

4.15 Deputy T.M. Pitman of the Solicitor General regarding the Court's powers to ensure that full indemnities awarded to members of the public at the conclusion of a court case are enforced:

What powers, if any, does a Court have to ensure that full indemnities awarded to members of the public at the conclusion of a court case are enforced and the injured party is not left thousands of pounds out of pocket?

The Solicitor General:

If a court orders that a party should receive their costs in respect of a case then the party can rely upon that court order to obtain payment of those costs. Quite often that is a 2-stage process. If the court has not fixed a precise amount to be recovered and has, for example, awarded costs in the case, then the first stage is to assess the exact amount of cost it should be paid. This process is called taxation. At the end of the taxation process a cost certificate will be issued indicating the precise amount to be paid. We then move to the second stage. The party who should receive payment can now use the cost certificate to enforce payment through the courts if no payment is still forthcoming. But, the court will take steps to enforce payment as it would with any other debt that has proved to be outstanding.

4.15.1 Deputy T.M. Pitman:

I thank the Solicitor General for that. If a wronged member of the public has been awarded those full indemnities - he has even been through the bâtonnier - and nearly 8 years later the other party, the lawyer, has refused to pay up. Where can that individual go in theory? It would seem, from what the Solicitor General has advised us, his only recourse is perhaps to spend more money probably making him no better off than if he just took the hits, if I can put it that way.

The Solicitor General:

I am not entirely clear as to the facts, but assuming for the moment that the party has a costs order from the court in his or her favour, then all that is left for the process of taxation is to determine the amount that should be paid to him or her, not whether they should recover anything. That party in whose favour a costs order has been made will usually recover their costs of taxation. The same applies if you get as far as stage 2 enforcement. If a party, who has a costs order has to go to those steps to get their payment then they will recover their costs.

4.15.2 Deputy T.M. Pitman:

Yes, I will try again. I am not trying to be difficult. As I say, I find it very strange that this gentleman I am in contact with has been waiting 8 years. Everything was found in his favour. His lawyer refuses to hand over that money. Is there no other recourse such as through the Law Society again? Is there no other recourse without spending more money that this gentleman can make? I cannot go into details, obviously, but the gentleman has already tried to make complaints to the police about other issues relating to this case and the police will not even accept the complaint. It seems he is in limbo, which obviously I think the court would not want and we would not want. Can the Solicitor General give us any other hope of where he could go?

The Solicitor General:

I am afraid I do not understand why this party is in limbo. As I say, assuming that I have understood correctly that there is a costs order in his or her favour then they were entirely entitled to seek taxation of the costs, get a cost certificate and if the other party will not pay, for whatever reason, then the party who is owed the money can enforce it through the court. I do not understand at the moment why it is said that somebody is in limbo. If they have a costs order, they are not in limbo they have a right that they can properly exercise.

Deputy T.M. Pitman:

I would just thank the Solicitor General for his answer and perhaps I can come and visit him and I might be able to give him some details I cannot give here. Thank you.

Senator B.I. Le Marquand:

Sir, may I ask a question?

The Bailiff:

May you ask a question?

Senator B.I. Le Marquand:

Yes, Sir.

The Bailiff:

No, you are a Minister. We do not usually allow Ministers to ask questions.

Senator B.I. Le Marquand:

Oh, I was going to try to help elucidate the position, Sir, by a helpful question.

The Bailiff:

Very well.

Senator B.I. Le Marquand:

May I, Sir?

The Bailiff:

Yes.

4.15.3 Senator B.I. Le Marquand:

Would the Solicitor General agree that because the test applied by the court on taxation is a reasonable sum reasonably incurred in favour of the receiving party that there is sometimes a substantial gap left because the costs incurred have either been unreasonable in amount or unreasonable in the ambit of the work done?

The Solicitor General:

Yes, I can confirm that the principle purpose of taxation is to have an independent party, i.e. the Judicial Greffe, in the first instance, assess the costs claimed and they consider the amount claimed, having regard as to what was reasonable, taking into account the issues and complexity of the case.