

**COMMUNICATION TO AARHUS COMPLIANCE COMMITTEE**

**IN THE MATTER OF ICOS No 18/23791/01  
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY RURAL INTEGRITY (LISBURN 01) LTD FOR LEAVE  
TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION BY LISBURN AND CASTLEREAGH CITY COUNCIL TO  
ISSUE PLANNING PERMISSION REF LA05/2017/0556/O  
DATED 6<sup>TH</sup> DECEMBER 2017**

**CORRESPONDENT**

Gordon Duff

For the attention of the Compliance Committee Ref :PRE/ACCC/C/2020/180

Ref: the Aarhus Compliance Committee's questions to the Communicant dated 11<sup>th</sup>  
November 2020

**Introduction and update**

Further to substantial submissions in an interlocutory hearing in another Appeal, the Court of Appeal has granted me leave to represent Coulters Hill Residents Ltd (please see attached Court Order). I regard this as resolving the issue of law at the centre of Communicants complaint to the Aarhus Compliance Committee. Clearly I as director can represent an Applicant or Appellant Company. The circumstances of this Court Order may differ from other cases in other respects, such as lodging £10,000 costs in Court, but that was a separate issue which was never determined in the Communicant's single case or the dismissal of all 29 cases despite costs protection applications being submitted in all cases.

It is my opinion that an application to the Supreme Court by Rural integrity (Lisburn 01) Ltd is no longer necessary to resolve the issue of law and it appears that the High Court has acted prematurely in dismissing 29 cases prior to that issue of law being finally resolved.

The Communicant therefore is grateful to the Court of Appeal for reconsidering the issue and allowing full submissions on the matter and hopes that the United Kingdom now concedes that Order 5 Rule 6 RCJ needs to be amended in some specific circumstances, namely environmental cases where it is not necessary to maintain a level playing field between warring parties. The Communicant would prefer prompt resolution of the matter in a harmonious way rather than any further conflict with the United Kingdom.

As the Communicant I would also respectfully inform the Committee that I have felt very stressed and overwhelmed for many months and am unable to appeal to the Supreme Court or Appeal each of the 29 cases to the Court of Appeal. The workload would be impossible

for me. I have my health, relationship and my ability to run my business consider during difficult times and also my limited ability to conduct other ongoing environmental legal cases.

I nevertheless answer the Committee's questions below.

### **Question 1**

*If leave to appeal was granted, approximately how long would you expect the Supreme Court to take to issue a decision on the appeal?*

An appeal to the Supreme Court would be at least 3 months to be granted leave and thereafter it could be heard relatively quickly as this is a relatively simple matter. Cumulatively if I were to consider the time to prepare the application to appeal, I would expect the appeal process may possibly take 5 - 6 months in total, with only 1 or 2 months of that after leave is granted.

*Would Rural Integrity Lisburn 01 Ltd or you personally be the applicant of the appeal to the Supreme Court?*

The Applicant would be Rural Integrity (Lisburn 01) Ltd as this company was the Appellant in the Court of Appeal. The Appellant has submitted a cost protection application in the High Court and additionally was granted costs immunity in the Court of Appeal due to the importance of resolving a lead case for the benefit of the other 32 queued cases. I would expect that that costs immunity would extend to the Supreme Court and I would be uncomfortable to step forward outside that costs immunity as a personal litigant even if permission were granted for me personally to bring the appeal

*Would it be possible to bring the appeal without having to appoint a lawyer to represent the applicant?*

Yes. I would expect that the Supreme Court would accept the Appellant's submission and consider its merit before denying me the right as director to represent the Appellant. As the point of law to be considered is one and the same as me as director being allowed to represent the Appellant, that matter would be a preliminary matter that I would be entitled to raise and the preliminary decision would resolve the Appeal.

### **Question 2**

*What, if anything, would prevent you entering a service contract with Rural Integrity Lisburn 01 Ltd to become, as director, an employee of the company for a minimal or token remuneration?*

This is a very good question which I had asked myself and sought advice from a friend who is a solicitor specialising in employment law. The advice given was that such a contract could be problematic and specifically "it can be hard to show a real relationship of mutuality

and control if a director basically runs the company that employs him or her". The Advice also stated "The main issue as I see it is that this arrangement might be open to the allegation that the 'employment' is not a true employment relationship (master and servant) but is a sham designed to get around procedural rules. That might mean it being found void on public policy grounds or potentially even an illegal contract". Finally the advice also stated "where you are an employee you would also have statutory rights such as the right to earn the national minimum wage and depending on who the employer was that might be difficult if lots of work was involved".

Given the above private advice and also my experience of being challenged that I as director had devised a method of providing "quasi legal services" to others by setting up a company to bring litigation on behalf of third parties, I am quite sure that arguing that I was an employee would be heavily attacked by the Respondent.

Furthermore the case before the Court of Appeal was regarded by the Court as a test case with a high degree of significance for the other 32 cases. These cases were all brought by various limited companies some of which had other shareholders and directors apart from me. It should be noted from reading the Appeal judgement that I refused to accept the Court of Appeals decision to take the Appeal in my own name when offered. The Appeal was then dismissed as there was no one present in the Court to represent the Appellant.

The reason that I did not accept the offer of the Court of Appeal is that (a) I thought it was wrong and (b) I would have accepted that ruling of the Court of Appeal which would have bound the judge in the lower Court to follow the Court of Appeal when deciding the related 32, pending cases.

The implication of accepting the Court's interpretation meant that I either would have had to employ legal representation or applications for me to take over on a personal basis in 32 cases. The potential costs of both of these options would have been prohibitive and would have meant I would have been obliged to concede most of these other 32 cases had I accepted the Court of Appeal's offer and subsequent decision.

My position is that this was a point of law of some significance that needed to be resolved justly and not simply accepted. I believed a 40 year old rule that was appropriate to inter party civil cases with economic interests on both sides was not appropriate in a case where an advocate for the environment should not be burdened with risk and financial costs.

To answer the question more succinctly, to set up a service contract between myself and Rural Integrity would be very vulnerable to legal challenge and would simply reinforce the reasonable validity of an unjust Court Rule.

Gordon Duff

20<sup>th</sup> November 2020