

**The Chief State Solicitor**

**Osmond House**

**Little Ship Street**

**Dublin 8**

15 Carysfort Avenue,  
Blackrock, Co. Dublin, Ireland.  
Tel: 01 284 2420 or 284 3491.  
Fax: 01 284 2421.  
E-Mail kevinoh@indigo.ie  
DX 7014 Blackrock

4<sup>th</sup> November 2010

**Re: Patrick W. Coffey**

Dear Sir,

We act on behalf of the above mentioned whose name is included on the Register of Electors for the Constituency of Waterford. Against a background where the moving of the writ has already been voted down at the instigation of the Government in the wake of the Doherty Judgement, we will ask the Court to treat same as a refusal to remedy the continuing constitutional wrong arising out of the failure to hold the Waterford by-election.

1. On the 8th day of March 2010, Martin Cullen resigned from his position as Teachta Dála for the Constituency of Waterford and thereby created a casual vacancy within the meaning of Article 16 of the Constitution of Ireland.
2. Almost 8 months has elapsed since the creation of the casual vacancy and the vacancy has not been filled. This delay is inordinate, inexcusable and amounts to the infringement of my client's Constitutional rights.
3. On the 3<sup>rd</sup> of November 2010, the President of the High Court, Mr. Justice Kearns delivered Judgement in proceedings entitled *Doherty v. Ireland and The Attorney General and Dáil Éireann*, Notice Party wherein he construed section 39(2) of the Electoral Act, 1992. The Court concluded that "*by well settled principles of constitutional and statutory construction, section 39 (2) of the Electoral Act, 1992 is to be construed as incorporating a requirement that the discretion reserved thereunder be exercised within a reasonable time.*"
4. The Court went on to state that "*it would strike me as absurd to apply a requirement of reasonable time to the holding of a general election and then to flout or altogether ignore the same principle at a micro level of a by-election.*" My client has been denied the right to have his views expressed by an elected representative. He has been denied the right to be fully represented in Dáil Éireann. The ongoing failure to move the writ to hold the by-election in the Waterford Constituency since the casual

vacancy arose on the 8<sup>th</sup> of March 2010 patently offends the terms and the spirit of the Constitution.

5. This Government and/or Dáil Éireann and/or its members is in breach of my client's constitutional rights and those rights under the European Convention on Human Rights Act 2003 in failing to move the writ for the holding of the by-election within a reasonable period of time

Now that the High Court has ruled that the writ for a by-election must be moved within a reasonable time of the vacancy arising, which has not been done, the Government, Dáil Éireann and/or its members voting in favour of the Government is perpetrating a continuing constitutional wrong in its failure to move the writ.

My client will be applying for *inter alia* an Order of Mandamus compelling the Government, the cabinet, Dáil Éireann and/or its members currently blocking the moving of the writ to act in accordance with law and move the writ for the by-election in the Waterford Constituency forthwith.

Please further note that due to the extremely grave nature of any protraction of the current state of affairs which is wholly illegal and unconstitutional, in any proceedings which we are compelled to institute, we will be asking the Court for the earliest hearing date possible. The Government, Dáil Éireann and/or its members have had ample time since the inception of the Doherty proceedings in July 2010 to consider the issues arising.

My client will also be applying for a declaration that the delay in moving the writ of eight months or more is unreasonable and/or inordinate and/or in breach of section 39(2) of the Electoral Act 1992.

Please note that the Applicant will seek all legal costs associated with the vindication of his constitutional rights before the Courts.

This letter is addressed to you in your capacity as solicitor to the Attorney General, the Taoiseach, the Cabinet Secretary, the Government of Ireland and the Ceann Comhairle to the Dail.

Yours Faithfully



**KEVIN O'HIGGINS**

**SOLICITORS**