



## Summary of Judgment

### **Guneser v Aitken Partners (Cross appeal on costs) [2020] VSC 329**

5 June 2020

The Supreme Court has decided that an incorporated legal practice that successfully acted for itself in court proceedings was not entitled to recover its professional costs (other than disbursements). To award it costs, Justice Macaulay held, would be inconsistent with the rule that self-representing litigants are not to be recompensed for the value of their time spent in litigation. In so finding, the judge adopted and applied the principles in *Bell Lawyers Pty Ltd v Pentelow* (2019) 93 ALJR 1007 and *United Petroleum Australia Pty Ltd v Herbert Smith Freehills* [2020] VSCA 15.

Aitken Partners Pty Ltd is an incorporated legal practice. It succeeded on a taxation of its costs initiated by its former client, Mr Guneser; on a review of that taxation by a Costs Judge; and on an appeal from that Costs Judge's decision to the trial division. On the review, the Costs Judge set aside the Costs Registrar's decision to award Aitken Partners its full professional costs and disbursements for acting for itself on the taxation and, instead, allowed only its reasonable disbursement costs. Similarly, the Costs Judge allowed Aitken Partners only its reasonable disbursement costs for acting for itself on the review. On Aitken Partners' cross-appeal to the trial division, the question was whether the Costs Judge was correct in those respects.

In *Bell Lawyers* the High Court decided that what was known as the *Chorley* exception to the rule that self-represented litigants could not recover the value of their time spent in litigation did not form part of the common law of Australia. The effect of that decision was that neither barristers nor solicitors who successfully acted for themselves in litigation could recover their professional costs for doing so. In *United Petroleum*, the Victorian Court of Appeal, applying *Bell Lawyers*, held that a law firm (trading as a partnership) was precluded

from recovering professional costs for the work of its employee solicitors after it had acted for itself in litigation. The firm conceded that it could not recover any professional costs for the work of its partners.

Both decisions acknowledged that the abolition of the *Chorley* exception did not affect the continued entitlement of in-house lawyers employed by government departments or companies from recovering their professional costs when successfully acting in litigation on behalf of their employer. But neither *Bell Lawyers* nor *United Petroleum* determined the entitlement of an incorporated legal practice to recover professional costs when acting successfully for itself in litigation, whether by its principal or its employed solicitors. Justice Macaulay rejected Aitken Partners' argument that an incorporated legal practice should be seen as analogous to an in-house lawyer for a government agency or a company and confirmed the decision of the Costs Judge.

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**NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.**