

**JUDICIAL REVIEW**

Between

**Arnaud D. GAULTIER**

Applicant

and

**The Registrar of Companies,  
Companies Acts 1963-2009**

Respondent(s)

and

**Loire Valley Limited**

Notice Parties

<p><b>OUTLINE LEGAL SUBMISSIONS on behalf of Arnaud D. GAULTIER SWORDS</b></p>
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<b><i>I. Introduction</i></b> _____	<b>2</b>
<b><i>II. The Pleadings</i></b> _____	<b>2</b>
<b>A. The Applicant seeks</b> _____	<b>2</b>
<b><i>III. The Relevant Statutory Provisions -</i></b> _____	<b>2</b>
<b>A. The Constitution of Ireland</b> _____	<b>2</b>
<b>B. (European) Convention for the Protection of Human Rights and Fundamental Freedoms, 1950-2010</b> _____	<b>3</b>
<b>C. Charter of Fundamental Rights of the European Union 2000</b> _____	<b>3</b>
<b><i>IV. Determination of Court Impartiality</i></b> _____	<b>4</b>
<b>A. Assessment of Court Impartiality at previous hearings</b> _____	<b>4</b>
1. Order of Mr Justice Murphy dated 19 <sup>th</sup> July 2012 _____	<b>4</b>
2. Order of Mr Justice Hedigan dated 21 <sup>st</sup> November 2012 _____	<b>4</b>
3. Order & Judgment of Ms Justice Dunne dated 8 <sup>th</sup> March 2013 _____	<b>5</b>
<b>B. Conditions of Impartiality</b> _____	<b>5</b>
1. In any matter brought by a lay-litigant where the other party is represented by Counsel. _____	<b>5</b>
2. In this matter _____	<b>6</b>
<b>C. Conclusion on impartiality: a catch 22!?</b> _____	<b>6</b>
<b><i>V. The Substantive Review of Taxing Master Ruling</i></b> _____	<b>6</b>
<b>A. The Review sought</b> _____	<b>6</b>
<b>B. Legal Principles - General Considerations</b> _____	<b>6</b>
<b><i>VI. General Conclusion</i></b> _____	<b>7</b>

## **I. INTRODUCTION**

1. The Respondent was awarded her Costs of the Judicial Review brought by the Applicant, by orders of the Honourable Ms Justice Dunne of the 8<sup>th</sup> March 2013 and of the Honourable Mr Justice Hedigan of the 21<sup>st</sup> November 2012.
2. Having failed to serve his Notice of Appeal of this Judicial Review before the Supreme Court, the Applicant requested a consent from the Respondent for the late service of his notice.
3. The Respondent agreed and the applicant successfully served upon him his Notice of Appeal dated 11<sup>th</sup> April 2013 with the record number 186/2013.
4. Despite the accepted practise that such appeal creates a stay on the execution of any cost order, the Respondent issued a summon to tax on the 8<sup>th</sup> January 2014.
5. After Taxation hearing and Objections Hearing, the Applicant has reduced the Bill of Costs from €36,753 to €23,882 or in the region of.

## **II. THE PLEADINGS**

### **A. The Applicant seeks**

6. The object of this motion is to review the item 90 of the Bill of Costs standing at €15,000, for the Chief State Solicitor's office instruction fee acting on behalf of the Respondent. The Applicant contests the matter of urgency alleged by the Respondent on the basis that no objective definition of urgency was given, by either the Respondent or the Taxing Master in term of days, weeks or months. In addition, contesting the impartiality of the Taxing Master by design of his appointment, the Applicant request the strict utilisation of objective criteria in estimating the item 90, *ie* use of number of hours and hourly rates.

## **III. THE RELEVANT STATUTORY PROVISIONS -**

### **A. The Constitution of Ireland**

#### **Article 40**

1. All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function. [...]

3. 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

**B. (European) Convention for the Protection of Human Rights and Fundamental Freedoms, 1950-2010**

Irish Law by European Convention on Human Rights Act 2003 (including Protocol 1, 4, 6 & 7).

***Main Act - Rome, 4.XI.1950***

*“Article 6 - Right to a fair trial. 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

*Article 13 - Right to an effective remedy. Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*

**C. Charter of Fundamental Rights of the European Union 2000**

ratified by Ireland as part of the Lisbon Treaty, which came into force on 1<sup>st</sup> Dec. 2009

*Article 20 - Equality before the Law. Everyone is equal before the Law.”*

#### **IV. DETERMINATION OF COURT IMPARTIALITY**

##### **A. Assessment of Court Impartiality at previous hearings**

7. First, we are going to illustrate how lay-litigant can be dealt with in Court, in some worst case scenarios, at either *Ex Parte* application, Application on Motion and Hearing.

##### **1. Order of Mr Justice Murphy dated 19<sup>th</sup> July 2012**

8. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, the applicant made an *Ex Parte* application before Mr. Justice Murphy for an amendment of his “Statement of ground” adding the words “injunctive interim” in its paragraph 6 before the word “relief”. However, Mr. Justice Murphy issued an order not relevant on the applicant’s application.

9. This order was based on hearsay from Ms Justice Laffoy, that the Applicant was in Contempt of Court when he first applied before him on the 5<sup>th</sup> July 2012, for leave to apply by way of an application for judicial review. This was making reference to a former application, the Applicant made *Ex Parte* before Ms Justice Laffoy on the 18<sup>th</sup> June 2012, reference 2012/91IA where he was refused “*a relief to issue the Plenary Summons as exhibited and/or documented in Court this day*”.

10. The notable fact, which was blatantly ignored, is that the Application of the 5<sup>th</sup> July 2012 was made in the Chancery list, in the same Court and before the same registrar that his application of the 18<sup>th</sup> June 2012. The fact that Mr. Justice Murphy was sitting in stead of Ms Justice [Laffoy] was a matter of chance or, as it appears, maybe of God’s will. By itself, this fact alone should have vindicated the Applicant’s good name. But it did not.

11. In addition, having been unable to force the Court Registrar to amend Mr Murphy’s order the to match his application, this order was going to become a most damaging factor in the proceedings to come.

##### **2. Order of Mr Justice Hedigan dated 21<sup>st</sup> November 2012**

12. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, the Applicant attended his motion, on the 21<sup>st</sup> November 2012, before Mr Justice Hedigan despite the huge discrepancy between his Notice of Motion and his grounding affidavit. He was very unprepared as he did not have not any written legal submissions.

13. And, in the absence of any written legal submissions, the Applicant was surprisingly refused to present any verbal submissions. Following the above-mentioned damaging order, Mr Justice Hedigan made an order after a 15 minutes recess on the ground of the order of Mr Justice Murphy of the 19<sup>th</sup> July regarding an *Ex Parte* application the Applicant did not make.

**3. Order & Judgment of Ms Justice Dunne dated 8<sup>th</sup> March 2013**

14. In the matter of Gaultier -v- The Registrar of Companies [2013] IEHC 111, on the 5<sup>th</sup> March 2013, at the final hearing of this Judicial Review, the Honourable Ms Justice Dunne turned toward Counsel for the Respondent to ask if “there was any liberty in the Companies Acts to issue any of the reliefs sought by the (*lay-litigant*) Applicant”. The Counsel surprisingly stated they were none.

15. In her following judgement of the 8<sup>th</sup> March 2013, the Honourable Ms Justice Dunne does neither refute any of the submissions of the Lay-Litigant applicant nor give any reason to refute them. She does not mentioned them while insulting the reputation of the Lay-litigant applicant.

**B. Conditions of Impartiality**

**1. In any matter brought by a lay-litigant where the other party is represented by Counsel.**

16. In the Republic of Ireland, Judges of the Superior Courts are former solicitors or former barristers, who had practised as such for over 20 years. As such, they have created and kept ties with their former peers and peerage.

17. As a lay-litigant, it is difficult to establish such ties. In order to do so, a preliminary statement as the one below, may be considered as appropriate for any sitting Judge in such matters:

*“I, as former member of the Bar or the Law Society, swears having no former connections with neither the barrister nor the solicitor representing the “other party”. This includes:*

- *having never met casually;*
- *having never met professionally;*
- *having not attended the same school.”*

18. In the alternative, the lay-litigant should be made aware of the extent of any existing connection and be in a position to decide if he considered appropriate to ask for the judge to recuse oneself on this matter or to request a alternate

declaration: *“I take oath not to favour any of the submission and / or evidence brought by the said barrister and to take in equal considerations any submission and evidence brought in by the lay-litigant applicant/plaintiff/appellant.”*

**2. In this matter**

19. In this matter, the notion of impartiality becomes more tenuous as it is assessing fees of solicitors and barristers. An additional preliminary statement, as the one below, may be considered as appropriate for any sitting Judge in this matter:

*“I, as former member of the Bar or the Law Society, swears having kept no acquaintance, connection or friendship within neither the Bar of Ireland or the Law Society of Ireland nor do I have any relatives member of such.”*

20. In the alternative, the lay-litigant should be made aware of the extent of any existing connection and be in a position to decide if he considered appropriate to ask for the judge to recuse oneself on this matter or for the judge to only based one’s decisions on objective and quantitative criteria.

**C. Conclusion on impartiality: a catch 22!?**

21. Impartiality of the Court is a fundamental right of the Applicant in this matter. Though, the impartiality of the Court in this matter can not be ascertained. Face to such a catch 22, it is the strong belief of the Applicant that Taxation of Costs should and have to only be based on objective and measurable criteria.

**V. THE SUBSTANTIVE REVIEW OF TAXING MASTER RULING**

**A. The Review sought**

22. First, we have to notice that this motion for review is inconsistent or more exactly incomplete by the fact that it does not equally ask for a review of the Costs of the Barrister based on similar objective criteria. However, the application of objective criteria is indisputable. But, what is behind this motion? And more exactly what is behind this Taxation and the initial request of the Respondent to the Applicant to agree on the Costs?

**B. Legal Principles - General Considerations**

23. In *Gladys Ryan v The Attorney General* [1965] I.R. 294, the Honourable Mr Justice Kenny states at page 311 that the article 40 of the Constitution of Ireland

“I have to anticipate a later part of this judgment by saying that, in my opinion, this general guarantee relates not only to the personal rights specified in Article 40 but to those specified personal rights *and* other personal rights of the citizen which have to be formulated and defined by the High Court.”

24. With due regard to the above and due consideration to the views of the founders of the States and of all Irish people who fought over a century ago at the 1916 Easter rising, and before and after that for the establishment of the Irish State, we may unmistakably consider that Equality before the law, with equal access to Justice **not depending on conditions of resources**, is such a Personal Right of the Citizens. To confirm such, we can remember the Irish Catholic League with its collection ensuring the legal representation of Catholics, representation which first occurred in Killashandra 1829.
25. The second personal right which has to be considered is the **right of self-defence, to be applied on legal costs**. This is mostly to be considered with the right to an effective remedy, specified by Article 11 of the European Convention on Human Rights, which clearly relates to: “*violation has been committed by persons acting in an official capacity*”. The above statement seems laughable but, unless access to the Court is free against persons acting in an official capacity for which the State pay for their legal fees, there would be no Justice, creating an elite of people living in a virtual impunity. This was certainly not the wish of the founders of the State and the Irish people who fought for the independence of Ireland.
26. With due regard to Ferrazzini v. Italy (2002) 34 E.H.R.R. 45, paragraph 27, the Article 6.1 of the European Convention on Human Right should apply

*“[...] This has led the Court to find that procedures classified under national law as being part of «public law» could come within the purview of Article 6 under its «civil» head if the outcome was decisive for private rights and obligations, in regard to such matters as, to give some examples, the sale of land, the running of a private clinic, property interests, the granting of administrative authorisations relating to the conditions of professional practice or of a licence to serve alcoholic beverages [...].”*

## **VI. GENERAL CONCLUSION**

27. Finally, it is difficult to understand why the Respondent has issued such taxation, but we may speculate on it: Was it an **attempt of intimidation** to prevent the Applicant to pursue other matters before the Court?
28. Alternately, was it just an attempt of wasting the Applicant's time, also in the view preventing him to pursue other matters before the Court?
29. Alternately, was it an attempt to take advantage of the legal situation before the passing of Establishment of the Legal services Regulation Bill 2011.?
30. While remaining fully opened on any alternative submissions the Respondent may offer on this matter, the above hypotheses have to be put in light of the declaration of, The Chief Justice, O Dálaigh “ in the State (Quinn) v. Ryan [1965] I.R. 70:
- “It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of these rights. As a necessary corollary it follows that no one can with impunity set these rights at nought or circumvent them, and that the Courts' powers in this regard are as ample as the defence of the Constitution requires. Anyone who sets himself [on] such a course is guilty of contempt of the Courts and is punishable accordingly.”*
31. In the above-cited case, Gladys Ryan v The Attorney General [1965] I.R. 294, which was lost by the Applicant, the State was awarded its legal costs, which have been valued in excess of £250,000 at a time you could buy a decent house for £25,000. In his book “the Supreme Court”, 2016, Ruadhán Mac Cormaic informs that the Applicant was not asked to pay for these Costs. Would this not set up a precedent? Or are we really all equal before the Law?
32. The Applicant reserves the right to lodge supplemental submissions or present such orally.

Arnaud D. Gaultier Swords  
January 17<sup>th</sup>, 2017