

Vote 18. - Office of the Chief State Solicitor

22. Costs Retained by State Solicitors

Local State Solicitors appointed by the Attorney General are responsible for the discharge of Government business requiring the services of a solicitor in all areas except Dublin where the services are provided by the Office of the Chief State Solicitor. The position is part-time and the solicitors are free to engage in private practice subject to restrictions designed to avoid conflicts of interest. Under the Conditions of Appointment the principal duties of a State Solicitor in her/his area include

- the preparation and presentation of prosecutions initiated by Ministers or Departments.
- acting as solicitor for the Director of Public Prosecutions and for the Garda Síochána in the preparation and presentation of cases in all criminal courts in which a solicitor is required.
- the provision of a solicitor service in all civil courts and tribunals in which any Department or other State Authority is involved.

For the performance of these duties local State Solicitors receive a remuneration package which presently ranges from £39,343 to £46,898 per annum and covers personal salary, staff salary costs, and other expenses. State Solicitors are in contract with the Attorney General and their salaries are paid from the Vote for the Office of the Chief State Solicitor. The Conditions of Appointment also allow the State Solicitor to retain costs recovered in civil cases only. The bulk of the State work transacted by State Solicitors is criminal in nature. Files are submitted by local Gardaí to the State Solicitors who then deal directly with the Director of Public Prosecutions.

In general, the Attorney General is not involved in criminal matters which instead are dealt with by the Director of Public Prosecutions. One exception arises from the Attorney General's retention of a prosecution function under the Fisheries (Amendment) Act, 1978. The local State Solicitor appears for the Attorney General in the District and Circuit Courts. While these are criminal prosecutions, in 1992 an arrangement was made whereby applications would be made for costs in the Circuit Court. Costs are rarely awarded in criminal trials in the Circuit Court and the award for costs in fisheries prosecutions was an innovation. Costs awarded, together with fines and forfeitures, are payable to the Vote for Marine and Natural Resources. However, the costs awarded by the Circuit Court which amounted to £180,000 by mid-1997 have been retained by the local State Solicitors.

The Accounting Officer informed me that:

- These cases refer to the prosecution of fishing boats, usually non-national, which have been arrested on the high seas. The charges are indictable and are prosecuted in the name of the Attorney General. Upon arrest a trawler will be escorted into port and a Detention Order obtained in the District Court. A decision is made on what charges to prefer and the availability of evidence. In almost all cases the defendants elect to go forward for trial to the Circuit Court without preliminary examination in the District Court on pleas of "not guilty". A bond is lodged in Court to cover the value of catch, gear and maximum amount of fines, and an agent is named for service of documents. The boat is then allowed back to sea. There

is usually great urgency to get the boat back to sea. Accordingly, State Solicitors obtain directions on charges directly from the Attorney General's Office. The only involvement of the Chief State Solicitor's Office is the payment of Counsel fees on prosecution in the Circuit Court.

- Information suggesting that these costs were not being paid to the Department of the Marine and Natural Resources came to the notice of the Office of the Attorney General in July 1997 and the Chief State Solicitor was requested to take action. At that time it was believed that two State Solicitors were retaining these costs but on further examinations it was established that only one of these two had done so. Following correspondence with a County Registrar it transpired that five State Solicitors were involved. Each was written to and each claimed entitlement under their respective Conditions of Appointment. The Chief State Solicitor obtained Senior Counsel's advice to the effect that retention of these costs did not come within the terms of the State Solicitor's Contracts of Appointment. Proceedings were then drafted and issued in two cases. The outstanding sum of £2,000 was recovered by set-off from one of the State Solicitors. Further negotiations with the State Solicitors (and their Association) ensued but without success. Accordingly, proceedings have now been served on the four State Solicitors. If the proceedings are successful the amounts due should be recovered.

The Accounting Officer also informed me that:

- The problem with the fishery prosecution costs arose because the Courts awarded the costs to the State Solicitors personally. He had never had experience of a Court naming a Solicitor as personally entitled to the costs. Costs in his experience are always awarded to the successful party - whether plaintiff or defendant.
- In these cases the costs were collected with the fines and remitted directly to the State Solicitors.