

**SUPREME COURT**

**Murray C.J.  
Denham J.  
McGuinness J.  
Hardiman J.  
Geoghegan J.  
Fennelly J.  
McCracken J.**

**198 & 203/05**

**BETWEEN**

**BRIAN CURTIN**

**APPLICANT / APPELLANT**

**-v-**

**CLERK OF DÁIL ÉIREANN, CLERK OF SEANAD ÉIREANN, DEPUTY DENIS O'DONOVAN, DEPUTY JERRY CROWLEY, DEPUTY JAMES O'KEEFE, DEPUTY JAN O'SULLIVAN, SENATOR JOHN DARDIS, SENATOR GERALDINE FEENEY, SENATOR MICHAEL FINUCANE, IRELAND  
AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**RULING of the Court on the question of costs delivered on the 6th day of April, 2006 by Murray C.J.**

1. Following upon the judgment delivered in this case on the 9th March, 2006 the Appellant has applied for an Order for his costs. The Attorney General and other parties have applied for the costs of the appeal against the Appellant. Each of the parties have made a similar application for costs of the proceedings in High Court as they have for the costs of this appeal. The costs awarded in the High Court concerning other matters are not in issue.
2. The Appellant was refused any of the reliefs which he sought in the High Court and on appeal in this Court. This Court ruled against him on a number of discrete issues which had been argued on his behalf in the appeal.
3. The general rule is that costs follow the event subject to the Court having a discretion, for special reason, to make a different Order. It is a discretion to be exercised in the circumstances and context of each case and is one which is so exercised from time to time.
4. Counsel for all parties referred to previous decisions of this Court, and the High Court, in which a discretion was exercised to make an order concerning costs which did not follow the general rule. It would neither be possible nor desirable to lay down one definitive rule according to which exceptions are made to the general rule. The discretionary function of the Court to be exercised in the context of each case militates against such a definitive rule of exception and it is also the reason why previous decisions on such a question are always of limited value.
5. One of the arguments advanced on behalf of the Appellant for an Order of costs in his favour was that he had succeeded in a core issue in his case, namely, that fair procedures required that there should be a dual adjudication on the proposal for his removal, that first there must be an adjudication as to whether he was guilty of the alleged stated misbehaviour and if so a second adjudication on whether that stated misbehaviour warranted his removal from office. He pointed out that it had been argued on behalf of the Attorney General that the process involved a unitary decision, that is to say, one combined adjudication on the question of whether he should be removed for the stated misbehaviour, but that this argument had been rejected by the Court. In that sense it was argued on behalf of the Appellant that he had in effect won a core issue in the case and should be awarded costs accordingly. That point referred to was raised by the Appellant in a different context to which it was decided by the Court and as previously stated the Appellant lost on a range of issues raised by him as a result of which he was not entitled to any of the specific reliefs which he sought in these proceedings
6. The Court is satisfied that the Appellant cannot be treated as if he had succeeded in the appeal and the normal rule applies subject to the discretion of the Court to make a different Order if there are special reasons, due to the circumstances or aspects of the particular case. I now turn to this aspect of the application.
7. At the core of the jurisdiction of this Court, as a constitutional court of final instance, lie issues concerning the distribution of constitutional powers of government among the three organs of State identified in Article 6 of the Constitution, the Executive, the Legislature and the Judiciary, the limits of such powers and the manner in which they may be exercised.
8. Fundamental issues of this nature underlay and were interwoven with the several discrete issues raised by the Appellant in his appeal.
9. Article 35.4 is silent as to the procedures to be followed by the Houses of the Oireachtas when considering a motion for the removal of a Judge. The adoption of procedures for that purpose was left to each House. No such procedures had been adopted by either House before the question of the Appellant's removal had been raised. This was understandable given that since the foundation of the State no substantive question concerning the removal of the judge had been brought before the Oireachtas. This meant that to a significant extent all those concerned, the Government, both Houses of the Oireachtas and the Appellant were required to address novel but crucial constitutional questions in an uncharted constitutional terrain. In the event it was the Courts which were asked to resolve them.
10. In these circumstances, before the Court addressed the discrete issues arising between the parties, it was necessary to interpret and define the meaning and ambit of Article 35 of the Constitution as a whole with a view to identifying the appropriate balance between the function of the Houses of the Oireachtas to call for the removal of a judge for stated misbehaviour and the separation of powers between the Judiciary and the other organs of State as guaranteed by Article 35 itself. For this purpose, the Court, as a constitutional court, had to consider questions that went, at least to some extent, beyond the specific issues raised, and determined, by way of constructive interpretation, how the final adjudication process must be addressed by the Houses of the Oireachtas when and if they come to a final decision. In addressing the broader issues the Court has provided certainty and obviated the risk of later litigation regarding them as well as providing a guide for the Oireachtas as to the procedures to be followed in the future.
11. In doing so the Court has clarified for the future the constitutional norms in a core area of constitutional governance as between the three organs of State, irrespective of the issues in this case. In this sense the case is exceptional and *sui generis*.

12. In all these circumstances the Court, in the exercise of its discretion, has decided that the Appellant should be refused his application for full costs and be awarded half the costs of the proceedings in the High Court and half the costs of the appeal in this Court against the Attorney General. No other Order for costs, for or against any other party, will be made.