

Denise Southwood

From: Paul Maher <paul.maher@mahersolicitors.com.au>
Sent: Tuesday, 20 January 2015 11:53 AM
To: Denise Southwood
Subject: FW: Lawler ATS Lawrie - NTSC 68 of 2014

2042426

Denise

My apologies- I should have copied you in on my email of 14 January to Terri Hart, which I now forward to you. I will also forward the invoices I subsequently sent to Terri.

#2
#2826
2827 #2
2888 #1

Paul Maher

From: Paul Maher
Sent: Wednesday, 14 January 2015 8:36 AM
To: Teresa Hart (DCM) (Teresa.Hart@nt.gov.au)
Subject: Lawler ATS Lawrie - NTSC 68 of 2014

Terry

I am providing the report I promised and an updated estimate of costs:

1. I have already provided to you the advice of Mr Maurice of 18 November 2014. Mr Maurice advised at that time that, although there was no prospect of the plaintiff obtaining certiorari, it was more likely than not that she would obtain a declaration that she had not been accorded procedural fairness. Mr Maurice reached that conclusion because Mr Lawler had not given Ms Lawrie the formal notice that he might make adverse findings and had not given her a formal and final chance to make submissions, as his earlier letter had promised. Notwithstanding that other steps had been taken by Mr Lawler to ensure Ms Lawrie had a full opportunity to present her case, Mr Maurice felt the authorities were probably against us, based on the facts of our situation.
2. At the time he gave his advice Mr Maurice felt we could probably strengthen our prospects of resisting a declaration by arguing that to grant a declaration would be futile. This was on the basis that both the government and the public had effectively made up their minds as to the role played by Ms Lawrie in this whole affair and had already decided whether or not to accept Mr Lawler's report. That is why I met with Mr Barnes and Mr Grant late last year, in order to obtain the letters which were subsequently written to support that argument.
3. There was one other potential issue at the time, but neither Mr Maurice nor I really expected it to so dramatically impact on the case. It had seemed at first inconceivable to Mr Maurice and I that Ms Lawrie and her advisers Cathy Spurr and Alistair Wyvill did not expect adverse findings to be made. Even when it was asserted in Ms Lawrie's Statement of Facts, Issues and Contentions that neither she nor her advisers expected an adverse finding, we found that difficult to believe. We were therefore surprised when both Alistair Wyvill and Cathy Spurr swore affidavits stating that they did not expect adverse findings.
4. Although Mr Maurice and I felt it highly unlikely that Alistair Wyvill and Cathy Spurr would make affidavits which were not true and accurate, we felt that at least we should explore the issue in order to satisfy our obligation to Mr Lawler. The fact that the plaintiff had made those assertions

acted as a waiver of the privilege she would have otherwise been able to maintain over communications between her, Cathy Spurr and Alistair Wyvill relating to that issue.

5. On 21 November 2014 I wrote to Cathy Spurr asserting that privilege had been waived and calling for her to produce the relevant communications which went to the state of mind of Ms Lawrie, Alistair Wyvill and herself regarding the expectation of adverse findings.
6. It was not until 15 December that Cathy Spurr responded. Although not accepting that privilege had been waived, she offered to provide documents on the basis that they were seen only by me and Mr Maurice. I accepted her offer.
7. The documents were only provided to me on the afternoon of 22 December 2014. Nothing effective could be done before Christmas. However, when Mr Maurice and I examined these documents we were surprised indeed. We had expected that they would confirm what Alistair Wyvill and Cathy Spurr had asserted in their affidavits, but the contrary was the case. This is what has had such a dramatic impact on the matter.
8. The first impact is that it has significantly improved the prospect of success. Whilst no litigation is certain, Mr Maurice now advises that he thinks it is more likely than not that the declaration would be refused. The argument we now have is that both the plaintiff and her legal advisers fully expected an adverse finding. That being the case, they presented to Mr Lawler everything they wanted to present to him. The fact that they were not given a formal warning of the prospect of an adverse finding means nothing, because they had in fact anticipated that and had in fact made all the submissions they intended to make.
9. The other significant impact is that in order to run this argument we must cross-examine not only the plaintiff but also Cathy Spurr and Alistair Wyvill. Cathy and Alistair have been known to me for many years and it is obviously awkward for me to have to be challenging their credibility. Alistair has been known to Michael Maurice for many years. Michael felt he could not conduct a cross-examination of Alistair as it should be conducted, so was intending to cease to act. As recently as last Friday morning I was expecting to have to find a replacement senior counsel and have the hearing dates adjourned.
10. When I had the matter mentioned before Southwood J on Friday 9 January (with Mr Maurice appearing by phone), Southwood J made it clear that he did not want the hearing delayed. He came up with the suggestion that we brief a junior counsel who would be given the specific task of cross-examining Alistair Wyvill. Although Mr Maurice and I were somewhat taken aback by the Judge's approach, it was clear that he was not going to adjourn and that we were therefore effectively stuck with his suggestion. Upon reflection, it is probably very good for us because we retain the invaluable services of Mr Maurice but also have the advantage of an experienced counsel cross-examining Alistair Wyvill.
11. One of the consequences of the cross-examinations is that the originally allocated 2 days is quite insufficient. Consequently Southwood J has now allocated 4 days (27 to 30 January inclusive) for the hearing.
12. You know that Mr Grant authorised me to go ahead to engage junior counsel and was even kind enough to give me a list of recommended counsel. Fortunately I was able to procure the services of the preferred counsel, Mr David McLure of the Sydney Bar. I have sent a brief to him.

13. I have kept Mr Lawler fully informed throughout, in recent weeks by telephone first, because of fast moving events, and then in writing. He is happy for us to proceed as we are.
14. The inevitable consequence of all these events, encouraging as they are in boosting the chances of success, is a very significant increase in costs. I can report that my current unbilled work in progress is about \$18,000. My communications with Mr Maurice since his last invoice have been fairly intense, particularly in relation to the formerly privileged documents. I expect that his unbilled work would be in about the same amount. I will send an invoice shortly and I will ask Mr Maurice to raise another interim invoice also.
15. The hearing is now for 4 days during which Mr Maurice, Mr McLure and I will obviously be fully occupied. Mr Maurice could need up to 3 days in preparation. I expect Mr McLure will need 4 days in preparation. I expect I will need the equivalent of 4 days in preparation also, having regard to the fact that the solicitor has to deal with the more mundane areas of preparation. I think I might need up to 20 hours of clerk's time also, charged at \$140 per hour in accordance with the Supreme Court scale.
16. The Sydney Bar tends to be the most expensive in Australia. Mr McLure's rate is \$4,500 per day. I am not surprised by that. It accords with the levels normally charged by a senior/junior in Sydney, in my experience. It is not dissimilar from the rates charged by barristers of similar experience here. The fact that it is almost the same as Mr Maurice's rate reflects more on the modesty of Mr Maurice's charges than on any excess in Mr McLure's charges.
17. Obviously both counsel will have to travel to Darwin and back. They will need to be accommodated. Mr Maurice is going to arrive on Saturday 24 January. I do not know Mr McLure's arrangements yet but I will allow 14 nights and assume about \$200 per night for accommodation costs. In addition I expect we will need to get at least some running transcript and will estimate \$1,000 for that.
18. I therefore estimate future costs (with all figures exclusive of GST) to the end of the 4 day hearing as follows:

Mr Maurice (7 days)	\$35,000
Mr McLure (8 days)	\$36,000
Solicitor (8 days)	\$30,000
Clerk (20 hours)	\$3,000
Counsel travel	\$4,000
Counsel accommodation	\$3,000
Transcript	\$1,000
TOTAL	\$112,000

19. I regret that costs have blown out so extensively, and in particular that they so far exceed my initial estimate, but the startling evidence of the expectation an adverse finding, its impact on the length of the trial and the need for a junior counsel were all quite unpredictable.

Please call me if you have any questions.

Paul Maher

PAUL MAHER

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