

**Schedule 2**

**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	
The Court of Appeal	

[Title and record number as per the Court of Appeal proceedings]

<b>DPP</b>	<b>v</b>	<b>M J</b>  <b>Court of Criminal Appeal Record Number 111/2010</b>
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<b>Date of filing</b>	
Name(s) of Applicant(s)/Appellant(s)	██████████
Solicitors for Applicant(s)/Appellant(s)	Kevin Tunney Solicitors
Name of Respondent(s)	Director of Public Prosecutions
Respondent's solicitors	Patrick Geraghty c/o Director of Public Prosecutions Appeals Section

Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?
Yes
If yes, give [Supreme Court] record number(s) <b>1. [REDACTED] v Governor of Midlands Prison Supreme Court Record Number [REDACTED] / 2017</b> (stamped on 7 November 2017 and is being concurrently initiated for consideration with this companion appeal) contains appeal grounds with ‘common and / or similar issues’

Are you applying for an extension of time to apply for leave to appeal?	Yes
If Yes, please explain why	
<ol style="list-style-type: none"> <li>1. In late 2014, the Appellant concurrently issued two appeals having some similar issues – one to the Court of Criminal Appeal (<b>DPP v MJ CCA 111/2010</b>) and the other to the (then new) Court of Appeal Civil (<b>[REDACTED] v Governor of Midlands Prison CoA 38/2014</b>)</li> <li>2. On 25<sup>th</sup> June 2015 (the day the Court of Criminal Appeal delivered its ruling in this matter), the Appellant instructed immediately that he wanted to apply to the European Court of Human Rights - while a written perfected Order was still awaited from the (then new) Court of Appeal Civil in his concurrent companion appeal.</li> <li>3. The appellant has maintained his innocence at all times.</li> <li>4. The appellant has always indicated and instructed his wish to overturn his conviction by way of appeal and / or by way of application to the European Court of Human Rights.</li> <li>5. A procedural conundrum has thus arisen, having regard to the contents of Sections 5 &amp; 6 of this appeal and the Applicants / Appellants current instructions to make another application to the European Court of Human Rights in addition to the Supreme Court.</li> <li>6. It is proposed to address this procedural conundrum by applying for ancillary Supreme Court Orders to clarify whether any Applicant / Appellant must plead every First Instance Court and / or Court of Appeal ground to avoid waiver of the right(s) to then raise each and every appeal ground (individually and as a composite whole) at the European Court of Justice and / or the European Court of Human Rights and / or a UN Human Rights Committee. Please see paragraphs 8.3, 8.4, 8.5 and 8.6 herein in this context.</li> <li>7. In regard to the said applications for ancillary Supreme Court Orders herein, the Irish Human Rights and Equality Commission (‘IHREC’) and the office of the Attorney General (‘AG’) are being served as Notice Parties with both of the Applicant / Appellants applications for leave to appeal - as is mandatory in order to afford this Honourable Court jurisdiction to issue a Declaration and / or Order of incompatibility with the European Convention of Human Rights.</li> <li>8. The Governor of Midlands Prison is being served as Notice Party to this companion application for Supreme Court Leave to Appeal having ‘common and / or similar issues’ to <b>[REDACTED] v Governor of Midlands Prison CoA 38/2014</b> (stamped by the Supreme Court on 7 November 2017)</li> <li>9. The issues raised at paragraph 6 above (and paragraphs 8.3, 8.4, 8.5 and 8.6 herein) were highlighted to this Honourable Court in DPP v [REDACTED] (Supreme Court Record Number 137/2017) and in other more recent applications for Supreme Court leave to appeal.</li> </ol>	

10. The appeal herein (together with companion appeal having ‘common and / or similar issues’ - **██████████ v Governor of Midlands Prison CoA 38/2014** – Stamped by the Supreme Court on 7 November 2017) integrally involves detailed consideration of the right(s) of any litigant or appellant to litigate for an extension of time or otherwise.
11. Draft 1 of this appeal was submitted to the Supreme Court office by email on or about 8<sup>th</sup> November 2017 (companion conviction appeal **██████████ v Governor of Midlands Prison CoA 38/2014** was stamped the previous day by the Supreme Court office on 7<sup>th</sup> November 2017)
12. The Court of Criminal Appeal perfected Order for the ruling on 25<sup>th</sup> June 2015 was awaited before filing this application at the Supreme Court Office in late March 2018.
13. In late March 2018, attention was kindly drawn by the Supreme Court Office to Supreme Court Practice Direction SC16 ‘*Conduct of Proceedings in Supreme Court*’ and the recommended length of pleadings therein.
14. Attention was also kindly drawn to proposed Notice Parties IHREC and AG – please see paragraph 7 above.
15. Attention was also kindly drawn to proposed Notice Party Governor of Midlands Prison – please see paragraph 8 above.
16. All the additional appeal grounds applied for herein, by way of amendment of the original appeal and by way of other procedures, are bona fide and relate to concerns that fair procedures and related access to court rights are not being afforded to persons accused of sexual offences in custody, pre-trial, trial and any related domestic appeals.

**1. Decision(s) that it is sought to appeal**

Name(s) of Judge(s)	Mr Justice McKechnie, Mr Justice Michael White , Ms Justice Stewart.
Date of orders & Judgment	<b>Court of Criminal Appeal Ruling</b> of 25 June 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	[REDACTED]		
Original status		Plaintiff	Defendant
	✓	Applicant	Respondent
		Prosecutor	Notice Party
		Petitioner	
<b>Solicitor</b>			
Name of firm	Kevin Tunney Solicitors		
Email	<a href="mailto:rshaughnessy@kevintunney.ie">rshaughnessy@kevintunney.ie</a> and <a href="mailto:info@kevintunney.ie">info@kevintunney.ie</a>		
Address	Millenium House Main Street, Tallaght, Dublin 24	Telephone no.	01 451 8887
		Document Exchange no.	
Postcode		Ref.	<b>DPP v MJ CCA 111/2010</b>
Email	<a href="mailto:rshaughnessy@kevintunney.ie">rshaughnessy@kevintunney.ie</a> and <a href="mailto:info@kevintunney.ie">info@kevintunney.ie</a>		
How would you prefer us to communicate with you?	<input type="checkbox"/> Document Exchange <input checked="" type="checkbox"/> E-mail <input checked="" type="checkbox"/> Post <input type="checkbox"/> Other (please specify)		

	<b>Counsel</b>		
Name	Ciaran O'Loughlin SC		
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Postcode	D07N972		

	<b>Counsel</b>		
Name	Norma Judge BL		
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Address	Law Library, Distillery Building, 145-151 Church Street Dublin 7	Telephone no.	086 2500548
		Document Exchange no.	816576
Postcode	D07 WDX8		

If the Applicant / Appellant is not legally represented please complete the following

<b>Current postal address</b>	N/A
<b>e-mail address</b>	N/A
<b>Telephone no.</b>	N/A

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	The People (Director of Public Prosecutions)
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Original status		Plaintiff		Defendant
		Applicant	✓	Respondent
		Prosecutor		Notice Party
		Petitioner		

<b>Solicitor</b>			
Name of firm	Patrick Geraghty		
Email	<u>Patrick.geraghty@dppireland.ie</u>		
Address	Appeals Section Director of Public Prosecutions	Telephone no.	
	Infirmary Road, Dublin 7		
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you?	<input type="checkbox"/> Document Exchange <input checked="" type="checkbox"/> E-mail <input checked="" type="checkbox"/> Post <input type="checkbox"/> Other (please specify)		

<b>Counsel</b>			
Name	Sean Gillane SC		
Email			
Address	3 Arran Square, Arran Quay, Dublin 7	Telephone no.	01-817 2715
		Document Exchange no.	810087
Postcode			

<b>Counsel</b>			
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Email			
Address	Law Library Four Courts, Dublin 7	Telephone no.	086-855 3661 01-817 4578 045-436 282
		Document Exchange no.	812026
Postcode			

If the Respondent is not legally represented please complete the following

<b>Current postal address</b>	N/A
<b>e-mail address</b>	N/A
<b>Telephone no.</b>	N/A

How would you prefer us to communicate with you? N/A

- Document Exchange     E-mail  
 Post                             Other (please specify)

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

*Please set out below:*

- 4 *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*
- 5 *(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*
- 6 *The relevant orders and findings made in the High Court and/or in the Court of Appeal*

**Decision(s) sought to appeal herein**

**Court of Criminal Appeal Ruling** of 25 June 2015

**Overview / Background**

**4.1 - INTRODUCTION**

**4.1.1** - The appellant was convicted of four counts of indecent assault regarding claims made by one of his daughters, Ms H, on 27th July 2006 but the Court of Criminal Appeal quashed that conviction on 14th March 2008 owing to concerns about the length of time and the circumstances of jury deliberations (2008 2 IR 410)

**4.1.2** - In the original 2006 trial the appellant was acquitted of a number of other charges of indecent assault in relation to Ms H. He was also tried and acquitted of a number of indecent assault claims made by another daughter, Mrs M.

**4.1.3** - On 22nd March 2010 the appellant was convicted of the same 4 counts on the indictment by unanimous jury verdict at Dublin Circuit Court.

**4.1.4** - The four counts of indecent assault were stated to be contrary to common law as provided for by s.10 of the Criminal Law (Rape) Act 1981.

**4.1.5** - On 29th April 2010 the appellant was sentenced to six years imprisonment with the final 3 suspended on Bond.

**4.1.6** - On 18th June 2010 the appellant applied to the Court of Criminal Appeal relying on 10 grounds.

**4.1.7** - The appellant was released on bail with the consent of the DPP on 28th June 2010.

**4.1.8** - On 3rd June 2014 The Court of Criminal Appeal (McKechnie J, Herbert J & White Michael J) refused all 10 appeal grounds.

**4.1.9** - A Notice of Motion application was personally filed by the lay litigant appellant / applicant: On or about June 23<sup>rd</sup> 2014 the appellant filed a Notice of Motion, that he drafted himself as a lay litigant, to apply for leave to appeal to the Supreme Court in accordance with section 29 of the Courts of Justice Act 1924. That Notice of Motion listed 3 appeal grounds

**4.1.10** - Habeas Corpus / Article 40 application of the lay litigant Appellant / Applicant

On or about September 17<sup>th</sup> 2014 the appellant / applicant posted a short 3 page hand written High Court application pursuant to article 40.4.2 seeking an enquiry into the legality of his detention and seeking an order for his production. On October 10<sup>th</sup> 2014, Mr. Justice Barrett delivered a written ruling / judgment, refusing the application, in the absence of the appellant.

**4.1.11** - Related Proceeding # 1 - [REDACTED] v Governor Midlands Prison

Court of Appeal (Civil) Appeal of refusal of “Habeas Corpus” application: On or about Tuesday November 18<sup>th</sup> 2014, lawyers for the appellant / applicant issued a Court of Appeal appeal of the ruling of Mr. Justice Barrett under a number of headings prescribed by the new Court of Appeal pleadings templates (refusal of Ex Parte order, refusal of Interlocutory order, appeal against refusal of relief under Article 40 of the Constitution). The said proceedings included challenges to the constitutionality of s 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961. This appeal was drafted on the template for Civil appeals and reserved the appellants rights pursuant to the Constitution, European Law and the European Convention of Human Rights. Central to these proceedings are allegations that Fair Procedures were not complied with.

**4.1.12** - The pleadings templates of the Rules of the Superior Courts (Court of Appeal Act) 2014 are statutory provisions in a Statutory Instrument – they specifically invite & encourage pleading challenges to the constitutionality of provision(s) of legislation

**4.1.13** - Related Proceeding # 2 - DPP v MJ - Court of Appeal appeal re Court of Criminal

Appeal refusal of leave to appeal: On or about Wednesday November 19<sup>th</sup> lawyers for the appellant / applicant issued a Court of Appeal appeal of the ruling of the Court of Criminal Appeal dated June 3rd 2014 listing 10 new appeal grounds and asserting they are of sufficient public importance for Supreme Court hearing . Those new appeal grounds also include challenges to the constitutionality of s29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961. This appeal is also drafted on the template for Civil appeals and reserves the appellants rights pursuant to the Constitution, European Law and the European Convention of Human Rights.

**4.1.14** Related Proceeding # 3 –Court of Criminal Appeal Motion to amend lay litigant Motion to give 10 appeal grounds / DPP v MJ

**4.1.15** - Court of Criminal Appeal hearing to fix a date – Friday November 21 2014: Mr Justice McKechnie presided (and sat alone) and counsel for the appellant handed in the 2 Court of Appeal appeals together with a Draft unsworn Court of Criminal Appeal Notice of Motion (to enlarge time and amend) and explained to

Mr Justice McKechnie why there were / are currently 3 separate actions (record numbers) seeking to challenge the constitutionality of s29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961. It was emphasized that the 10 appeal grounds were new and that they were presumed / intended to be identical in both the Court of Appeal DPP v MJ matter and the Court of Criminal Appeal Motion to amend the lay litigants Motion. It was also outlined that the DPP was served with the 2 Court of Appeal matters Thursday November 20th and was handed a Draft unsworn Motion that same morning.

**4.1.16** - All 3 sets of proceedings were served on the DPPs office, the Attorney Generals office and the Irish Human Rights Commission

**4.1.17** - The appellant/ applicant outlined wishes to reserve all rights pursuant to the new Rules of the Superior Courts (Court of Appeal Act 2014) 2014 and asked that the Court of Criminal Appeal Notice of Motion to amend the lay litigant appellants Motion giving 10 proposed new appeal grounds be heard together (joined) with the Court of Appeal appeal issued on or about November 19 because both proceedings are similar in that they seek to challenge the constitutionality & / lawfulness of s29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961 and the 10 appeal grounds were presumed / intended to be identical

#### **4.2. RULING OF THE COURT OF CRIMINAL APPEAL**

On June 25<sup>th</sup>2015 the Court of Criminal Appeal delivered a written ruling rejecting all appeal grounds. The ruling makes written reference to a concurrent " unsuccessful " attempt at a Habeas Corpus application before the Court of Appeal Civil.

The Court of Appeal Civil was asked for a written order and judgment regarding its summary dismissal of the habeas corpus appeal on December 11 2014 but nothing written followed until the ruling of the Court of Criminal Appeal in June 2015.

#### **4.3 - PLEADINGS RE STATEMENT OF ALLEGED ECHR VIOLATIONS OF THE CONVENTION AND / OR PROTOCOLS AND RELEVANT ARGUMENTS PLEADED ON PRELIMINARY / FIRST APPLICATION FORM TO THE ECtHR**

##### **Article 6**

##### **Right to a fair trial not respected in many ways**

(1) A domestic system whereby prisoners write to a Judge directly and the judge posts back a judgment does not respect the established entitlements (CJEU & ECtHR) such as the right to legal aid (when lacking sufficient resources) and legal representation for an appeal. The postal judgments frequently do not refer to a prisoners appellate rights or to the rights of access to a lawyer or the entitlement to legal aid when lacking sufficient financial resources.

(2) Prisoners rights of access to court and rights to make oral / written submissions are not respected by the domestic postal system whereby a prisoner writes directly to a judge - the maxim Audi Alteram Partem is not observed .

(3) Appellate options in the Irish jurisdiction are too disproportionately restrictive and narrow to be compatible with the acquis of the European Human Rights Convention or the acquis of the European Treaty provisions. In essence if an accused is convicted by a jury there is just one appeal to a Court of Criminal Appeal (now the Court of Appeal Criminal pursuant to the Court of Appeal Act

2014). Thereafter in the final appellate option the maxim Nemo Judex In Causa Sua is not respected because the same 3 Judges hear the subsequent section 29 ( Courts of Justice Act 1924 ) appeal for leave to access the Supreme Court and not the expected (pursuant to fair procedures) completely new independent and impartial appellate court

(4) There are very restrictive domestic precedent rulings that make it unlikely to overturn a jury verdict.

(5) A final conviction certificate will not issue until all domestic appellate options have been exhausted and the section 29 application is refused - the presumption of innocence is not respected if there is no domestic procedure for bail after refusal of an appeal application by the Court of Appeal Criminal unless subsequently a section 29 (Courts of Justice Act 1924) appeal application succeeds. There is no domestic procedure for bail while awaiting a section 29 application after refusal of an appeal by the Court of Appeal Criminal.

### **Article 13**

#### **Right to an effective remedy**

(1) There is no domestic procedure for bail while awaiting a section 29 application after refusal of an appeal by the Court of Appeal Criminal.

(2) The domestic mandatory " public interest " and " of exceptional public importance " requirements (pursuant to section 29 of the Courts of Justice Act 1924) for access to the Supreme Court by way of appeal is incompatible with the acquis of the European Human Rights Convention and the acquis of the European Treaty provisions . Recent ECtHR rulings have indicated that failure of a domestic court to have regard to and observe European legislation &/ CJEU precedent can result (sometimes automatically) in an unfair trial.

(3) Criminal appellate options are too disproportionately restrictive and narrow to be compatible with the acquis of the European Human Rights Convention or the acquis of the European Treaty provisions.

#### **4.4 - LETTER FROM REGISTRAR OF EUROPEAN COURT OF HUMAN RIGHTS**

On 1 February 2015 the ECHR Registrar wrote to the solicitors for the Applicant / Appellant to request copies of transcripts and referred to the Court of Appeal hearing date of 11 December 2014.

#### **4.5 - RULING AND ORDER OF COURT OF APPEAL**

On 13 September 2016 the Court of Appeal released its perfected order and an ex tempore written ruling, of President Kelly, for the Court of Appeal Directions list on 11 December 2014

#### **4.6 - MOTION FOR TRANSCRIPTS**

On November 10<sup>th</sup> 2017 the Court of Appeal perfected its Order refusing the Applicant / Appellants motion seeking transcripts and holding that the issue of costs did not arise.

#### **4.7 - SERVICE OF THE IHREC AND AG AS NOTICE PARTIES**

In regard to the said applications for ancillary Supreme Court Orders herein (please see paragraphs 8.3, 8.4 and 8.5 herein) the IHREC and AG are being served as Notice Parties with both of the Applicant / Appellants applications for leave to appeal - as is mandatory in order to afford this Honourable Court jurisdiction to issue a Declaration and / or Order of incompatibility with the European Convention of Human Rights.

#### **4.8 - SERVICE OF THE GOVERNOR OF MIDLANDS PRISON AS A NOTICE PARTY**

The Governor of Midlands Prison is being served as Notice Party to this companion application for Supreme Court Leave to Appeal having 'common and / or similar issues' to Supreme Court application [REDACTED] v Governor of Midlands Prison CoA 38/2014

### **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*

#### **5.1 - Why it is necessary in the interests of justice that there be an appeal to the Supreme Court**

**5.1.1** A Supreme Court appeal is necessary to uphold the overriding objective that all criminal cases be dealt with justly in the interests of justice and / or the public interest.

**5.1.2** A Supreme Court appeal dealing with a criminal case justly, in the interests of justice and / or the public interest, includes

- (i) Ensuring acquittal of the innocent and conviction of the guilty
- (ii) Ensuring the prosecution and defence are dealt with fairly
- (iii) Recognising the rights of the Accused / Appellant, particularly those under Article 6 of the European Convention of Human Rights
- (iv) Ensuring trial courts respect the interests of witnesses, victims and jurors and keep them informed of the progress of the case
- (v) Ensuring trial courts deal with the case efficiently and expeditiously
- (vi) Ensuring that appropriate information is available to the court at all stages of trial and appellate procedure and / or considerations

**5.1.3** A Supreme Court appeal dealing with a criminal case justly, in the interests of justice and / or the public interest, involves taking into account

- (i) The gravity of the offence alleged
- (ii) The complexity of what is in issue

(iii) The severity of the consequences for the defendant and others affected, and

(iv) The needs of other cases

- 5.1.4** A Supreme Court appeal dealing with a criminal case justly, in the interests of justice and / or the public interest, prioritises ensuring a case outcome that is first and foremost factually and / or evidentially accurate.
- 5.1.5** A Supreme Court appeal dealing with a criminal case justly, in the interests of justice and / or the public interest, prioritises ensuring all evidence is reliable and cogent.
- 5.1.6** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy and / or was denied a fair and public trial and subsequent appeal hearing by the dismissal of the additional appeal grounds applied for.
- 5.1.7** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy and / or was denied a fair and public trial and / or was denied fair procedures in the Circuit Court trial, in the Court of Criminal Appeal and in the Court of Appeal.
- 5.1.8** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy and / or was denied a fair and public trial and / or the applicant was denied rights of access to court to prosecute the additional bona fide appeal grounds applied for
- 5.1.9** A Supreme Court appeal is necessary to address concerns that the applicant was denied rights of access to justice to prosecute the additional bona fide appeal grounds applied for
- 5.1.10** A Supreme Court appeal is necessary to address concerns that customary (summary) dismissal of applications for additional appeal grounds by the Irish Court of Criminal Appeal or (new) Court of Appeal, on the sole basis that they were not raised at jury trial by way of requisitions (or at any stage in the trial transcript), may be construed as usurping the jurisdiction of the European Courts (Court of Justice of the European Union and European Court of Human Rights) regarding integral related human rights and fundamental rights
- 5.1.11** A Supreme Court appeal is necessary to address concerns that the applicant denied the right to an effective remedy for the matters complained of in the additional appeal grounds applied for
- 5.1.12** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy and / or was denied a fair and public trial when the Court of Appeal refused the application to release the appeal trial and case management listings transcript(s) or DAR(s) for this Supreme Court appeal and the instructed application to the European Court of Human Rights

## **5.2 - Why the decision sought to be appealed involves a matter of general public importance**

- 5.2.1** A Supreme Court appeal is necessary to address concerns that the additional appeal grounds applied for are bona fide and relate to concerns that fair procedures and related access to court rights are not being afforded to accused persons in (historic or otherwise) sexual offences custody, pre-trial, trials and any related domestic appeals - this could foreseeably erode and

undermine the fair procedures and related access to court rights for all litigants in civil or criminal litigation.

- 5.2.2** A Supreme Court appeal is necessary to address concerns that the customary summary dismissal of applications for additional appeal grounds by Irish Court of Criminal Appeal or (new) Court of Appeal, on the sole basis that they were not raised at jury trial by way of requisitions (or in the trial transcript), may be construed as usurping the jurisdiction of the European Courts (Court of Justice of the European Union and European Court of Human Rights) regarding integral related human rights and fundamental rights
- 5.2.3** A Supreme Court appeal is necessary to address the argument that the appeal herein requires consideration of the interaction of Supreme Court precedent on the law of amendment of proceedings with Supreme Court precedent on the admissibility of appeal grounds when appealing a criminal conviction or sentence.
- 5.2.4** The appeal herein requires consideration of various appeal ground categories or modules, having public importance, concerning vindicating the legal aid or litigation finance entitlements, fair procedures rights, human rights and fundamental rights of any accused person in custody, pre-trial, trials or at appeal.
- 5.2.5** The appeal herein raises concerns of public importance regarding the adequacy of the standard issue written leaflet “Information for Persons in Custody” and whether it is compatible with the European Convention of Human Rights, the fundamental rights requirements of the European Treaties, the European Charter of Fundamental Rights and other Human Rights Instruments having the force of law in the European Union.
- 5.2.6** This appeal raises concerns of public importance regarding the adequacy of the domestic legal aid system (in custody, pre-trial, trial and subsequent appeals) and whether it is compatible with the European Convention of Human Rights, the fundamental rights requirements of the European Treaties, the European Charter of Fundamental Rights, other Human Rights Instruments having the force of law in the European Union and the Rule of Law.
- 5.2.7** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy for the matters complained of in the additional appeal grounds applied for – the Irish Constitution, the European Treaties, The European Charter of Fundamental Rights and the European Convention of Human Rights require that an appropriate remedy or appropriate remedies must be available for any wrong.
- 5.2.8** A Supreme Court appeal is necessary to address concerns that the applicant was denied the right to an effective remedy when the Court of Appeal refused to release the appeal trial and the case management listings transcript(s) or DAR(s) for the application to the Supreme Court and the European Court of Human Rights – the Irish Constitution, the European Treaties, The European Charter of Fundamental Rights and the European Convention of Human Rights require that an appropriate remedy or appropriate remedies must be available for any wrong.

**5.2.9** Paragraphs 5.1.1 – 5.1.12 herein relating to “Interests of Justice” raise public interest concerns regarding upholding the Rule of Law together with accepted fair procedures.

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

Please list (as 1, 2, 3, etc) concisely:

- 6** *the specific ground(s) of appeal and the error(s) of law related to each numbered ground*
- 7** *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*
- 6.1** The learned Court of Criminal Appeal Trial Judges erred in not directing a full hearing re the asserted unconstitutionality and / or unlawfulness of section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961 (which provides that appeals from the Court of Criminal Appeal are only permitted where a case involves a point of law of exceptional public importance and is desirable in the public interest)
- 6.2** Further , or in the alternative , the learned Court of Criminal Appeal Trial Judges erred by not affording the Applicant / Appellant the opportunity of applying by way of Case Stated to the Supreme Courts re the constitutionality and / or lawfulness of section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions ) Act 1961 ( which provides that appeals from the Court of Criminal Appeal are only permitted where a case involves a point of law of exceptional public importance and is desirable in the public interest) .
- 6.3** Further, or in the alternative, the learned Court of Criminal Appeal Trial Judges erred by not affording the Applicant / Appellant the opportunity of applying by way of Case Stated (within the framework of the European Convention on Human Rights and the European Treaty Provisions) to the Supreme Court on any point of law.

- 6.4** The learned Court of Criminal Appeal Trial Judges erred by not referring a Case Stated to the Supreme Court on the question of law of public importance and / or public interest “Whether the protection against self-incrimination as guaranteed by law is breached by admitting into evidence an incriminating statement made during a highly charged and tense confrontation, where eye witness evidence relating to the circumstances and / or substance of such admission contain significant inconsistencies”
- 6.5** The learned Court of Criminal Appeal Trial Judges erred by not referring a Case Stated to the Supreme Court on the question of law of public importance and / or public interest “Whether the protection against self-incrimination as guaranteed by law is breached by admitting into evidence an uncautioned incriminating statement made in circumstances which do not make it evident that such admission might be admissible in subsequent criminal proceedings”
- 6.6** The learned Court of Criminal Appeal Trial Judges erred by not referring a Case Stated to the Supreme Court on the question of law of public importance & public interest “Does the fundamental requirement of basic fairness require that a Trial Judge who has given an indication that a particular warning or direction will be given, upon which indication the defence has relied in its conduct of the proceedings, follows through by way of giving the expected direction or warning”
- 6.7** The learned Court of Criminal Appeal Trial Judges erred by not referring a Case Stated to the Supreme Court about whether a jury properly instructed could safely base a conviction on the evidential inconsistencies and discrepancies of 4 witnesses outlined in paragraphs 32 & 33 of the learned Ruling.
- 6.8** The learned Court of Criminal Appeal Trial Judges erred by not referring a Case Stated to the Supreme Court about whether all evidence was admissible before arriving at their determination.
- 6.9** The learned Court of Criminal Appeal Trial Judges erred by not seeking or directing a ruling of the Supreme Court to enumerate current parameters of the constitutional privilege against self-incrimination (within the framework of the European Convention on Human Rights and the European Treaty Provisions) in the public interest & as a question of law of public importance (before determination of his appeal).
- 6.10** The learned Court of Criminal Appeal Trial Judges erred by not seeking or directing a ruling of the Supreme Court to enumerate current parameters of the related constitutional right to silence (within the framework of the European Convention on Human Rights and the European Treaty Provision) in the public interest & as a question of law of public importance (before determination of his appeal)
- 6.11** The Learned Court of Appeal Trial Judges erred in refusing to direct release of the printed court transcripts (or alternatively the Digital Audio Recording (DAR) to facilitate word processing of the court transcripts) for the specified High Court and / or Court of Criminal Appeal and / or Court of Appeal dates and / or hearings.

- 6.12** The Learned Court of Appeal Trial Judges erred in refusing an application for an Order providing for the costs of the Court of Appeal Directions List application hearing on 11 December 2014
- 6.13** The Learned Court of Appeal Trial Judges erred in refusing declaratory Orders clarifying whether costs are payable under the criminal legal aid scheme, the custody issues scheme, payable simpliciter or a hybrid of some of the aforementioned.
- 6.14** The Learned Court of Appeal Trial Judges erred in refusing an application for an Order providing for the Costs of the Motion application hearing and declaring whether costs are payable under the criminal legal aid scheme, the custody issues scheme, payable simpliciter or a hybrid of some of the aforementioned.
- 6.15** The Learned Court of Appeal Trial Judges erred in ruling that the question of costs does not arise.
- 6.16** - The Appellant reserves the right to furnish further grounds of appeal prior to or at the hearing hereof.

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

**Ross Shaughnessy solicitor**  
**Ciaran O’Loughlin SC**  
**Norma Judge 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

DPP v MJ, Court of Criminal Appeal [2010 No. 111 CCA]

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:

- 8.1** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, that the learned Court of Criminal Appeal Trial Judges erred by not ruling in favour of the Appellant in relation to the appeal grounds pleaded in each of paragraphs 6.1 – 6.10 at section 6 herein.
- 8.2** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, that the learned Court of Appeal Trial Judges erred by not ruling in favour of the Appellant in relation to the appeal grounds pleaded in each of paragraphs 6.11 – 6.15 at section 6 herein
- 8.3** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, clarifying whether an application may not be made to the European Court of Human Rights directly from the Court of First Instance and / or Court of Criminal Appeal and / or Court of Appeal without first appealing to the Supreme Court.

- 8.4** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, that the Learned Court of Criminal Appeal and / or Court of Appeal Civil Judges erred in not publishing all the Appellants appeal grounds on the courts.ie web site
- 8.5** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, clarifying whether an Appellant to the Supreme Court must plead and include each and every appeal ground raised in the lower court(s) in order to prevent waiver of the right(s) to then raise each and every appeal ground (individually and as a composite whole) at the European Court of Justice and / or the European Court of Human Rights and / or a UN Human Rights Committee.
- 8.6** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, clarifying whether Supreme Court Practice Direction SC16 is compatible with the Constitution and / or the European Convention on Human Rights and / or the European Treaties and / or the European Charter of Fundamental Rights and / or other Human Rights Instruments having the force of law in the European Union and / or the Rule of Law.
- 8.7** - A Preliminary Order granting release of the Digital Audio Recording (DAR) and / or Transcript of all case management listings (High Court, Court of Criminal Appeal and Court of Appeal) and all hearings (High Court, Court of Criminal Appeal and Court of Appeal) of this action since the date of the Appellants conviction.
- 8.8** - Order(s), in the public interest and / or the interests of justice, quashing the Order(s) of the Court of Criminal Appeal
- 8.9** - Order(s), in the public interest and / or the interests of justice, directing a full public rehearing
- 8.10** - Order(s), in the public interest and / or the interests of justice, directing a Case Stated to the Supreme Court and / or a Supreme Court hearing re the asserted unconstitutionality of section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961
- 8.11** - Declaration(s) & / Order(s), in the public interest & the common good, that section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts (Supplemental Provisions) Act 1961 is fully or in part unconstitutional and / or incompatible with European Law and / or incompatible with the European Convention on Human Rights.
- 8.12** - Declaration(s) & / or Order(s) in the public interest and / or the interests of justice outlining and / or updating the principles which should guide domestic Courts when deciding whether to grant Preliminary Pre-emptive Costs Order(s).
- 8.13** - Declaration(s) & / or Order(s) in the public interest and / or the interests of justice granting Preliminary Pre-emptive Costs Order(s).
- 8.14** - Declaration(s) & / or Order(s) in the public interest and / or the interests of justice, clarifying whether lawyers for the Applicant / Appellant ought to have been paid or ought to be paid Legal Aid professional litigation, consultation and other fees for all appellate

litigation (solicitors, senior counsel and junior counsel) from the date of the Applicants conviction.

**8.15** - Declaration(s) & / or Order(s), in the public interest and / or the interests of justice, providing for the residual Costs of all appellate litigation (solicitors, senior counsel and junior counsel) from the date of the Applicants / Appellants conviction and clarifying whether payable pursuant to common law and / or contract law and / or quantum meruit and / or taxed in default of agreement and / or otherwise.

**8.16** - The Appellant reserves the right to furnish further Orders sought prior to or at the hearing hereof.

What order are you seeking if successful?

Order being appealed:	set aside	<input type="checkbox"/>	vary/substitute	✓		
Original order:	set aside	✓	restore	<input type="checkbox"/>	vary/substitute	<input type="checkbox"/>

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

1. Section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts ( Supplemental Provisions ) Act 1961 ( which provides that appeals from the Court of Criminal Appeal are only permitted where a case involves a point of law of exceptional public importance and is desirable in the public interest )
2. Please see Grounds of Appeal & Order(s) sought – The Applicant / Appellant reserves all rights pursuant to the Irish Constitution, The European Convention of Human Rights and the European Treaties
3. The Appellant reserves the right to seek declarations of unconstitutionality

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

1. Section 29 of the Courts of Justice Act 1924 as re-enacted by s.48 of the Courts ( Supplemental Provisions ) Act 1961 ( which provides that appeals from the Court of Criminal Appeal are only permitted where a case involves a point of law of exceptional public importance and is desirable in the public interest )
2. See appeal grounds and orders sought – the Applicant / Appellant reserves all rights pursuant to the European Convention of Human Rights, the Irish Constitution & the European Treaties.
3. The Appellant reserves the right to seek declarations of incompatibility with the European Convention on Human Rights.

<b>Are you asking the Supreme Court to:</b>	
depart from (or distinguish) one of its own decisions?	✓ Yes <input type="checkbox"/> No
If Yes, please give details below:	
The People (Director of Public Prosecutions) v. Kelly [1982] I.R. 90	
The People (Director of Public Prosecutions) v. Cronin [2003] 3 I.R. 377	
The People (Director of Public Prosecutions) v Cronin (No. 2) [2006] 4 I.R. 329	
The People (Director of Public Prosecutions) v. Foley [2007] 2 I.R. 486	
The People (Director of Public Prosecutions) v. Griffin [2008] IECCA 112	
DPP v Patrick Higgins (Unreported, Supreme Court, 22 November 1985)	
make a reference to the Court of Justice of the European Union?	✓ Yes <input type="checkbox"/> No
If Yes, please give details below:	
The Applicant / Appellant reserves the right to make a reference to the Court of Justice of the European Union and asks this Honorable Court to consider a reference or reference(s) where appropriate	

Will you request a priority hearing?	✓ Yes <input type="checkbox"/> No
If Yes, please give reasons below:	
<ol style="list-style-type: none"> <li>1. There are numerous serious public interest issues and / or consideration in the proceedings herein and the common good is best served by expeditious determination of all those issues (please see paragraphs 5.1.1 – 5.1.12)</li> <li>2. There are numerous serious interests of justice issues and / or considerations in the proceedings herein and the common good is best served by expeditious determination of all those issues (please see paragraphs 5.2.1 – 5.2.9)</li> </ol>	

**Signed:** \_\_\_\_\_

**Kevin Tunney Solicitors**

**(Solicitor for) the applicant/appellant**

**Please submit your completed form to:**

The Supreme Court Office  
The Four Courts  
Inns Quay  
Dublin

**together with a certified copy of the Order(s) 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.**

**To:**

The Director of Public Prosecutions,  
Chief Prosecution Solicitors,  
90 North King Street,  
Smithfield, Dublin 7

**And by registered post to (Notice Party):**

The Irish Human Rights & Equality Commission  
16-22 Green Street,  
Dublin 7, Ireland

**And by registered post to (Notice Party):**

The Office of the Attorney General  
The Chief State Solicitors Office,  
Osmond House, Little Ship Street  
Dublin 8

**And by registered post to (Notice Party):**

The Governor(s)  
Midlands Prison  
Dublin Road  
Portlaoise, Co Laois