HIGH COURT OF AUSTRALIA

4 September 2019

BELL LAWYERS PTY LTD v JANET PENTELOW & ANOR
[2019] HCA 29

As a general rule, a self-represented litigant may not obtain any recompense for the value of his or her time spent in litigation. Under an exception to the general rule, commonly referred to as "the *Chorley* exception", a self-represented litigant who happens to be a solicitor may recover his or her professional costs of acting in the litigation.

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The Court unanimously held that the *Chorley* exception should not be extended to the benefit of barristers. Further, a majority of the Court held that the *Chorley* exception should not be recognised as part of the common law of Australia.

The appellant, an incorporated legal practice, retained the first respondent, a barrister, to appear in proceedings in the Supreme Court of New South Wales. At the conclusion of those proceedings, a dispute arose as to the payment of the first respondent's fees. The first respondent sued the appellant for her unpaid fees in the Local Court of New South Wales. She was unsuccessful in that proceeding, but she appealed successfully to the Supreme Court of New South Wales. Orders for costs were made in the first respondent's favour in relation to both the Local Court and the Supreme Court proceedings.

The first respondent subsequently forwarded a memorandum of costs to the appellant pursuant to those costs orders, which included sums for costs incurred on her own behalf and the provision of legal services by her in the Local Court and Supreme Court proceedings. Although the first respondent was represented by a solicitor in the Local Court proceeding, and by solicitors and senior counsel in the Supreme Court proceeding, she had undertaken preparatory legal work and had attended court on a number of occasions.

The appellant refused to pay the costs claimed for the work personally undertaken by the first respondent. A costs assessor rejected the first respondent's claim for the costs of the work she had performed and that decision was affirmed on appeal before the Review Panel and the District Court of New South Wales. The first respondent sought judicial review of the decision of the District Court in the Court of Appeal of the Supreme Court of New South Wales. The Court of Appeal, by majority, held that the first respondent was entitled to rely upon the *Chorley* exception notwithstanding that she was a barrister and not a solicitor.

By grant of special leave, the appellant appealed to the High Court. The majority of the Court held that the *Chorley* exception should not be recognised as part of the common law of Australia because it is an anomaly that represents an affront to the fundamental value of equality of all persons before the law and cannot be justified by the considerations of policy said to support it. In addition, the anomalous nature of the *Chorley* exception is inconsistent with the statutory definition of "costs" in s 3(1) of the *Civil Procedure Act 2005* (NSW).

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au