

## **SUBMISSIONS TO THE REVIEW OF THE ADMINISTRATION OF CIVIL JUSTICE.**

### **Costs:**

1. The archaic procedure in relation to Legal Costs and **Appendix W** should be abolished or extensively revised and brought up to date in a comprehensible and relevant manner.
  - (b) Legal Costs and the preparation of a bill of costs should not be the sole preserve of a Legal Cost Accountant ( who in contrast to what the name suggests are not-accountants and are not regulated and have no accountability).

### **Personal Injuries Summons and GDPR (General Data Protection Act)**

2. Having regard to the Data Protection Acts and the GDPR which will come into force in May 2018, a review of the Personal Injuries Summons and the information requested could be regarded as excessive in respect of the amount of personal information gathered in relation to the Plaintiff's details. It is noted, that in addition to the Plaintiff's Name and Address, a Plaintiff is requested to insert: *Date of birth, PPS No, Occupation, etc.* Hence, the defendant has at its disposal a large amount of **personal** information in relation to the Plaintiff, which may be open to abuse. Also, the issue of Identity theft is a major concern, where there are no safeguards in relation to who has access to this information and how the information will be used and distributed. In any event, the P.I. Summons appears to be in conflict with the Data Protection Acts and the GDPR. The P.I. Summons in its current form facilitates the excessive and unnecessary gathering of information in relation to the Plaintiff's personal details. The content requested in a P.I. Summons in relation to a Plaintiff's details should be reviewed to take account of the GDPR and should not facilitate the excessive and unfair gathering of a Plaintiff's personal details by a third party.

#### **a) Improving procedures and practices**

##### **Re: Requirement for PPS number and other personal information from personal injury applicants before proceedings can be issued**

The information sought is excessive, disproportionate and completely unnecessary. It is not consistent with EU data protection and privacy obligations imposed and in particular, EC Data Protection Directive 95/46 and the forthcoming General Data Protection Regulation.

A PPS number is required to instigate personal injury proceedings irrespective of whether or not an individual is claiming loss of earnings. There is a real risk to claimants of identity theft and fraud being perpetrated against them.

The information submitted is not confidential, is liable to abuse and mis-use and very often ends up in the hands of private investigators retained by insurance companies. From client experience, it is now the norm for accident victims to be followed, photographed, generally harassed and intimidated by private investigators. These incidents have been reported by our clients to the Gardai but the Gardai will not become involved because the person has an accident claim.

There have been some prosecutions by the Data Protection Commissioner in the District Court against private investigators in respect of data breaches but the fines imposed are not effective deterrents for misuse of personal data. Further, the number prosecuted is very small and only represents the "tip of the iceberg".

Recently, a staff member of the Department of Social Protection received a one year prison sentence for selling individual's data to private investigators (reported in newspapers on 27th January, 2018).

It is worthwhile to remember that individuals who suffer serious injuries in accidents are "victims", whose quality of life may be severely compromised post-accident. Why should an individual's data protection and privacy rights be set at nought because that individual pursues a personal injury claim for physical and/or psychological injury arising from the tortious wrongdoing of another?

SUGGESTION: The required should be abandoned.

**Re: Taxation of costs**

The process of taxation of costs is itself very lengthy, takes place over several days and is very expensive for a party who has obtained an Order for costs. The number of days in taxation often exceeds the time spent in Court where a matter goes to hearing. In the words of Mr. Justice Cregan in the Court of Appeal decision in Sheahan V Corr "***It is hard to avoid the conclusion that there must be something wrong with a taxation process that would take so long to resolve such a dispute***"

In the 1995 book entitled "Taxation of Costs", Flynn & Halpin, in relation to Objections at page 677, it is stated:

*The application of the section can be abused because of its potential penal utility and it's apparent anomalous position. For example, if a person, whose costs have been taxed, and the paying party wishes to exhaust the full procedure with regard to the taxation of costs and objects solely for the purpose of frivolity, the person, whose costs have gone to the objection stage of the process, is forced to finance this vindictiveness. Therefore, an abuse of the system exist which would penalise one party unfairly.*

*..... Furthermore, a party may seek to exhaust the processes of taxation to defer it's inevitable and ultimate responsibility of paying costs.*

*At page 679*

*If the section was interpreted in any other form it would cause hardship to the party that incurred the cost. For example, the party obliged to pay the costs could hold the entitled party to ransom in that a forced taxation would involve extra cost and rather than pursue this right the person would have to accept a sum at least lower to the extent of the cost of taxation if the person did not wish to incur the expense of taxation and gamble on a system that may adjudicate that the costs are fair or unfair,*

*whichever the case may be. Even if so adjudged, they are allowed but must be financed out of the taxed cost ....."*

While former Taxing Master Flynn was referring to the costs of objections in 1995, the same sentiments apply today to the taxation of costs process, because very often the paying party will make no offer whatsoever on costs or a derisory offer resulting in a forced taxation of costs, which is so lengthy and so expensive for the party receiving costs and is financed out of the taxed costs. The taxation of costs process itself is an impediment to the Constitutional right of access to the Courts.

### **Suggestion - Revise Appendix W**

There is no reality in the Appendix W figures which are used in taxation of costs. Although the Court Rules were updated in 1986, Appendix W was not updated since 1962. As set out by Ms. Justice Laffoy in Sheahan V Corr, the Appendix W figures are not only pre Euro, they are pre-decimalisation and comprise pounds, shillings and pence. L.s.d.

### **Inadequate Allowances on Taxation in respect of AGED disbursements and outlays necessarily incurred in personal injury cases:**

Medical reports - if €700 paid out and only recover €250. The reality is that doctors will not release a report unless advance payment is made. If a personal injury claim itself including PIAB takes five years plus and taxation of costs may take another 2 to 3 years to complete, that is a very long time to wait *interest free* for a refund, or more likely a partial refund.

The system is even punitive when it comes to standby fees - circa €450 plus for two hours. €900 plus per day depending on the consultant. If the case is listed but not reached, consultants will be on standby the next day also and maybe the following day, by which time very sizeable standby fees will have been incurred. When taxation eventually comes around, the Taxing Master only allows €200 standby fee for each professional witness, leaving a shortfall of €700 per expert witness per day. Some medical practitioners are now insisting on advance payment before they will even go on standby.

It is difficult to escape the conclusion that the taxation of costs process is broken, in need of extensive overhaul and incompatible with access to justice particularly for impecunious litigants.

### **Reduce costs and improve access to justice by introducing a system of actuarial tables such as the OGDEN tables used in the U.K.**

## **SUBMISSIONS TO THE REVIEW OF THE ADMINISTRATION OF CIVIL JUSTICE.**

### **Costs:**

This submission is supplemental to my earlier submission regarding legal costs.

While I am mindful that the President of the High Court, Mr. Justice Peter Kelly is reflecting on the costs of going to Court and has expressed the opinion that only "*paupers and millionaires*" can afford to go to Court.

It is important to bear in mind, the costs incurred by the Solicitor, the risks involved in taking the case and the outlay paid out by the Solicitor to fund a paupers case to enable access to justice for all, should also be properly considered.

There is a real impediment to access to justice for individuals where the expenditure costs incurred by the Solicitor in enabling litigants to pursue cases are so high that only a small number of Solicitor firms are able to bear that expenditure for such a prolonged period of time with no guarantee of recovery of that expenditure, even where the cases are successful in view of the Taxation process.

For example, if we take a simple Personal Injuries case, where the Plaintiff is involved in a car accident, suffers soft tissue injuries, trauma and a broken femur.

The following reports must be obtained and paid for in advance by the Solicitor's firm:

1. Obtain a Medico/Legal report from GP €350
2. Obtain a Consultant's Report from Hospital €600
3. Obtain psychiatric report in relation to trauma €600

In addition:

Court fees, Stamp Duty fees, Commissioners fee, motion costs etc are all outlays incurred by the Solicitors firm in advance of any Court Hearing.

When the case is called on for hearing in addition to the above expenses, Expert Witness costs for attending Court is €900 for a full or part day, if the case runs over and takes several days in Court, the Solicitor is liable for such costs. In addition to the above costs there are also Standby Costs.

It is important to appreciate any Solicitor's firm funding a case has already exposed itself to considerable costs before even reaching the steps of the Court.

When the Court case is over, if successful, the Solicitor must then obtain a legal costs accountant at the Solicitors expense to furnish a bill of costs to the insurance company. The Legal Cost Accountant usually charges a 10% fee plus the costs of each day at hearing before the Taxing Master.

When the matter proceeds to hearing before the Taxing Master, the insurance company will challenge all the outlay costs paid and the legal work involved, but crucially, the outlay costs paid out by the Solicitor's firm in advance may be reduced at the Taxation hearing. For example if a Consultant's report costs the Solicitor €600, the Solicitor may only be awarded €400 at the taxation hearing, clearly, the Solicitor is at a loss of €200.

The above matters are very onerous on all Solicitors firms and this is something which should be carefully considered when reviewing legal costs.

As a point of information, please see attached Medico Legal fees from a General Practitioner setting out charges for medical reports and Court fees which the Solicitor is liable for.

#### **Excessive Delay in Court of Appeal Cases:**

There is excessive delay in hearing of cases which were originally set down in the Supreme Court over four and a half years ago. Some cases were subsequently transferred to the Court of Appeal.

Some of these cases received a fixed hearing date, however due to the extreme weather conditions earlier this year, these cases were cancelled and not re-listed for hearing by the Court of Appeal office. These cases are now in legal limbo . I am mindful that justice delayed is justice denied. Perhaps, the Court term could be extended to hear such cases.