THE HIGH COURT

[2023] IEHC 33

[2021 No. 341 MCA]

IN THE MATTER OF IRISH LIFE AND PERMANENT GROUP HOLDINGS PLC AND IN THE MATTER OF IRISH LIFE AND PERMANENT PLC AND IN THE MATTER OF AN APPLICATION FOR THE SETTING ASIDE PURSUANT TO SECTION 11 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT 2010 OF THE DIRECTION ORDER WHICH WAS MADE ON THE 26TH JULY 2011 PURSUANT TO SECTION 9 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT2010 AND ANCILLARY ORDERS

BETWEEN:

GERALD DOWLING, PADRAIG MCMANUS, PIOTR SKOCZYLAS AND SCOTCHSTONE CAPITAL FUND LIMITED

APPLICANT

-AND-

THE MINISTER FOR FINANCE

RESPONDENT

-AND-

PERMANENT TSB GROUP HOLDINGS AND PERMANENT TSB PLC

NOTICE PARTIES

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 17th day of January 2023.

1. This is a review of a determination of the Legal Costs Adjudicator relating to party and party costs awards in this litigation. The matter to be decided is whether Piotr Skoczylas is entitled to recover amounts claimed for what are described in 26 invoices submitted to the Legal Costs Adjudicator as "professional research and advisory / consulting and related services; i.e. non-legal litigation services and advice / consulting in relation to the proceedings before the High Court…" The Legal Costs adjudicator disallowed these claims.

2. The core issue is whether Mr Skoczylas has provided through the medium of his English limited liability partnership services which are capable of giving rise to a valid claim for allowance or reimbursement on foot of party and party costs orders which allowed him outlay.

3. This Court has examined each of the disputed invoices. They contain explanations of work claimed to have been done. They claim fees for "professional" "non-legal" input which assisted Mr Skoczylas in formulating and presenting his legal claim. The invoices do not indicate what the nature of the advice and consultancy was or what professional expertise was deployed or why it was needed. Examination of these aspects would become relevant if services of the type invoiced were in principle capable of being recoverable as outlay on foot of an order for party and party costs.

4. This Court has no difficulty with the general proposition that party and party costs can be recovered for time taken on preparing and giving expert evidence supplied by a

litigant or via a litigant’s business partnership or employee where such claims would be allowed if that service was provided by an independent professional.

5. However, the law does not allow a litigant to recover any value for the type of services set out in the invoices produced by Mr Skoczylas on foot of an award of party and party costs or expenses. The indemnity which the law provides on foot of an order for party and party costs is not a full indemnity.

6. The submission that litigants in person who are awarded costs may recover for use of academic or professional qualifications, expertise and know-how in preparation and presentation of their legal cases is misconceived.

7. If Mr Skoczylas availed of legal representation, he would not be entitled to recover party and party costs for any value of services billed in these invoices. The amount recoverable would be limited to costs of legal representation. Any increase in a claim for remuneration or reimbursement for value of any in-house non-legal expertise or know-how of solicitors and barristers instructed would not be recoverable.

8. If the expertise claimed for was bought in by the solicitors from Mr Skoczylas or from his partnership, or from independent providers the cost would not be recoverable either. Value of know-how of a litigant or of any consultant commissioned or deployed in providing services of the type charged for in these invoices is not recoverable as party and party costs.

9. Litigants who have resources to buy in this type of assistance must bear the expense themselves. Litigants who provide their own know-how and skill are not entitled to recover value for use of their expertise on foot of an award of party and party costs or expenses. The law does not bestow such advantages on well-educated litigants. Their use of qualifications and talents to research their cases and instruct themselves or their solicitors goes unrewarded.

10. In any legal proceedings there are two ways in which a litigant may participate. A litigant may adduce evidence and provide proof. A litigant may prepare and present the case. Preparation and presentation of the case involves the legal aspect. Value of expertise and exercise of professional skill used in litigation can only be allowed on an adjudication of party and party costs if it has a direct bearing one or other of these aspects of participation.

11. The expertise provided must be of a type which the law is prepared to recognise as generating a valid claim for recoverable outlay.

12. A suitably qualified litigant may use expertise to prepare and give expert proof. That litigant may recover remuneration for such expert input on foot of an award of costs.

13. A litigant who has access to expertise, qualifications, or know-how of whatever sort is not entitled to recover for use of these advantages in researching, preparing and presenting the case.

14. The only exception to this rule allows recovery of party and party costs for engagement of licensed professional lawyers to prepare and present a case. Solicitor litigants and their partners are also entitled to recover some professional fees for work done on their own cases.

15. Tribunals in other jurisdictions have allowed fees to non-practicing legal professionals for representing themselves as party and party costs in some types of proceedings: see *R (Bar Standards Board) v. Disciplinary Tribunal of the Council of the Inns of Court* [2016] 1 WLR 4506 ([2016] EWCA Civ. 478). This Court expresses no view on whether this reasoning should be followed in this jurisdiction.

16. In light of this conclusion it is not necessary for this Court to express a final view on other matters canvassed in argument before the Legal Costs Adjudicator and before this Court.

17. As Mr Skoczylas has not demonstrated that the Legal Costs Adjudicator has erred in disallowing the amounts claimed on foot of the disputed invoices, this Court must confirm the determination relating to those disallowances, as required by s.161(4)(a) of the Legal Services Regulation Act 2015 (the 2015 Act).

18. Some of the history of this litigation is summarised paras. 4 to 6 of the judgment of O'Donnell J. in *Permanent TSB PLC and others v. Skoczylas and others* [2019] IESC 78.

19. This Court has been provided with a copy of the case file for the reference to the European Court of Justice. This contains copies of some of the affidavits and exhibits referred to in the invoices. This file also includes transcripts of the hearing before the High Court which took place over 15 days in early 2014. Most of the evidential material submitted by the applicants for this hearing is contained in affidavits sworn by Mr Skoczylas and in exhibits to those affidavits.

20. Other proceedings which are not included in this case file related to procedural steps in this litigation. Some of the disputed invoices refer to these steps.

21. Mr Skoczylas held senior positions in banking for a number of years. He holds an MBA and other postgraduate academic awards in subjects relating to finance. Mr Skoczylas was one of the applicants in this litigation. He represented himself before the courts.

22. Mr Skoczylas and a business entity which he controlled invested in shares in Irish Life and Permanent Group Holdings PLC. This publicly quoted company was the holding company in the "Irish Life and Permanent" group. PTSB Bank was the banking arm of the group. Irish Life was the insurance arm of the group.

23. In 2011 this bank was in severe financial difficulty. It continued in business in the short term because of a State guarantee to depositors. Regulatory authorities decided that a very substantial injection of capital was required.

24. A proposal was made to put capital into the bank through State investment in the group. Irish Life and Permanent Group Holdings PLC did not agree to this proposal. A counter-proposal was not acceptable to the Minister for Finance. This impasse was broken by exercise by the Minister of powers to obtain court-ordered directions to restructure the capital base of the group under the Credit Institutions (Stabilisation) Act 2010 (the 2010 Act).

25. The directions affected rights of existing shareholders in Irish Life and Permanent Holdings PLC. The value of their shares had collapsed with the fortunes of the bank. This element in the recapitalisation took the form of a share issue which gave the Minister a controlling stake of over 99% in Irish Life and Permanent Group Holdings PLC.

26. These steps led to a recapitalisation of PTSB Bank by introduction of €2.3 billion in State funds into the group and an eventual disposal of Irish Life for €1.3 billion. That money was also used to meet capital requirements of the bank.

27. Mr. Skoczylas and others challenged the validity of this process. He asserted that the recapitalisation was disproportionate and should have been structured in a manner which did not involve this dilution of existing shareholder interests. He claimed that the directions were invalid and that the scheme contravened EU law.

28. Most of these claims were rejected by the High Court in 2014. The outstanding issue identified at the conclusion of the initial High Court hearing was whether the scheme was compatible with Council Directive 77/91/EEC of 13 December 1976.

29. Following the reference to the European Court of Justice, this challenge to the validity of the scheme on foot of the directions also failed. An appeal from the decision of the High Court was dismissed.

30. On 23 March 2012 the High Court awarded Mr Skoczylas "out-of-pocket expenses…when taxed and ascertained" of an interlocutory application. On 23 May 2012 an order in the same form was made by the High court in favour of Mr Skoczylas in respect of another interlocutory application. On 1 December 2017 the High Court made an order in favour of Mr Skoczylas in the action which awarded him "…40% of his allowable outlay to be taxed in default of agreement." These awards were made against the Minister.

31. Mr Skoczylas claimed that 26 invoices which he presented to the Legal Costs Adjudicator for what are described as "non litigation and advice / consulting" in relation to the High Court proceedings were allowable outlay for provision of non-legal expertise.

32. The total value of the invoices is STG£1,412,598. He asserted that he was entitled to recover as party and party costs the appropriate percentage of the value claimed or of such other sum as the Legal Costs Adjudicator should quantify as the proper value of the work invoiced.

33. The invoices were issued by an English limited liability partnership of which Mr Skoczylas is a member. He asserts that this partnership provided the "non litigation advice / consulting" and "professional research and advisory / consulting and related services; i.e. non-legal litigation services and advice / consulting..." billed to him by the invoices. It is likely that most of any expertise of the partnership was provided by and through Mr Skoczylas. He submits in this application that the Legal Costs Adjudicator erred in disallowing this claim.

34. A litigant must present evidence to a Legal Costs Adjudicator which shows that an item is properly claimable in order to succeed in a claim to recover that item as allowable disbursement or outlay. No evidence was produced which demonstrates that any of the invoices related to properly claimable expert services. The invoices on their face make claims for items which are not recoverable as party and party costs.

35. Mr Skoczylas complained that the Legal Costs Adjudicator did not carry out an in-depth analysis of the claims in each of the invoices. He relied on legal authorities which refer to an obligation of Legal Costs Adjudicators to engage in a "root and branch" examination of any disputed items in an assessment of party and party costs. This type of examination is not necessary where it is clear that the item claimed is not recoverable.

36. The Legal Costs Adjudicator was entitled to deal with the issue of whether there was any legal basis on which these items could properly be recoverable as a preliminary step.

37. The Legal Costs Adjudicator was also entitled to take the view that assertions in invoices and in submissions by Mr Skoczylas that non-legal expert services and consultancy were provided were not sufficient to demonstrate any stateable claim for an allowable outlay. The invoices showed that the sums billed were for some sort of expertise or professional input which assisted Mr Skoczylas in preparing and presenting his claim. There was no bill in any of the invoices for any provision of evidence by a suitably qualified expert relevant to an issue which required expert proof.

38. No evidence was presented which demonstrated precisely what the claimed expert non-legal "professional" services were or how they were distinguishable from the benefit of personal research using any qualifications and experience in matters of banking and capital structures of corporate entities which enabled Mr Skoczylas to understand and present his case.

39. While it may well be that business and academic qualifications, researches and experience of Mr Skoczylas and any other person engaged in activities billed for contributed to the content of affidavits and helped him to make his case, the value of this input is not recoverable outlay on foot of the costs orders.

40. The rule that litigants are not entitled to costs for time and effort is said to come from a view that a court can only award costs for exercise of professional skill by lawyers which can be measured and not for expenditure of time, labour and trouble by non-legal

people. The most recent affirmation of this rule in Ireland is to be found in the judgment of Keane C.J. on behalf of the Supreme Court in *Dawson and another v. Irish Brokers Association* [2002] 2 I.L.R.M. 210 ([2002] IESC 36).

41. The value of skill or input of litigants in preparation and presentation of their cases cannot be measured. It is part of the "instructing" element of preparing for and conducting litigation. Any benefit of special skills which litigants bring to proceedings is provided as part of instructions which they give to a solicitor, if they have engaged professional representation.

42. A litigant in person is free to engage outside experts such as doctors, engineers and accountants with a view to their providing independent expert evidence in the same manner as a litigant who is legally represented.

43. There has never been any difficulty in including and assessing the value of expert opinion relating proof of a relevant issue in dispute as a recoverable item on a costs adjudication. Outlay may be allowed in respect of such engagements and expenses in appropriate cases. The Legal Costs Adjudicator has power to consider whether the engagement was proper and whether the charges were reasonable.

44. In theory, a litigant in person who is suitably qualified may be allowed professional expenses for that litigant's expert evidence in the litigation: see Willmer J. in *Buckland v. Watts* [1970] 1 Q.B. 27 at 37-38. This may extend to preparatory work with a view to giving such evidence. This rule applies whether or not the suitably qualified litigant is legally represented.

45. This type of self-engagement will be rare because courts may be less inclined to place weight on expert evidence coming from a direct party to litigation.

46. Mr Skoczylas submits that litigants who use any non-legal expertise relevant to an aspect of litigation or who engage for supply of this know-how are entitled to recover the cost or value of this use or supply on foot of an award of costs or outlay in their favour.

47. If Mr Skoczylas is correct, then every litigant can recover as part of an award of costs the "non-legal" elements of general "consultancy services" provided by somebody with potentially relevant professional expertise in relation to any and all aspects of preparation and presentation of a case.

48. If this is the principle, why stop there? why confine recovery to what are described in the invoices as the "non-legal" and the "professional"? What about the litigant who holds an academic degree in legal subjects and uses that knowledge?

49. A well-resourced litigant will have access to "in-house" know-how or can pay for armies of persons claiming expertise of one sort or another to review and provide input into every aspect of litigation. A knowledgeable litigant may have all sorts of degrees, qualifications and know-how which can be deployed to good advantage in preparing

and presenting the case. If Mr Skoczylas is correct, the exceptions to the rule that litigants must bear their costs of knowing their own cases and are not entitled to recover for time and efforts in preparing and presenting their cases will become the rule.

50. Are litigants awarded party and party costs entitled to recover for using or engaging such expertise in preparing and presenting their cases? The law says "No". An award of party and party costs or expenses in favour of such a litigant does not cover the value of such services, or outlays incurred by a litigant on their provision. This award of costs provides indemnity for the expense of engaging legal professionals and obtaining expert proofs and evidence.

51. The Legal Costs Adjudicator was correct in his core conclusion that the items billed by the partnership to Mr Skoczylas are not recoverable outlay. They do not come within any exception allowed by case law cited by Mr Skoczylas to the Legal Costs Adjudicator or to this court.

52. Many litigants and controllers of business entities involved in litigation have expertise which is relevant to matters in dispute. Such expertise may relate to financial, legal, accountancy, agricultural, environmental, regulatory or other matters. These litigants often have to get to grips with complex documents and business or other scenarios. Such expertise may inform the decision of the litigant to pursue litigation and the manner in which that litigation is conducted. It may assist a litigant in a challenge to expert evidence.

53. Litigants may have business or engineering degrees. They may be non-practicing solicitors or barristers. They may have researched legal matters. They may hold degrees or professional qualifications which include a legal component. They may hold academic awards in legal subjects.

54. The line between "legal" and "non-legal" aspects of expertise is often blurred. The expertise might be non-legal or a mixture of legal and non-legal in areas where there is a cross-over of disciplines. This is especially so where expertise relates to areas of public regulation. Accountancy qualifications include study of components relating to company law and taxation. Multi-disciplinary practice by partnerships which include legal professionals is now permitted by law. Architecture degrees include modules dealing with laws relating to planning and the environment.

55. Expertise may be acquired in a number of ways. Legal cases involving planning and environmental issues are frequently brought by members of the public who have expertise arising from formal qualifications or from self-taught mastery of disciplines relevant to environmental protection. A litigant who does not have expertise as a result of study leading to academic or professional qualification may research law or finance or any other discipline and acquire information which is then deployed in making a case.

56. Litigants cannot recover for their use of any of these skills or for the cost of buying them in. This rule applies to all litigants. Litigants in person who instruct and take instructions from themselves are in the same position as litigants who instruct solicitors.

57. The law treats use of these benefits as part of input of litigants in knowing and preparing their cases. Any special advantage enjoyed by such a litigant arising from expertise, be it legal expertise or other expertise or a mixture of both, cannot become the subject of a valid claim on foot of an award of party and party costs and is not allowable outlay.

58. So, successful litigants in road traffic accidents who happen to be engineers are not entitled to include as recover as outlay a sum for general engineering assistance provided by them in support of their claims. The same goes for surgeons who are sued for alleged negligence in the conduct of operations or accountants or other financial experts who are sued in respect of consequences of financial advice. Any value of professional know-how and input of these litigants into formulation or presentation of a claim or defence or into challenging evidence is excluded from the reckoning in the quantification of costs and outlays payable to them.

59. If a litigant with the benefit of an order for party and party costs has engaged a solicitor to conduct the litigation and the solicitor buys in in such assistance, recovery of outlay or disbursements will not extend to the cost of such services.

60. The rule applies irrespective of whether this assistance is provided by the litigant or by a person associated with the litigant or by an outsider engaged by the litigant's professional legal advisors.

61. The rule also applies to value of non-legal expertise where professional lawyers engaged to conduct litigation have other qualifications such as medical or engineering degrees or accountancy specialisations. Multi-disciplinary partnerships may have access to such specialist knowledge. Clients are not entitled to recover as part of an award of party and party costs any additional remuneration paid to solicitors and barristers for advantages of such expertise in non-legal disciplines.

62. The rule gives rise to no "inequality of arms" between those who elect to conduct litigation in person and those who opt to engage lawyers who may have an input into decisions to engage experts. It is the same for everybody. It is immaterial whether a person who decides to use or engage such services is a litigant in person or is a solicitor or barrister acting for a litigant.

63. Interposition of a request by legal representatives cannot convert an item which would otherwise be irrecoverable outlay into recoverable outlay. Statements in authorities such as *Kelly (an infant) v. Hoey* (unreported judgment of Butler J of 18 December 1973, H.C.), *Crown Chemical Company (Ireland) Ltd v. Cork County Council* [1984] I.L.R.M. 555, *Kelly v. Breen* [1978] I.L.R.M. 63, *Aspell v. O'Brien* [1993] 3 I.R. 516, *Staunton v. Durkan* [1996] 2 I.L.R.M 509, *Minister for Finance v. Laurence Goodman,*

Goodman International and Subsidiary Companies (No. 2) [1999] 3 I.R. 333, and *Bula Limited and others v. Tara Mines Ltd and others* (unreported judgment of McGuinness J of 7 March 2000, H.C.) to the effect that where counsel directs expert witnesses or technical advice or information be sought, then these steps are prima facie necessary have no application to outlays and disbursements which the law regards as irrecoverable.

64. In many cases the irrecoverable nature of items will be obvious and any presumption of propriety of engagement of such services as a result of a decision made by a barrister or a solicitor will count for little or nothing. For example, in *Minister For Finance v. Goodman and others* the claims to recover for disbursements for advice on customs and excise; to public relations consultants and for work which could have been done without the expertise of independent chartered accountants and was not specialist in nature were all manifestly unsustainable.

65. This Court has considered English and Australian judgments relied on by Mr Skoczylas which were not cited to the Legal Costs Adjudicator. These legal authorities do not support a general proposition that value of expertise and know-how which a litigant has or buys in to assist litigation may be claimed as a recoverable outlay on foot of an order for party and party costs.

66. Costs may be recovered for work of "in house" experts who are employed by or associated with litigants who provide specialist assistance in accordance with the principles enunciated by Lloyd-Jacob J in *Re Nossen's Patent* [1969] 1 WLR 638 and by Warren J. in *Sisu Capital Fund Ltd v. Tucker* [2006] 1 All ER 167 ([2005] EWHC 2321 (Ch)). This is an aspect of the rule that any litigant may engage an expert to assist in providing technical evidence for the purpose of advancing or defending a legal claim.

67. This line of authority in England stems in part from comments in judgments in *The London Scottish Benefit Society v. Chorley* ((1884) 12 QBD 452 and (1884) 13 QBD 872. This authority established that solicitors who act on behalf of themselves in litigation are entitled to have costs awarded in their favour assessed on the same basis as that which applies where they have elected to engage external legal representation.

68. The law does not expressly confer special rights on solicitors who act for themselves. The basis of the decision was that the solicitor was exercising a type of special skill and judgment which the law recognised as entitling remuneration and there was no reason why this assessable contribution could not be recovered in an award of party and party costs. If matters were otherwise, solicitors would by worse off as a result of their own exercise of professional skill than they would have been if they engaged an outside solicitor. However, solicitors acting for themselves cannot claim for consulting themselves or instructing themselves or attending on themselves: see Brett M.R. at (1884) 13 QBD page 876.

69. The Divisional Court and the Court of Appeal in *The London Scottish Benefit Society v. Chorley* did not intend to create a new general category of recoverable costs. It is clear

from the judgments that party and party costs have always been allowed to solicitors acting for themselves in litigation. This was not a new development in 1884.

70. It has never been the case that a litigant is entitled to indemnity on foot of an order for party and party costs for any and every engagement "of skilled persons to do the work necessary to secure success" in litigation. That comment in the judgment of Watkin Williams J in the Divisional Court (12 QBD 452 at 460) relates to work of a type which the law recognises as attracting a right to indemnity. This is clear from subsequent English authorities.

71. In *Re Nossen's Patent,* The UK Atomic Energy Authority was awarded costs of defending a patent infringement application. The court permitted recovery for salary paid to expert employees of the Authority who conducted experiments directed by a professor of chemistry. Their purpose was to challenge the patent claim by expert scientific evidence. They related to the scope of an exclusion set out in the main claim in the patent and the accuracy of a representation in the patent specification.

72. The sums allowed as outlay also included cost of materials used in conducting the experiments, but not overheads for light and heat. The assistance from expert staff could only be valued on the basis of their salaries and disbursements on carrying out the experiments and not on the basis of any profit element which an outside laboratory would be entitled to charge. Costs other than direct costs were excluded.

73. This principle allows a costs claim for "in-house" specialist work by a litigant which relates to evidence to prove or disprove an aspect of a claim. This expert's evidence must be relevant to an issue of proof which arises in the litigation.

74. The possible limitation on party and party costs recoverable for in-house expert witnesses under this rule does not also apply to work by in-house practicing solicitors employed by client litigants. Any party and party costs awarded to the client will include profit costs of these in-house solicitors: see *Bank of Ireland v. Lyons* [1981] I.R. 295. That work involves taking instructions and preparing and presenting the case, and is valued differently.

75. In *Admiral Management Services Ltd v. Para Protect Europe Ltd* [2002] 1 W.L.R. 2722 ([2002] EWHC 233(Ch)) it was held that cost of analysis by a claimant's in-house computer staff of materials showing that files were raided from computers by departing staff who were sued for trying to poach the claimant's business might be allowable on foot of an order that the defendants pay costs of the legal proceedings.

76. Whether these costs were allowable depended on proof that the work was such as required a level of expertise beyond what would normally be expected of those in charge of computers used by a business entity. If the claimant could demonstrate that such special expertise was deployed, then the claimant could recover a sum for the cost of the work, even though the staff who provided the expertise were in-house.

77. The judgment of Stanley Burnton J emphasised that much work relating to operating of computers does not involve specialist expertise and that it had not been proved at that stage of the proceedings that the particular work undertaken required expertise beyond that which those operating the claimant's computer system should have as part of their ordinary skills.

78. *Sisu Capital Fund Ltd v. Tucker* related to claims by liquidator and administrator defendants on foot orders for party and party costs for fees of professionals in their accountancy firm for charge-out of costs relating to a variety of tasks, some of which might have called for special expertise. The liquidators and administrators claimed for input of staff into superintendence of litigation at appropriate hourly rates. Rejecting this claim, the court held that the law did not treat these statutory office holders as having the same rights as solicitors representing themselves in litigation.

79. Warren J. held that in order to establish any right to recover for time and effort by accountants in defending the litigation, the liquidators and administrators had to show that work undertaken fell within the principle in *Re Nossen's Patent*: see para. 48 of the judgment at page 182. In order to recover for professional skill was necessary to show some input of special expertise of a sort which would justify engagement of an independent expert.

80. An example of recoverable outlay in the context of insolvency-related litigation might be use of accountancy expertise to prove or disprove claims for special damage for lost profits. There is no suggestion in the judgment in *Sisu Capital Fund Ltd v. Tucker* that Warren J. would have allowed as party and party costs any general value of input of know-how of partners and employees of the accountants in preparation or presentation of the defence by the solicitors for the liquidators and administrators. That sort of input came within what was excluded.

81. It did not matter that it might be possible to calculate financial cost of the time spent by reference to salaries or charge-out rates for professional services. Those rates might be allowed to liquidator as appropriate costs in a liquidation but they are not recoverable outlay on foot of an award of party and party costs.

82. Two dissenting judges in the High Court of Australia in *Cachia v. Hanes* [1993-1994] 179 CLR 403 were prepared to allow were an amount to a civil engineer litigant in person for time spent in preparing his case relating to subsidence of his land. The majority decision was that the relevant taxation rules for party and party costs made no provision for time me lost by a litigant in preparation or presentation of his case. These rules were considered to be in accordance with established law.

83. Indemnity in party and party costs was for held to be for costs actually incurred and not to compensate for some other disadvantage or inconvenience of a litigant. The following passages in the judgment of Mason C.J., Brennan, Deane, Dawson and McHugh JJ. at (the majority of judges on the court) page 413 to 415 of the report accord somewhat with the reasoning of this Court:

> "Rather too much emphasis may have been given in the cases to costs which are awarded to a solicitor acting for himself. They are awarded upon an exceptional basis and not upon the basis upon which costs are ordinarily awarded, namely, as an indemnity for legal costs actually incurred. It is, we think, not possible to reason by way of exception that litigants in person are treated unequally and then to conclude that the very basis on which costs are ordinarily awarded should be abandoned so that the exception becomes the rule…
>
> If costs were to be awarded otherwise than by way of indemnity, there would be no logical reason for denying compensation to a litigant who was represented. That would in some cases dramatically increase the costs awarded to a successful litigant. In corporate litigation of complexity, for example, a litigant may expend considerable time and effort in preparing its case.
>
> Whilst the restricted basis upon which party and party costs are awarded may be debated as a matter of policy, it is to be borne in mind that party and party costs have never been regarded as a total indemnity to a successful litigant for costs incurred, let alone total recompense for work done and time lost. Putting to one side the question posed by the relatively rare exception of a solicitor acting in person, there is no inequality involved: all litigants are treated in the same manner. And if only litigants in person were recompensed for lost time and trouble, there would be real inequality between litigants in person and litigants who were represented, many of whom would have suffered considerable loss of time and trouble in addition to incurring professional costs. The partial indemnity which the law allows represents a compromise between the absence of any provision for costs (which prevails as a matter of policy in some jurisdictions) and full recompense. In these days of burgeoning costs, the risk of which is a real disincentive to litigation, the proper compromise is a matter of both difficulty and concern."

84. Any exceptions which allow for recovery of disbursements or outlay for expertise are very narrow, as is clear from the judgment of Bingham J. in *Richards & Wallington (Plant Hire) Ltd v A Monk & Co Ltd* (11 June 1984, HCEW, unreported). That case involved a claim by a contractor for building costs. The claim was formulated by a non-executive director of the contractor who was paid a fee for the work. He was an employee of the contractor. The contractor also hired an outside person to present the work in evidence.

85. These were not expenditure on expert work of a type recoverable as party and party costs. Bingham J. considered that they fell "within the ordinary costs that a litigant must bear of digging out his own factual material, through his own employees, to prove his own case. Had outside experts been introduced to carry out this work then it by no means seems to me to follow that it would in any event have been recoverable as a cost of the litigation."

86. This is another way of expressing the point made by the Legal costs Adjudicator that "…the general principle is that a party to litigation must know his case at his own

expense…" The words quoted come from an extract from the Taxing Master's report in *Irish Independent Newspapers Ltd v. Irish Press Ltd* [1939] I.R. 371 at page 372.

87. The following submission made by counsel for the defendant in *Richards & Wallington (Plant Hire) Ltd v A Monk & Co Ltd*, was accepted by Bingham J. and is a correct statement of the law: "…a party cannot, in the ordinary way, recover his own costs of performing professional work and if he is to do so he must show that the work falls within a recognised category, for example, where a solicitor is acting for himself or in a case falling within an exception described by *Nossen's* case."

88. One further matter arises. The orders of the High Court in favour of Mr Skoczylas were made prior to commencement of Parts 10 and 11 of the 2015 Act on 7 October 2019. The jurisdiction of the High Court to award costs or outlay to Mr Skoczylas was conferred by s.53 of the Supreme Court of Judicature Act (Ireland) 1877 which confers power on the superior courts to award "…the costs of and incident to every proceeding…". This provision has not been repealed. The power to award costs is now conferred on courts by s.168(1)(a) of the 2015 Act which refers to "…the costs of or incidental to the proceedings…"

89. These costs include any outlays and disbursements which are established as properly incurred as incidental to the proceedings.

90. The definitions of "legal costs", "contentious business", "non-contentious business" and "bill of costs" in s.138 of the 2015 Act relate primarily to fees, charges, disbursements and other costs incurred or charged relating to legal services provided by legal practitioners. However, the definition of "legal costs" includes other matters such as costs of receivers and of enquiries and of registering judgment mortgages. This inclusive definition must be given a purposive interpretation. Part 10 of the 2015 act applies to the expenses awarded to Mr. Skoczylas in this action. These awards come within O.99 r.13(1)(a) and (f) of the Rules of the Superior Courts.