APPROVED

THE HIGH COURT
JUDICIAL REVIEW

2017 No. 146 J.R.

BETWEEN

TOMASZ ZALEWSKI

APPLICANT

AND

THE WORKPLACE RELATIONS COMMISSION
AN ADJUDICATION OFFICER
(ROSALEEN GLACKIN)
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

BUYWISE DISCOUNT STORES LIMITED

NOTICE PARTY

JUDGMENT of Mr. Justice Garrett Simons delivered electronically on 21 May 2020

INTRODUCTION

1. This judgment determines the appropriate costs order to be made in respect of a challenge to the constitutional validity of aspects of the Workplace Relations Act 2015. The challenge has been dismissed in its entirety for the reasons set out in a reserved judgment delivered on 21 April 2020, *Zalewski v. Workplace Relations Commission* [2020] IEHC 178 ("***the principal judgment***").

2. In accordance with the protocol of 24 March 2020 on the delivery of judgments electronically, the parties have exchanged written legal submissions on the issue of costs. Each party maintains that its costs should be paid by the other side. The disagreement in respect of costs centres largely on whether or not the proceedings should be characterised

as a form of "public interest litigation" with the consequence that the default position, namely that the successful party is entitled to an order for costs in its favour, should be displaced.

3. In exercising my discretion in respect of costs, I must seek to reconcile (i) the objective of ensuring that individuals are not deterred by the risk of exposure to legal costs from pursuing litigation of a type which—although ultimately unsuccessful—nevertheless serves a public interest, with (ii) the objective of ensuring that unmeritorious litigation is not inadvertently encouraged by an overly generous costs regime.

4. For the reasons which follow, I have concluded that the proportionate outcome is that the Applicant should be allowed to recover one half of his costs from Ireland and the Attorney General. The proceedings raised fundamental issues of constitutional law touching on the separation of powers, and it had been in the public interest that these issues be resolved—one way or another—by the courts.

RELEVANT STATUTORY PROVISIONS

5. Traditionally, the default position has been that the successful party in litigation is entitled to recover their costs from the unsuccessful party. This default position is embodied in the, somewhat quaintly worded, rule that "costs follow the event". Crucially, however, the courts have always retained a *discretion* to make a different type of costs order where justified by the special circumstances of the case. A court is required to explain its reasons for departing from the default position.

6. The costs jurisdiction has now been placed on a formal statutory footing by Part 11 of the Legal Services Regulation Act 2015. (The relevant provisions were commenced in October 2019). Section 169, insofar as germane, reads as follows.

> 169.(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those

proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including—

(a) conduct before and during the proceedings,

(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,

(c) the manner in which the parties conducted all or any part of their cases,

(d) whether a successful party exaggerated his or her claim,

(e) whether a party made a payment into court and the date of that payment,

(f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and

(g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.

(2) Where the court orders that a party who is entirely successful in civil proceedings is not entitled to an award of costs against a party who is not successful in those proceedings, it shall give reasons for that order.

7. As appears, there are two broad categories of considerations which a court may take into account in determining costs: (i) the particular nature and circumstances of the case, and (ii) the conduct of the proceedings by the parties. The criteria enumerated at subparagraphs (a) to (g) appear to be directed principally to the second of the two categories, that is, the conduct of the proceedings. The criteria provide examples of what might be described as litigation misconduct, such as, for example, the unreasonable pursuit of issues in the proceedings. The use of the introductory words "including" indicates that the criteria enumerated at subparagraphs (a) to (g) are not intended to be exhaustive; rather, they are illustrative.

8. There is no reference in the legislative provisions to “public interest litigation”. This is to be contrasted with other provisions governing costs, such as those applicable to certain categories of environmental litigation under section 50B of the Planning and Development Act 2000, and Part 2 of the Environment (Miscellaneous) Provisions Act 2011. In each of these instances, the relevant costs rules are expressly stated not to affect the court’s entitlement to award costs in favour of a party in a matter of exceptional public importance.

9. There is nothing in the statutory language of the Legal Services Regulation Act 2015 which suggests that the discretion previously enjoyed by the courts under the pre- 2019 version of Order 99 of the Rules of the Superior Courts has been removed. Rather, it seems to me that the type of considerations identified in the case law discussed under the next heading below—such as, for example, whether the proceedings raise issues of general importance which transcend the facts of the case and which are novel—continue to inform the exercise of the costs jurisdiction. These considerations come within the rubric of the “particular nature and circumstances of the case” as *per* section 169(1) of the Legal Services Regulation Act 2015.

CASE LAW ON PUBLIC INTEREST LITIGATION

10. The parties were in broad agreement as to the principles governing an application for costs in circumstances where the moving party asserts that their proceedings had advanced a public interest. Both parties referenced the judgment of the Supreme Court in *Dunne v. Minister for the Environment (No. 2)* [2008] 2 I.R. 775 (“***Dunne***”), as follows.

> “26. The rule of law that costs normally follow the event, that the successful party to proceedings should not have to pay the costs of those proceedings which should be borne by the unsuccessful party, has an obvious equitable basis. As a counterpoint to that general rule

> of law, the court has a discretionary jurisdiction to vary or depart from that rule of law if, in the special circumstances of a case, the interests of justice require that it should do so. There is no predetermined category of cases which fall outside the full ambit of that jurisdiction. If there were to be a specific category of cases to which the general rule of law on costs did not apply that would be a matter for legislation since it is not for the courts to establish a cohesive code according to which costs would always be imposed on certain successful defendants for the benefit of certain unsuccessful plaintiffs.
>
> 27. Where a court considers that it should exercise a discretion to depart from the normal rule as to costs, it is not completely at large but must do so on a reasoned basis, indicating the factors which, in the circumstances of the case, warrant such a departure. It would neither be possible nor desirable to attempt to list or define what all those factors are. It is invariably a combination of factors which is involved. An issue such as this is decided on a case by case basis and decided cases indicate the nature of the factors which may be relevant but it is the factors or combination of factors in the context of the individual case which determine the issue."

11. As appears from the foregoing, there is no *predetermined* category of cases which falls outside the general rule that costs follow the event. *Dunne* had been decided prior to the enactment of the Legal Services Regulation Act 2015. As discussed under the previous heading, the legal position remains the same in that there is still no reference in the relevant legislative provisions to "public interest litigation".

12. The judgment in *Dunne* also confirms at [18] that factors such as (i) whether the proceedings were seeking a private personal advantage, and (ii) whether the legal issues raised were of special and general public importance are potentially relevant but are not necessarily determinative.

13. The parties have cited an impressive number of other authorities from the High Court which illustrate the type of cases in which a court has been moved to depart from the general rule that costs follow the event. Three themes emerge from this case law which are of potential relevance to the circumstances of the present case, as follows.

(i) Whether issues raised are novel

14. There is a line of judgments which suggests that, in order to justify a departure from the general rule, it is not sufficient that the proceedings entail a challenge to the constitutional validity of legislation. Rather, the proceedings must have raised an issue of constitutional law which is *novel* (as opposed to simply involving the application of *well-established principles* to a particular set of circumstances). Thus, for example, in *O'Brien v. Clerk of Dáil Eireann* [2017] IEHC 377, [14], the High Court (Ní Raifeartaigh J.) held that whereas the factual matrix of the case before her was undoubtedly novel, and the treatment of the pre-existing jurisprudence involved somewhat more than a straightforward application of identifiable principles, there was an "insufficient degree of novelty" in the legal issues raised to justify a departure from the general rule.

15. Similarly, in *McCaffrey v. Central Bank of Ireland* [2017] IEHC 659, [14], the High Court (Noonan J.) refused to depart from the general rule in circumstances where the conclusions reached by him in respect of each of the substantive issues in the proceedings had been based on the application of well settled jurisprudence. Whilst the actual determination in the case might have had an element of novelty, the legal principles applied to arrive at that determination did not.

16. Examples of cases falling on the other side of the line are provided by *Collins v. Minister for Finance* [2014] IEHC 79 and *Kerins v. McGuinness* [2017] IEHC 217. In each of those cases, a Divisional High Court, in addressing costs, relied *inter alia* on the fact that the proceedings had raised novel issues to justify an order for costs in favour of the *unsuccessful* party. Thus, in *Collins*, the Divisional High Court emphasised the novelty of the issue before it, which was not "straightforward" and had required "careful and elaborate judicial consideration". It was suggested that entirely different costs considerations would come into play if, for example, the issue had been fully considered and determined in earlier proceedings. In *Kerins*, the Divisional High Court relied on

the fact that the proceedings had raised "issues of special and general public importance and of some novelty". These concerned "important questions of freedom of speech in Parliament, the separation of powers and the extent to which the court may intervene in the affairs of the Legislature".

(ii). Whether applicant had a personal interest in the outcome of proceedings

17. There is a suggestion in some of the case law that it may be relevant to consider whether an applicant has a personal interest in the outcome of the proceedings. The Supreme Court in *Dunne* accepted that the fact that a plaintiff is not seeking a private personal advantage is a factor which may be taken into account, along with all other circumstances of the case, in deciding whether there is sufficient reason to exercise a discretion to depart from the general rule that costs follow the event. However, it does not necessarily flow as a corollary of the fact that an applicant does *not* have a personal interest in the outcome of the proceedings, that the proceedings must have been in the public interest.

(iii). Whether proceedings in nature of a "test case"

18. The case law suggests that a departure from the general rule may be justified where proceedings are in the nature of a "test case", the outcome of which may affect a large number of other cases. The Applicant cites the judgment of the High Court (Binchy J.) in *P.C. v. Minister for Social Protection (No. 2)* [2016] IEHC 343. Those proceedings involved a challenge to the constitutional validity of legislation which disqualified an individual undergoing a sentence of imprisonment from receiving the State contributory pension. (The substantive judgment in those proceedings was subsequently overturned on appeal to the Supreme Court in *P.C. v. Minister for Social Protection* [2017] IESC 63).

19. In deciding to award the unsuccessful applicant in those proceedings two-thirds of his costs, the High Court made the following observations as to the nature of "test cases".

> "12. It follows from this that whether or not a case qualifies as a test case or a public interest challenge is not determinative of the issue, but rather it is a factor that the Court may take into account in considering an application to depart from the general rule. The plaintiff has argued that this case qualifies as a test case and should be treated as such and relies upon the decision of Clarke J. in *Cork County Council v. Shackleton* referred to above. However, it has been submitted on behalf of the defendants that it is a pre-requisite for a case to qualify as a test case that there must be a issue requiring clarification, and it is not enough simply that the plaintiff is one of a category of persons who may have an interest in the outcome of proceedings. If this were correct however, it would mean that any person who first raises an issue would have great difficulty in succeeding with an argument that the case qualifies as a test case, notwithstanding that there are many others who will be affected by the outcome of the proceeding. In this case, the Court was informed that in the order of 40 people per annum are affected by s. 249(1) of the [Social Welfare (Consolidation) Act 2005]. It is certain therefore that had the plaintiff been successful there would be many others currently disqualified from entitlement to receive payment of the SPC, not to mention claims for refunds of payments denied to all persons affected by the provision in the past. Not only that, but during the course of the proceedings the defendants expressed concern that an outcome adverse to the defendants could well have a knock on effect for others disqualified from receiving other social welfare benefits during a term of imprisonment.
>
> 13. It seems to me that the concept of a test case may include those cases where a challenge to the constitutionality of a statutory provision, if successful, would inevitably result in a large number of claims being made against the State or an emanation of the State, provided that the challenge itself is substantive in nature and not frivolous or vexatious. This was such a case."

DECISION OF THE COURT

20. The judgment of the Supreme Court in *Dunne v. Minister for the Environment (No. 2)* [2008] 2 I.R. 775 confirms that—absent express legislative provisions such as, for example, those applicable to environmental litigation under section 50B of the Planning and Development Act 2000—there is no predetermined category of cases which falls outside the full ambit of the discretionary costs jurisdiction.

21. Notwithstanding the commencement of Part 11 of the Legal Services Regulation Act 2015, the courts continue to have a discretion, to be exercised on a case by case basis, to depart from the general rule that costs follow the event. The case law indicates that this will only be done sparingly, and where there are special and unusual circumstances. In exercising its discretion in respect of costs, a court must seek to reconcile (i) the objective of ensuring that individuals are not deterred by the risk of exposure to legal costs from pursuing litigation of a type which—although ultimately unsuccessful—nevertheless serves a public interest, with (ii) the objective of ensuring that unmeritorious litigation is not inadvertently encouraged by an overly indulgent costs regime.

22. In carrying out this balancing exercise, it will be necessary for the court to consider factors such as (i) the general importance of the legal issues raised in the proceedings; (ii) whether the legal principles are novel, or, alternatively, are well established; (iii) the strength of the applicant's case: proceedings might touch upon issues of general importance but the grounds of challenge pursued might be weak; (iv) whether the subject-matter of the litigation is such that costs are likely to have a significant deterrent effect on the category of persons affected by the legal issues; and (v) whether the issues touch on sensitive personal rights. (In this last connection, see *Collins v. Minister for Finance* [2014] IEHC 79, [13], citing *Norris v. Attorney General* [1984] I.R. 36 (homosexuality), *Roche v. Roche* [2006] IESC 10 (the constitutional status of human embryos), and *Fleming v. Ireland* [2013] IESC 19; [2013] 2 I.R. 417 (assisted suicide).

23. For the reasons which follow, I am satisfied that the within proceedings are one of those exceptional cases which justifies a departure from the general rule that costs follow the event.

24. First, the proceedings gave rise to difficult and novel issues of constitutional law in respect of the separation of powers. The issues were of general importance and

transcended the facts of the case. In particular, the court had been required to rule upon the question of whether the determination of two common types of employment dispute represents the administration of justice within the meaning of Article 34 of the Constitution. (The claims at issue were for unfair dismissal and for the payment of wages in lieu of notice).

25. Whereas both parties were agreed that the relevant criteria for determining whether or not a particular form of decision-making represents the administration of justice are those approved of by the Supreme Court in *McDonald v. Bord na gCon* [1965] I.R. 217, the application of those principles to the decision-making regime provided for under the Workplace Relations Act 2015 nevertheless required careful consideration. This is because the context of the present case is very different from anything considered in the earlier case law. The earlier case law is concerned largely with very specific types of decision-making, directed to a limited category of persons, such as, for example, solicitors, members of An Garda Síochána, and members of certain sporting organisations. By contrast, the adjudication process impugned in these proceedings applies to all employees (as defined) who wished to bring a claim for unfair dismissal and for the payment of wages in lieu of notice. The issues raised in these proceedings may also have relevance for other forms of statutory decision-making, such as, for example, that now provided for under the Cervicalcheck Tribunal Act 2019.

26. The novelty of the issues raised is illustrated by the fact that much of the principal judgment is directed to one of the five characteristics of the administration of justice, as identified in *McDonald v. Bord na gCon*, which has not previously been discussed in great detail in the case law, namely, the fourth characteristic (the enforcement of a determination).

27. It is also to be noted that concerns have been expressed by many of the leading academic commentators as to whether the determination of employment disputes might involve the administration of justice. The relevant extracts from *Kelly: the Irish Constitution* (Hogan, White, Kenny and Walsh; Bloomsbury Professional; 5th ed.) and Casey *Constitutional Law in Ireland* (Round Hall, 3rd ed.) were opened to me at the hearing. The very fact that this issue has excited academic commentary tends to confirm that same is not clear-cut or obvious.

28. Moreover, the Workplace Relations Act 2015 has introduced very significant changes to the decision-making regime. In particular, the abolition of the full right of appeal to the Circuit Court (which had been available since the introduction of the Unfair Dismissal Act 1977), and the limiting of the role of a court in enforcing a determination, represent a substantial shift towards the judicial, as opposed to the administrative, end of the spectrum of decision-making. Whereas this court ultimately concluded in the principal judgment that even the amended legislative regime does not infringe upon the administration of justice, this conclusion was only reached with the benefit of six days of argument, and, even then, the court expressed some hesitation on one aspect of its findings. (See paragraphs 77 to 82 of the principal judgment).

29. The principal judgment also suggests that there are certain issues arising in respect of the test for the administration of justice which may need to be teased out further. (See paragraphs 122 to 136 of the principal judgment). This will, ultimately, be a matter for the appellate courts in circumstances where this court is bound by the findings in *McDonald v. Bord na gCon*.

30. The principal judgment also had to address the alternative argument that the procedures under the Workplace Relations Act 2015 are deficient by reference to Article 40.1 of the Constitution. In particular, complaint had been made that there is no provision for the

taking of evidence on oath or affirmation; no express provision for the cross-examination of witnesses; and the hearings before the adjudication officers take place in private. Complaint had also been made that there is no requirement for adjudication officers to hold a legal qualification. The resolution of these complaints necessitated an in-depth consideration of the law on fair procedures. Whereas the law is settled, the application of same to the specific context of employment disputes did present some novel issues. For example, the connection, if any, between a right to cross-examination and a requirement that evidence be given on oath had not previously been addressed in any detail.

31. Secondly, as is evident from the discussion immediately above, the grounds of challenge pursued by the Applicant were weighty and substantial. The Applicant was ultimately unsuccessful; however, the issues raised required careful consideration. The *strength* of a case is something which should be assessed by the court before departing from the general rule that costs follow the event. Whereas an applicant who is seeking a modified costs order will, by definition, have been *unsuccessful* in the proceedings, the margin by which he or she lost is relevant. If the grounds raised in proceedings are weak, it will be difficult to justify a departure from the normal costs rule. There is no public interest in litigation which does not raise weighty or substantial points.

32. Thirdly, the fact that the monetary value of many of the claims subject to the impugned procedures under the Workplace Relations Act 2015 will be relatively modest may have the consequence that legal costs will have a greater deterrent effect on the bringing of constitutional challenges than in other contexts. On the facts of the present case, for example, the average weekly wage of the Applicant appears to have been in the sum of €400. The maximum compensation which he could receive under the Unfair Dismissals Act 1977 (as amended) would be in the region of €40,000. This is because the maximum

compensation which can be awarded is fixed by the Unfair Dismissals Act 1977 at an amount not exceeding 104 weeks remuneration. A sum of €40,000 would represent a fraction only of the costs of a six day constitutional action before the High Court.

33. Were the general rule that costs follow the event to be applied in this context, it might have the unintended consequence that proceedings, which raise legitimate questions as to the constitutional validity of the statutory procedures under the Workplace Relations Act 2015, would not be brought for the want of a litigant with a large enough financial interest in the outcome of the proceedings to justify his or her incurring the risk on costs. This might skew constitutional litigation towards cases the outcome of which have significant financial implications for the litigants, such as, for example, cases asserting property rights in land or in commercial contracts. Those with more modest concerns might not be able to afford to litigate.

34. This would be unfortunate: the importance of constitutional rights cannot be measured in monetary terms. The issues raised by the Applicant in this case touch upon fundamental questions in respect of the separation of powers, and, in particular, seek to identify the precise contours of the judicial power. These are hugely important issues and it is in the public interest that these issues be clarified.

35. Finally, the fact that the Applicant has a private interest in the outcome of the proceedings is not fatal to an argument that costs should not follow the event. An applicant for judicial review is required to demonstrate a "sufficient interest" in order to pursue their proceedings. Indeed, one of the issues which arose at an earlier stage of these proceedings is whether the Applicant had the requisite "sufficient interest" in circumstances where the respondents had conceded that the specific decision under challenge, namely the decision of 16 December 2016 dismissing the Applicant's complaints to the Workplace Relations Commission, should be set aside. This issue of

standing was ultimately resolved in favour of the Applicant by the Supreme Court, *Zalewski v. Adjudication Officer and Workplace Relations Commission* [2019] IESC 17.

36. To treat the existence of a personal interest as precluding a departure from the general rule that costs follow the event would create the following paradox. An applicant for judicial review would find themselves in a type of "Catch-22" situation whereby, first, it is necessary for them to establish a personal interest in the proceedings, but secondly, the existence of such an interest would prevent them from availing of a relaxation of the general rule that costs follow the event.

37. On the facts of the present case, whereas the Applicant has a personal interest in the outcome of the proceedings, the constitutional issues raised are of general importance and transcend the facts of the case.

38. In summary, I am satisfied that it was in the public interest that these proceedings be brought. The amendments introduced by the Workplace Relations Act 2015 are significant, and have the potential to affect a large segment of society. It is in the public interest that the amendments be tested to ensure their compliance with constitutional imperatives. The fact that those issues have been resolved—for the moment at least, pending an appeal—in favour of the State respondents does not mean that the case should not have been brought.

39. The Applicant should not, therefore, be required to pay the costs of the State respondents. The next question which arises is whether the Applicant should be entitled to recover any of his costs against the State respondents. If, as posited earlier, one of the objectives of departing from the general rule that costs follow the event is to facilitate the bringing of proceedings which allow constitutional issues of general importance to be litigated, then something more than simply shielding an unsuccessful applicant from an adverse costs order may be required. It is in the public interest that constitutional challenges be

properly presented, and that an applicant have access to talented lawyers. Whereas there is a proud tradition in both the barristers and solicitors professions of pursuing litigation *pro bono publico*, i.e. without any expectation of remuneration, regard must be had to the practical realities of the type of proceedings at issue here. This case involved a six day hearing before the High Court, and the preparation in advance of that of detailed written legal submissions and affidavit evidence. This would have necessitated an enormous commitment on the part of the lawyers involved. The court should seek to ensure that at least some of this work is recompensed. Having regard to previous case law, it seems to me that the appropriate order to make is to allow one-half of those costs to be recovered. This is the same proportion of costs as awarded in respect of the Supreme Court appeal in *Fleming v. Ireland* [2013] IESC 19, [2013] 2 I.R. 417.

RELEVANCE OF EARLIER COSTS ORDER?

40. For the sake of completeness, it is necessary to address briefly an argument advanced on behalf of the State respondents to the effect that, in exercising its discretion in respect of the costs of the substantive proceedings, the court should have some regard to the costs awarded in respect of the earlier dispute as to whether the Applicant had a "sufficient interest". The point is put as follows in the State respondents' written legal submissions of 12 May 2020.

> "In this context it is also relevant that the Applicant is already the beneficiary of a substantial award of costs arising out of these proceedings. This includes an award of costs that reflects the concession made by the Respondents in April 2017. The making of no order as to costs would not leave the Applicant without any of his legal costs as he will recover the costs of instituting the proceedings and making the application for Leave to Apply for Judicial Review, but would also reflect the position of the Respondent as the successful party in the litigation."

41. With respect, the two sets of costs are separate, and fall to be addressed discretely. The earlier costs order reflects the fact that the State respondents raised an objection as to the Applicant's standing which, although successful before the High Court, was ultimately dismissed by the Supreme Court (*Zalewski v. Adjudication Officer and Workplace Relations Commission* [2019] IESC 17). As explained at paragraph 38 above, the purpose of the partial costs order in favour of the Applicant is to reflect the separate work involved in the preparation for, and participation in, the six day hearing before this court in February 2020.

CONCLUSION AND FORM OF ORDER

42. The Applicant will be allowed one-half of his costs of the substantive hearing as against the State respondents. It seems that the order should formally be made as against the third and fourth named respondents, namely Ireland and the Attorney General. This is because the only issues which remained outstanding, subsequent to the concession that the adjudication officer's decision of 16 December 2016 should be quashed, were constitutional issues to which Ireland and the Attorney General were *legitimus contradictor*. If, however, the State respondents have an objection to this particular formulation, and would prefer the costs order to encompass the Workplace Relations Commission, their solicitor should notify the Registrar within seven days of this judgment.

43. The final order in the proceedings will be as follows.

44. First, an order of *certiorari* quashing the decision dated 16 December 2016 in the matter of *Tomasz Zalewski v. Buywise Discount Store Limited* and bearing the Adjudication Decision Reference Number ADJ – 00003113.

45. Secondly, an order pursuant to Order 84, rule 27 remitting the complaints of Tomasz Zalewski, bearing the Complaint Reference Numbers CA-0004535 – 001 and CA-00004535-002, to the Director General of the Workplace Relations Commission, to be assigned to an adjudication officer other than Ms Glackin.

46. Thirdly, an order requiring the third and fourth named respondents to pay one half of the Applicant's costs of these proceedings from 14 March 2018 to the date of perfection of this order. Such costs are to include the costs of two senior counsel and one junior counsel; the costs of the written legal submissions; and are also to include the costs associated with the "paper based" application for costs. In default of agreement, the costs are to be adjudicated upon by the Office of the Legal Costs Adjudicator.

47. A stay is placed on the *entire* of the High Court's order for twenty-eight days pending the making of an appeal to the Court of Appeal or the making of an application for leave to appeal to the Supreme Court. The stay is to continue pending the final determination of any such appeal or application for leave to appeal.

Appearances

Peter Ward, SC and Cian Ferriter, SC (with them Darach MacNamara and Nóra Ní Loinsigh) for the Applicant instructed by Eamonn O'Hanrahan Solicitor

Nuala Butler, SC and Mark Dunne, SC (with them Aoife Carroll) for the Respondents instructed by the Chief State Solicitor

Approved Garrett Simons