

From: mcashion <mcashion@sixthfloor.com.au>
To: Jodie_Vella <jodie_vella@agd.nsw.gov.au>
Sent: Wednesday, 11/01/2012 03:50 PM
Subject: RE: AIL

CSO REFERENCE: 200801481 - D2012/4872

Jodie

Paul and I discussed this possibility during a conference just before Xmas. Our preliminary conclusion was that the evidence would be the same and that it is worth running as a separate application on the first day set aside for the hearing commencing 20 February. We parted on the basis that we would both re-read the authorities, consider the evidence in that context and discuss the matter in detail when we are both back in the latter part of January. I will call you tomorrow morning to discuss.

Regards

Michael

From: Jodie_Vella@agd.nsw.gov.au [Jodie_Vella@agd.nsw.gov.au]
Sent: Wednesday, 11 January 2012 3:36 PM
To: Michael Cashion
Cc: swoods@wentworthchambers.com.au; parblaster@selbornechambers.com.au; Evangelos_Manollaras@agd.nsw.gov.au
Subject: AIL

Dear Michael

Steven Woods queried whether the defendant is planning to argue, by its own motion, 'prejudice' 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 High Court 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. I understand there is authority for the Supreme Court to stay proceedings in courts over which the court exercises supervisory jurisdiction (see *Re Austin*; *Ex parte Farren* (1960) 77 WN (NSW) 743 at 744-5; *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351 at 363; [1955] ALR 265; *R v Grassby* (1989) 15 NSWLR 109 at 116; *Watson v A-G* (NSW) (1987) 8 NSWLR 685 at 697; 28 A Crim R 332 (criminal proceedings in the District Court)).

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

Perhaps you might like to discuss this with Junior Counsel and indicate whether the argument may have prospects of success in Kathleen Biles' case. Paul Arblaster has previously been briefed with a copy of this decision and the above note.

Kind regards
Jodie Vella
Paralegal
for Crown Solicitor

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