



Appendix FF

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

The Court of Appeal The High Court

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

M. O'S		V	THE RESIDENTIAL INSTITUTIONS REDRESS BOARD AND THE SUPERIOR COURTS RULES COMMITTEE AND THE MINISTER FOR JUSTICE AND EQUALITY
High Court Record Nr	2016 / 189 JR	Court of Appeal Record	2017/248
Date of filing			
Name(s) of Applicant(s)/Appellant(s)		M. O'S	
Solicitors for Applicant(s)/Appellant(s)		Byrne Carolan Cunningham Solicitors, "Oak House", 39 / 41 Mardyke Street, Athlone, Co. Westmeath	
Name of Respondent(s)	(1) The Residential Institutions Redress Board (2) The Superior Courts Rules Committee (3) The Minister for Justice and Equality		
Respondents' solicitors	(1) Ms Sharon Moohan Solicitor, The Residential Institutions Redress Board 3rd Floor St Stephens Green House Earlsfort Terrace Dublin 2 (2)(3) The Chief State Solicitor Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8		
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"/> No	
If yes, give [Supreme Court] record number(s)			

Are you applying for an extension of time to apply for leave to appeal? Yes No

If Yes, please explain why:

The Order was perfected on the 5th May 2017. A timely appeal was taken to the Court of Appeal. On further consideration of the matter Counsel advised that, for the reasons set out herein the appeal raised matters of general public importance and that whatever the outcome of an appeal to the Court of Appeal it was likely the points of law would be the subject of a possible Supreme Court Appeal on the application of one or other of the parties. By the time the issue had been discussed between the parties the 28 day period had expired.

1. Decision that it is sought to appeal

Name(s) of Judge(s)	McDermott J.
Date of order/ Judgment	Judgement delivered on the 24 th April 2017; Order perfected on the 5 th May 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

Appellant's full name	M O'S (Reporting restrictions were applied and the Appellant is referred to as M O'S)
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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

Solicitor: Brian Carolan			
Name of firm	Byrne Carolan Cunningham		
Email	maryr@bccsolicitors.ie		
Address	"Oak House" 39 / 41 Mardyke Street, Athlone, Co. Westmeath	Telephone no.	090 64 78433
		Document Exchange no.	12011
Postcode	N37 TA44	Ref.	10/IR O76/11/

How would you prefer us to communicate with you?

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

Counsel			
Name	Feichín McDonagh SC		
Email	eftmed@indigo.ie		
Address	Law Library Distillery Building, 145 - 151 Church Street, Dublin 7.	Telephone no.	8174523
		Document Exchange no.	816318
Postcode			

Counsel			
Name	Colette Egan BL		
Email	coletteegan@icloud.com		
Address	Law Library Distillery Building, 145 - 151 Church Street, Dublin 7.	Telephone no.	8177359
		Document Exchange no.	818062
Postcode			

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	(1) Residential Institutions Redress Board (2) Superior Courts Rules Committee (3) Minister for Justice and Equality
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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	(1)x Respondent				
	<input type="checkbox"/> Prosecutor	(2)x				
	<input type="checkbox"/> Petitioner	(3)x				
		<input type="checkbox"/> Notice Party	Yes	(1)x	No	(2)x
			(3)x			

Solicitor			
Name of firm	(1) Ms Sharon Moohan (3) Chief State Solicitor		
Email			
Address	(1) The Residential Institutions Redress Board 3rd Floor St Stephens Green House Earlsfort Terrace Dublin 2 (3) Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8	Telephone no.	
		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 type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	(1) Denis McDonald SC (3) Miriam Reilly SC		
Email			
Address	(1) Law Library Four Courts Dublin 7 (3) Law Library Four Courts Dublin 7	Telephone no.	
		Document Exchange no.	
Postcode			

Counsel

Name	(1) Fintan Valentine BL (3) Aoife Carroll BL		
Email			
Address	(1) Law Library Four Courts Dublin 7.	Telephone no.	
	(3) Law Library Four Courts Dublin 7	Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

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 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 High Court delivered on the 24th April 2017 and the Order perfected on the 5th May 2017 whereby:

(1) the Court refused the Applicant's application for an extension of time within which to seek judicial review under Order 84, Rule 21(3) of the Rules of the Superior Courts in respect of a decision of the First Named Respondent taken on the 9th January 2012 (of which the Applicant was formally notified on the 11th January 2012) on the grounds that the Applicant has failed to establish "good and sufficient reason" to extend time.

(2) the Court refused to grant declaratory relief sought by the Applicant to the effect that Order 84, Rule 21 sub-rules (3)(b) (i) and (ii) were ultra vires the Superior Courts Rules Committee.

The following facts were either found by the High Court or were contended for by the Applicant and were not rejected:

1. the Applicant is an individual who was entitled under the Residential Institutions Redress Board Act, 2002 (as amended) to apply to the First Named Respondent for redress arising out of childhood abuse suffered by him while in the care of a scheduled Institution.
2. the Applicant applied but was out of time and sought an extension of time to apply which extension could be granted by the Board if it found that there were 'exceptional circumstances' within the meaning of s.8 (2) of the Residential Institutions Redress Act 2002, as amended.
3. the Respondent Board held an oral hearing and declined to extend time, giving reasons therefor to the Applicant on the 11th January 2012. The decision was not, at the time, challenged by the Applicant by way of Judicial Review.
4. the test applied by the Board was incorrect in point of law and the refusal was due to the misinterpretation by the Respondent Board of its statutory powers and obligations and accordingly the Applicant was wrongly deprived of redress. The Applicant was an otherwise meritorious applicant.

5. the error in the Respondent Board's approach was clearly identified by the Court of Appeal in the case of *McE v The Residential Institutions Redress Board* [2016] IECA 17.

6. The Applicant obtained, *ex parte*, Leave to seek a Judicial Review of the decision of the Board on the 18th March 2016, with the issue of the need to extend time reserved to the substantive hearing;

At a Directions Hearing Counsel on behalf of the Minister indicated that the Minister would represent the interests of the Rules Committee.

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

Statutory Instrument 691 of 2011 amended Order 84 and imposed a more onerous test on an Applicant for Judicial Review who is obliged to seek an extension of time in which to apply. The new Rule permits a Court to extend time if, but only if, the Court forms the view that:

(a) *there is good and sufficient reason for doing so, and*

(b) *the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either—*

(i) *were outside the control of, or*

(ii) *could not reasonably have been anticipated by the applicant for such extension.*

General Public Importance:

The new test applies to all Applicants under Order 84 since the change in the Rule became effective in January 2012. The issue in relation to the *vires* of the Superior Court Rules Committee is a matter of general public importance potentially affecting the right of access of all citizens to the High Court when what is in issue is the lawfulness of a decision of a public body or lower Court or Tribunal

Further it is a matter of general public importance that those who were subjected to historical childhood abuse while in State care and in respect of whom the Oireachtas demonstrated an intention to provide redress by way of a remedial statute (as so found by this Court in *O'G v The Residential Institutions Redress Board* [2015] IESC 41) would in fact receive such redress and would not be wrongly deprived of same due to an error on the part of the Residential Institutions Redress Board.

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

1. The Court erred in fact and law in concluding that there was not good and sufficient reason to extend time within which to apply for leave to seek judicial review.
2. The Court erred in fact and law in concluding that that Order 84, Rule 21. (3)(b) (i) and (ii) are *intra vires* the Second Named Respondent herein and are proportionate, rational and fair provisions.
3. The Court erred in fact or law in failing to afford sufficient weight to all the circumstances of the case and in particular the issues highlighted by Ms Justice Denham (as she then was) in *De Roiste v. Minister for Defence and Others* [2001] 1 IR 190 wherein she stated *inter alia* that in determining whether or not to extend time within which leave to seek judicial review might be sought the Court could take into account matters such as the conduct of the applicant, the conduct of the respondent and the effect of the order under review on the parties and on others.
4. The Court erred in law in holding that a development in jurisprudence could never have availed the Appellant in seeking an extension of time and in deciding the application before him without regard to all prevailing circumstances and, in particular, in failing to afford any or any sufficient weight to the public interest in ensuring that persons such as the Appellant who were intended to be compensated by the First Named Respondent for childhood abuse but instead were denied redress due to the misinterpretation by the said Respondent of its statutory duties and functions should ultimately receive compensation and instead placed excessive weight on the competing public interest in ensuring that public law proceedings be dealt with promptly.
5. The Court erred in fact and law its apparent conclusion that it was open to the Appellant to challenge Order 84, Rule 21. (3)(b) (i) and (ii) of the Rules of the Superior Courts on the basis it was unconstitutional. The Rules could appropriately be challenged on the basis that they were *ultra vires* as occurred in this case.
6. The Court inappropriately relied on *dicta* of the Supreme Court in the case of *A v. The Governor of Arbour Hill* [2006] 4 IR 88.
7. The Appellant did demonstrate good and sufficient reason to extend time within which to apply for leave to seek judicial review.
8. The Court erred in law in failing to hold that Order 84, Rule 21(3)(b)(i) and (ii) (as amended by S.I. 691 of 2011) of the Rules of the Superior Courts to the extent it provides for a more strict discretion in respect of an extension of time amounts to an impermissible restriction on the Appellant's right of access to the Courts in the circumstances of the case.

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

Feichín McDonagh SC; Colette Egan

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 251

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:

- i. An Order extending time coupled with an Order of certiorari by way of an application for judicial review quashing the Determination/Decision of the Respondent dated the 9th and 11th of January 2012 respectively refusing the Applicant's application to the Residential Institutions Redress Board for an extension of time under Section 8(2) of the Residential Institutions Redress Act, 2002 (as amended) within which to apply for redress;
- ii. An Order remitting the matter to the Respondent for the purposes of a reconsideration of the Applicant's aforesaid application in accordance with law;
- iii. A Declaration that Order 84 Rule 21 (3) (b) (i) and (ii) (as amended by S.I. 691 of 2011) of the Rules of the Superior Courts is ultra vires the Second and Third Named Respondents as amounting to a substantive and impermissible restriction on the right of access to the Courts. In the alternative, a Declaration that in the circumstances of the case the provisions of the said sub-rule are inapplicable.

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

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:

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:

The Applicant suffered abuse in a Residential Institution and has waited for redress for a considerable period.

Signed: Byrne Corolan Cunningham Solicitors.

(Solicitor for) the applicant/appellant

Please submit your completed form to:

The Office of the Registrar of the Supreme Court
The Inns Four of the Supreme Court
Dublin Dublin Quay

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.