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Subject: Ellis - costs argument

Dear All

I appeared in the Supreme Court this afternoon to instruct Stephen Rushton SC on the costs argument in *Ellis*.

As usual, the plaintiff (himself as opposed to his lawyers) prepared a voluminous bundle of documents and 16 pages of submissions in support of his application to have his costs of the application paid by the defendants (on an indemnity basis).

After hearing the argument on both sides, His Honour reserved judgment on the matter.

Although under the Court Rules costs are discretionary, I would anticipate that His Honour will make the following order:

- Plaintiff to pay Cardinal Pell's costs of defending the application to extend the limitation hearing; and
- The costs, as between the Trustees and the plaintiff, to be the costs in the cause (in other words, the costs payable to the successful party at the conclusion of the hearing).

If costs are ordered against the plaintiff in respect of the Cardinal's defence of the application, we will instruct a costs assessor to prepare a formal bill of costs to present to the plaintiff. From the plaintiff's submissions on costs, it is apparent that he will not agree to any figure for costs that we may present to him.

I will, of course, notify you as soon as judgement is handed down.

Any award of costs against the plaintiff will have serious implications for him and his continued funding of the action. I will discuss this issue if it becomes relevant.

Kind regards

John Dalzell