

**CROWN SOLICITOR'S OFFICE**

NEW SOUTH WALES

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25 July 2008 *[This field is a date creation field. The date will change if you save the document as a new document.]*

Ms Robyn Young
Legal Officer, Legal Services
Department of Community Services
Locked Bag 21
ASHFIELD NSW 2131

By facsimile: 9716 2988

Dear Ms Young

State of New South Wales ats AIL [REDACTED] & DB

I advise that I attended the District Court, Sydney, on Wednesday 23 July 2008 and appeared for the defendant before Judicial Registrar McDonald at the Pre-Trial Conference listed in this matter at that time.

Ms Helen Wall, Barrister, appeared for the plaintiff.

Ms Wall indicated to the Registrar that, recently, 13 more claims had been filed in respect of the incidents referred to in the Statement of Claim filed by AIL [REDACTED] and that an application would be brought to have those proceedings heard together with the proceedings of the two plaintiffs AIL [REDACTED] and Bruce Biles.

The Judicial Registrar noted that this matter would require individual case management. Ms Wall briefly outlined the claim as being one of children in care bringing an action against the carers for assault.

I indicated for the defendant that:

1. The defendant opposed the claims by 15 plaintiffs being treated as one. The Judicial Registrar was referred to Uniform Civil Procedure Rules 6.19 (1) which provides:

"(i) two or more persons may be joined as plaintiffs....if:

- (a) separate proceedings by each of them would give rise to a common question of law or fact, and
- (b) all rights of relief claimed in the originating process are in respect of, or arise out of, the same transaction or series of transactions,

or if the Court gives leave for them to be joined".

I submitted to her Honour that the plaintiffs claim that they were assaulted at various different times and, accordingly, it was submitted that this would infringe Rule 16.19 (1) (a) in that there could not be a common question of fact. Furthermore, the relief claimed did not arise out of the same transaction as required by Rule 16.19 (1) (b).

2. The plaintiff had issued a subpoena which was now returnable on 28 July 2008. The defendant objected to providing anything in response to that subpoena as it amounted to discovery. If the matter could not be negotiated, the defendant would bring a motion to set aside the subpoena.
3. The allegations by the plaintiffs were in respect of actions many years ago and there were substantial limitation questions.

The Judicial Registrar noted the 13 separate actions filed on 15 July and on the application by the plaintiffs, listed both matters, all 15 claims, for Directions on 11 September 2008 at 12 Noon. Her honour also ordered that any motions filed by any of the parties would be listed for Directions before her Honour at the same time.

I have indicated to Counsel that he should appear at the next Directions Hearing before the Judicial Registrar on 11 September and Counsel has indicated his availability.

I had prepared some Consent Orders as required by the standard directions in the District Court however in view of the attitude adopted by the Judicial Registrar, I made no advance in relation to those Consent Orders.

I take the opportunity to **enclose** a copy of an Advice I received from Counsel arising from the conference I had with him on 15 July 2008. Although dated 23 July, it refers to the progress of the matter as at the time of the conference, namely 15 July. At that time, we were unaware of the further 13 claims filed on that day. You will note from item (iii) of Counsel's letter that he recommends a conference be arranged with the investigator to assist him in determining what enquiries need to be carried out immediately and what enquiries can be left to a later date. This depends to a great degree on the availability of Counsel. I will check with Counsel and advise you and Peter Maxwell of Counsel's availability by e-mail. I might just mention that my availability isn't too good before 7 August.

In relation to the plaintiff's subpoena, I have forwarded to you a copy of a letter I wrote to the plaintiffs' solicitors. I have heard nothing back from them at this stage. I do not propose to do anything about the subpoena until I hear back from the plaintiffs' solicitors.

I note, however, that we exchanged e-mails on 23 July following an e-mail from you setting out a list of files which were your Department's files but were held by the Police Service.

I suggested to you at the time that your Department should retrieve those files from the Police. They are your files, they are not Police files. In my opinion they should not be produced by the Police in response to any subpoena, as they are not Police files. The fact that they are in the custody of the Police does not entitle the Police to produce your files. It may well be that your Department will produce those files ultimately, however your Department should have the opportunity to first vet those files for any possible claim of privilege or indeed to ensure that the files are relevant to the enquiry.

I have requested Counsel to confirm that this is the correct approach.

I will report to you further when there has been some further developments.

Yours faithfully

Evangelos G Manoliaras
Solicitor
for Crown Solicitor

Encl. *[delete if not required]*