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To: parblaster <parblaster@selbornechambers.com.au>
Sent: Tuesday, 27/09/2011 11:02 AM
Attachments: 226 CLR 256 - Batistatos v RTA of NSW.pdf
Subject: AIL

CSO REFERENCE: 200801481 - D2011/376540

Dear Paul

Steven Woods queried whether we were planning to argue, by our own motion, 'prejudice' to the defendant because of the effluxion of time, separate from arguing prejudice within the course of responding to the applicant's motion.

I enclose a copy of the decision of *Batistatos v Roads & Traffic Authority of NSW* (2006) 226 CLR 256, wherein the HC upheld the decision of the NSWCA to stay the proceedings due to abuse of process because the pre-commencement delay, approx. 29.5 years after the cause of action accrued, precluded a fair trial, even where the plaintiff was under a disability and there was no oppressive conduct on the part of the plaintiff.

This decision concerned the Supreme Court's power to stay proceedings.

Please advise if this course has previously been considered.

I understand our evidence would be the same, namely Peter Maxwell's affidavit.

Perhaps you might like to discuss this with Steven Woods and prepare a joint advice.

Kind regards
Jodie Vella
A/Solicitor
for Crown Solicitor

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