FEDERAL MAGISTRATES COURT OF AUSTRALIA

FWO v LUFRA INVESTMENTS PTY LIMITED & ANOR *[2011] FMCA 263*

WORKPLACE RELATIONS – judgment in respect of quantum of penalties to be imposed on respondents for contraventions.

Workplace Relations Act 1996, ss. 189(1), 235, 719, 719(2), 728
Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998

Gibbs v Mayor, Councillors and Citizens of City of Altona (1992) 37 FCR 216
Pearce v R (1998) 194 CLR 610
Kelly v Fitzpatrick [2007] FCA 1080
Ikin v Crown Trading Group Pty Ltd [2009] FMCA 1187

Applicant:	FAIR WORK OMBUDSMAN
First Respondent:	LUFRA INVESTMENTS PTY LIMITED (A.C.N. 107 791 104)
Second Respondent:	JOHN SHEPLEY
File Number:	LNG 44 of 2009
Judgment of:	Burchardt FM
Hearing date:	25 February 2011
Date of Last Submission:	7 March 2011
Delivered at:	Melbourne
Delivered on:	21 April 2011

REPRESENTATION

Counsel for the Applicant:	Mr B. Vallence
Solicitors for the Applicant:	Zeeman & Zeeman
Counsel for the Respondents:	Mr M. O'Farrell S.C.
Solicitors for the Respondents:	De Korte Lawyers

THE COURT DECLARES THAT:

The First Respondent Contravened:

(1) Subsection 182(1) of the *Workplace Relations Act 1996* (Cth) ("WR Act") by failing to pay Mr and Mrs Adness for the work they had performed in the month of December 2007, the guaranteed basic periodic rate of pay as required under the preserved Australian Pay and Classification Scale ("APCS") derived from the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998*;

(2) Subsection 189(1) of the WR Act by failing to pay Mr and Mrs Adness in accordance with the frequency of payment provisions contained in the preserved APCS derived from the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998*;

(3) Subsection 235(2) of the WR Act by failing to pay Mr and Mrs Adness their untaken accrued annual leave on the termination of their employment;

(4) Clause 21 of the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* by failing to pay Mr and Mrs Adness in accordance with the frequency of payment provisions for the period 27 March 2006 to 29 December 2007;

(5) Clause 22.3 of the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* by failing to keep a daily record of the hours worked by Mr and Mrs Adness for the period 1 December 2004 to 29 December 2007; and

(6) Clause 25.5 of the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* by failing to make superannuation contributions on behalf of Mr and Mrs Adness in respect to their periods of employment from 1 to 29 December 2007.

(7) The Second Respondent was involved in the contraventions specified in declarations 1, 3 and 6 within the meaning of s.728(1) of the WR Act.

THE COURT ORDERS THAT:

(8) A penalty of $40,000 be imposed on the First Respondent pursuant to subsection 178(1) of the WR Act as in force prior to 27 March 2006 and subsection 719(1) of the WR Act for contraventions of the Australian Fair Pay and Conditions Standard and the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* as declared above.

(9) A penalty of $7,920 be imposed on the Second Respondent pursuant to subsection 719(1) of the WR Act for contraventions of the Australian Fair Pay and Conditions Standard and the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* as declared above.

(10) Pursuant to subsection 719(6) of the WR Act the First Respondent pay:

(a) Mr Stanley Adness the sum of $299.99 representing outstanding entitlements required to be paid under subsection 182(1) and 235(2) of the WR Act; and

(b) Mrs Marie Adness the sum of $301.15 representing outstanding entitlements required to be paid under subsection 182(1) and 235(2) of the WR Act.

(11) Pursuant to s.722 of the WR Act the First Respondent pay interest on moneys owed by the First Respondent to Mr and Mrs Adness from the date these proceedings were commenced.

(12) The above ordered penalties be paid into the Consolidated Revenue Fund of the Commonwealth pursuant to subsection 841(a) of the WR Act.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

LNG 44 of 2009

FAIR WORK OMBUDSMAN
Applicant

And

LUFRA INVESTMENTS PTY LIMITED (A.C.N. 107 791 104)
First Respondent

JOHN SHEPLEY
Second Respondent

REASONS FOR JUDGMENT

1. In the application and statement of claim filed on 21 December 2009 the applicant alleged various contraventions against the first respondent. These are collectively, and in my view correctly, described in the applicant's outline of submissions in relation to penalty filed on 23 February 2011 as:

> *"(a) subsection 182(1) of the Workplace Relations Act 1996 (Cth), in that the first respondent failed to pay Mr and Mrs Adness (the employees) for the work they had performed in the month of December 2007, the guaranteed basic periodic rate of pay as required under the Australian Fair Pay and Conditions Standard and contained in the preserved Australian Pay and Classification Scale (APCS) derived from the Award;*
>
> *(b) subsection 189(1) of the WR Act, in that the first respondent failed to pay the employees in accordance with the frequency of payment provisions contained in the preserved APCS derived from the Award;*

(c) clause 21 of the Award, in that the first respondent failed to pay the employees in accordance with the frequency of payment provisions contained in clause 21 of the Award;

(d) subsection 235(2) of the WR Act, in that the first respondent failed to pay the employees their untaken accrued annual leave on the termination of their employment with the first respondent;

(e) clause 22.3 of the Award, in that the first respondent failed to keep a daily record of the hours worked by the employees; and

(f) clause 25.5 of the Award, in that the first respondent failed to make superannuation contributions on behalf of the employees."

2. In the application and statement of claim the applicant also alleged that the second respondent was a person involved in the contraventions set out in subparagraphs (a), (d) and (f) above pursuant to s.728 of the *Workplace Relations Act 1996* ("WR Act").

3. On 14 December 2010 I found that the first and second respondents had committed the contraventions alleged against them, save for those in subparagraphs (b) and (d) above, in respect of which I requested further submissions.

4. The parties filed further written submissions on 21 and 22 December 2010 pursuant to the directions I had given. The respondents' further written submissions were by no means wholly responsive to the matters that I had requested and contained a number of argumentative matters that did not arise from my request for further submissions. The applicant's submissions directly addressed the matters I had requested.

5. It is sufficient to say for these purposes that in respect of the contraventions set out in paragraph (b) above, I accept the submissions set out in paragraphs 3 to 14 inclusive of the written submissions of the applicant. It is not necessary in the circumstances to set them out in full. They are, in my view, plainly correct.

6. Similarly, I accept the written submissions of the applicant at paragraphs 15 to 30 of the applicant's written submissions that the refusal of the first respondent to pay the employees their accrued annual leave entitlements on the termination of their employment contravenes s.235 of the WR Act. It is not necessary for me to rule on the alternative propounded in paragraph 30 of those written

submissions that the amount that remains outstanding to the employees be designated as an underpayment of either wages or annual leave.

7. Accordingly, it is clear that the first respondent contravened in respect of all of the six matters alleged against it and the second respondent contravened in respect of the three contraventions alleged against him. It is, therefore, appropriate in my view to make the declarations in the draft orders numbered 1 to 7 sought by the applicant.

8. Each case turns on its own facts but in the circumstances of this case, it is appropriate to define clearly the offending conduct of the respondents in its totality.

9. The maximum penalties that may be imposed for each of the contraventions are $33,000 for each contravention by the first respondent and $6,600 for the second respondent. Potentially, the amounts involved might be very large.

10. The applicant submits that each separate breach of each separate obligation found in the Australian Pay and Classification Scale ("AFPCS") and the *Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1998* ("the Award") is a separate contravention of an applicable provision for the purposes of s.719 of the WR Act. That submission is, in my view, correct (*Gibbs v Mayor; Councillors and Citizens of City of Altona* (1992) 37 FCR 216 at [223] per Gray J). Nonetheless, it is common cause that s.719(2) of the WR Act provides that multiple contraventions of the same provision involved in a course of conduct may be treated as a single contravention.

11. Each contravention thus identified must be considered and an appropriate penalty for it determined having regard to the relevant circumstances. However, to the extent that contraventions have common elements, this should be taken into account in considering what is an appropriate penalty in all the circumstances for each contravention, as respondents should not be penalised more than once for the same conduct (see *Pearce v R* (1998) 194 CLR 610 at [40]).

12. Finally, of course, the Court is required to give application to the totality principle.

13. All of the parties have pointed to a number of relevant factors of the sort identified by Tracey J in *Kelly v Fitzpatrick* [2007] FCA 1080. As I said in *Ikin v Crown Trading Group Pty Ltd* [2009] FMCA 1187 at [3]:

> *"Subject only to the caution expressed by Buchanan J in Australian Ophthalmic Supplies Proprietary Limited v McAlary-Smith (2008) FCAFC 8; (2008) 165 FCR 560 at 91 to the effect that the matters identified by Tracey J should not be treated as a rigid catalogue of matters for attention, it is now accepted that Tracey Js approach is correct in the sense that it indicates a number of relevant considerations. I also note the observations of Gyles J in A & L Silvestri Pty Ltd v Construction, Forestry, Mining and Energy Union (2008) FCA 466 at [6] where his Honour said:*
>
> > *"There are no mandatory statutory criteria and it is wrong to regard factors seen as relevant by one court as statutory criteria. Indeed, lists of factors can confuse an essentially straightforward task and lead to over-elaborate reasoning.""*

14. The written outline of submissions of the applicant in relation to penalty addressed a number of issues in the order in which they were set out by Tracey J in *Kelly v Fitzpatrick*. It is convenient to follow the same order.

The nature and extent of the conduct

15. As I described in my Reasons for Judgment in December 2010, Mr and Mrs Adness entered into a contract of employment with the first respondent in 2004. They started to work at the Lufra Hotel in December 2004. They were never the subject of any relevant pay records or the like, they were paid pursuant to an employment agreement which infringed the relevant alleged industrial instruments, and they ultimately walked off the job on 29 December 2007.

16. On or about 1 January 2008, Mr Adness spoke with Mr Shepley and asked when he and his wife's outstanding entitlements would be paid, this request being the subject of a letter dated 4 January 2008 from Mr Shepley to them. The letter accused them of abandoning their employment and indicated that damages were being sought from them

in a sum of over $20,000. The letter did, however, indicate pay for December 2007 and annual leave then owing.

17. Because of the various underpayments of salary that have emerged as having occurred, the Adnesses were also underpaid superannuation, and, because of the failure to keep appropriate records, it is not known whether or not the Adnesses were the subject of other underpayments.

18. Both sides sought to make something of this omission. The applicant sought to infer that the failure to keep appropriate records leaves open the prospect that not only the Adnesses but other employees were underpaid. The respondents, by way of contradiction, say not only that no such inference is open, but rather that an inference should be drawn that the Adnesses were correctly paid at all times pursuant to their contract of employment.

19. In my view, neither of these submissions is correct, save to the extent that the applicant is right to say that the true position cannot be known with certainty because records were not kept. I am not prepared to draw an inference favourable or adverse to either party arising out of this circumstance.

20. Once the Adnesses wrote on 1 February 2008 to Mrs Holland formally seeking payment of their entitlements, Mr Shepley replied on 1 March 2008 asserting indebtedness on their part of $21,000 to the first respondent and raising the set-off argument that occupied so much of the earlier proceeding.

21. It is worthy of note that a further amended defence of the second respondent relied upon a fixed term contract between the first respondent and the Adnesses. This argument (plainly in my view at all times untenable, in view of the second respondent's letter written on behalf of the first respondent to the employees dated 30 August 2007 in which it was asserted that, "In fact, there is no fixed term contract in place to be served out") should never have been pressed as it was.

22. The case sought to be propounded by the respondents was that the failure to pay arose out of a misunderstanding on the part of the second respondent as to the application of the Award and the asserted entitlement to set off.

23. This is at least clearly in part the case. Nonetheless, as I find, the correspondence of Mr Shepley and the attitude revealed by his affidavits and defences, all of which are notably querulous in tone, has much of the bully about it. This is, in my view, a relevant consideration. Nonetheless, the conduct concerned applied to only two employees. It did indeed arise out of a single decision, albeit one that was vigorously pursued and maintained. That is also, likewise, plainly a relevant consideration.

The circumstances in which the conduct took place

24. The matters relied upon by the applicant are in my opinion properly viewed essentially as background. It is the contraventions with which the Court is primarily concerned.

25. It is, however, relevant (and it was a matter, after all, to which both parties referred in their submissions on penalty) that the decision of Mr and Mrs Adness to walk off the job was one that I observed in my earlier Judgment as fully justified. Their treatment by the first respondent had been entirely inappropriate.

26. Further, it is relevant, although not a matter of great weight, that the Adnesses had to return to Queensland without their lawful entitlements. It is reasonable to infer, given the relatively low wages they were paid, that the absence of such moneys would have at least inconvenienced them at the time. I note that they were living in a caravan park after they walked off the job, so they can scarcely have been in considerable funds.

The nature and extent of loss or damage

27. As the applicant correctly submits, the amount of moneys withheld from the Adnesses was over $8,500 in total. While it is true that the process of investigation by the applicant took some considerable time, in my view the facts as disclosed by the materials do not suggest that any valid criticism can be made of the applicant's conduct.

28. It is also the case that by the end of April 2008, as the respondents submit, they were prepared to pay a sum of $11,200 into Court, a sum

well in excess of what was ultimately found to be payable to the Adnesses.

29. That, however, was only an offer to pay in. It was not an offer to actually give the Adnesses the money. It was not until 18 September 2009 that the second respondent, on behalf of the first respondent, wrote to the applicant and advised, "On commercial grounds, and without prejudice to any claim we may have against both Stanley and Marie Adness, we agree to make the payment to them at a sum of, Stanley Adness, $3,996.03 gross, Marie Adness, $3,994.87."

30. In fact, slightly lower sums were paid and a shortfall of some $300 to the Adnesses was left outstanding following the payment that was made on 28 October 2009. The respondents have submitted that this was an oversight and have in their written submissions undertaken to pay the moneys forthwith.

31. Under this heading, the applicant has raised the issue of the failure of the respondents to keep appropriate employment records. As earlier indicated, I am not prepared to make a finding favourable to or adverse to either party arising from this. It is, of course, a contravention in itself which calls for consideration as such.

Similar previous conduct

32. The only matter raised here was decisions of Fair Work Australia constituted by Commissioner Deegan given in relation to another proceeding involving the first respondent in October 2009 and December 2009.

33. As I indicated during the running of the hearing, I am not prepared to give any weight to that matter as the case was essentially concerned with a completely different statutory scheme.

34. Furthermore, upon consideration, I think that the respondents are correct, as a matter of first principles, to submit that since the events with which that case was concerned post-dated (and by some considerable time) the contraventions with which the Court is concerned here, it is not a matter to which it is appropriate to accord any weight.

Whether the breaches arose out of the one course of conduct

35. The applicant expressly concedes that while there are repeated contraventions of s.189(1) of the WR Act and clauses 21 and 22.3 of the Award, and clause 22.3 of the pre-reform Award, nonetheless, the operation of s.719(2) of the WR Act operates so as to limit those contraventions to one contravention of each provision of the AFPCS and the Award.

The size of the business

36. The first respondent is not a large business, although it does appear to be interrelated with an organisation that conducts a number of business activities. As Tracey J noted in *Kelly v Fitzpatrick* at [28]:

> *"No less than large corporate employers, small businesses have an obligation to meet minimum employment standards and their employees, rightly, have an expectation that this will occur. When it does not it will, normally, be necessary to mark the failure by imposing an appropriate monetary sanction. Such a sanction "must be imposed at a meaningful level"."*

37. It has become apparent from the materials annexed to the affidavit of Mr Shepley filed on 23 February 2011 that the financial position of the first respondent appears to be parlous. It is conceded by the applicant that it has suffered substantial losses in recent tax years. The applicant has conceded that penalties should not be imposed such as to operate in a crushing way.

38. Mr Shepley has asserted in his affidavit that:

> *"The second respondent is not prepared to disclose to the applicant anything regarding his private financial affairs as those are irrelevant to the proceedings before the court."*

39. That assertion, made in the somewhat combative style that rather characterises Mr Shepley's pleadings and evidence generally, is misconceived. All I can assume is that Mr Shepley does not require the Court to take into consideration, as a relevant matter in determining the appropriate quantum of penalty to be imposed upon him, any issues as to his financial circumstances.

The deliberateness of the breaches

40. There is no question here that the breaches were deliberate. Mr Shepley, and through him the first respondent, repeatedly refused to pay Mr and Mrs Adness their entitlements on the basis of a number of misconceived arguments. It should be noted that the basis for withholding the moneys changed from time to time, albeit that the set-off argument was always to the fore.

Involvement of senior management

41. The second respondent was the managing director and a shareholder of the first respondent when the first respondent refused to pay Mr and Mrs Adness their lawful entitlements. Plainly, senior management was not only involved, but was the decisive element in those contraventions.

42. It is relevant, although not a matter of any great weight, that Mr Shepley is, according to his own evidence, a current practising member of the Queensland Bar with extensive experience in industrial relations matters.

Contrition

43. This is not a case in which the respondents have shown any contrition whatsoever. Even the most recent submissions filed in relation to the penalty proceeding are couched in terms that seek, inappropriately, to minimise the respondents' conduct and to challenge, inappropriately, the Court's findings. Phrases such as "They were at most a technical breach" (the respondents' submissions as to penalty, paragraph 11) and "The first respondent has conceded its failure to keep records. The employees suffered no loss as a result. The issue has been rectified" (paragraph 12, respondents' submissions as to penalty) are simply examples of the tenor of the respondents' position. The defences filed and the case run by the respondents are completely inconsistent with the proposition that the respondents should receive any discount on the basis of contrition. It should be emphasised that this does not make the contraventions more serious and does not occasion any greater penalty

than would otherwise be the case. Rather, the respondents receive no benefit from any contrition because they have not expressed any.

Corrective action

44. I note and accept the submissions set out in paragraph 6.4.9(d) to (f) inclusive of the applicant's submissions on penalty. The matters there set out in my view are correct. Corrective action in this case took a long time and was essentially occasioned by the respondents. I accept the thrust of the applicant's submissions. The first and second respondents did cooperate in relation to producing records in response to a notice to produce and did attend records of interview. Nonetheless, it was in the ultimate the failure of the respondents to accept their legal liabilities to Mr and Mrs Adness that gave rise to these proceedings.

45. As with the issue of contrition, the questions of corrective action and cooperation do not operate in such a fashion as to increase the penalty that should be imposed. Rather, they are matters which, in the particular circumstances of this case, do not in my view give rise to any significant discount to benefit the respondents.

Ensuring compliance with minimum standards

46. The applicant laid stress upon the significance of this matter, which in a sense is a subset of arguments about general deterrence.

47. Contrary to the submissions advanced by the respondents, I do not accept that in the circumstances of this case it should be given little weight. The respondents' submissions say at paragraph 38:

> *"The underpayments by the respondents did not depend on the failure to pay in accordance with minimum standards. They occurred as a result of the belief at the time that Mr and Mrs Adness left their employment that the respondents were entitled to withhold payment."*

48. This submission fails to appreciate that the obligation to pay minimum standards is prescribed by law and that a failure to comply is important. These are not munificent benefits. They are minimum standards

created by the appropriate authorities to protect Australian workers. I accept that ensuring compliance with minimum standards is a significant matter albeit as I say, it is merely one aspect of the issues relating to general deterrence.

Specific deterrence

49. Here the position is somewhat opaque. On the one hand, the conduct of the respondents, and particularly that of Mr Shepley, who has clearly since his involvement commenced been the guiding force in the conduct of the first respondent, might lead one to think that further compliance would be open to question.

50. On the other hand, Mr Shepley is a practising member of the Queensland Bar and must be taken in my view to be more likely (by far) than otherwise to comply with the law. In my view specific deterrence is not a matter of great moment in this proceeding.

General deterrence

51. Here I think it is clear that this is a significant consideration. I have already referred to the issue of ensuring compliance with minimum standards. That is not the only aspect of the matter. Award and compliance is an important matter. It is important particularly in the retail and hospitality industry in which, as decisions of this Court show, non-compliance is regrettably rife.

52. Although Mr and Mrs Adness were not, as many in the hospitality and entertainment industry are, young and inexperienced in life, they were, nonetheless, in a relatively vulnerable position. Their employment and their residence were interrelated. The circumstances of their employment have been dealt with in my earlier Reasons for Judgment and were entirely unsatisfactory. The failure to provide them with the benefits to which they were entitled at the time of their termination has, as I have already indicated, had an effect upon them.

53. It is important to deter non-compliance with industrial law and that is particularly the case in an industry such as this.

The grouping of the contraventions

54. I accept the submission at paragraph 7.2 of the applicant's submissions as to penalty that the contraventions can be characterised as falling into the following five distinct groups:

> *(a) failure to pay guaranteed basic period rates of pay (s.182(1) of the WR Act);*
>
> *(b) failure to pay the employees in accordance with the frequency of payment provisions contained in the preserved APCS and the Award (s.189(1) of the WR Act and clause 21 of the Award);*
>
> *(c) failure to pay the employees their untaken accrued annual leave on the termination of their employment (s.235(2) of the WR Act);*
>
> *(d) failure to keep a daily record of the hours worked by Mr and Mrs Adness (clause 22.3 of the Award); and*
>
> *(e) failure to make superannuation contributions on behalf of the employees.*

The penalties to be imposed

55. Although the methodology set out at paragraph 8.1 of the applicant's submissions has a superficial attraction, it is not in my opinion an appropriate approach to the fixing of penalty. As Gyles J pointed out in *Silvestri*, there are no statutory criteria, and over-elaborate reasoning should be avoided. In my view, the task with which the Court is confronted is to place the level of penalty at an appropriate point in the continuum between the maximum ($33,000 or $6,600) and the minimum (nil) in each instance. This is to be done by giving appropriate weight to all of the relevant factors that I have traversed above.

56. In my view, the contraventions were serious. They were, in a number of instances, the result of a complete failure on the first respondent's part to make itself aware of the relevant applicable industrial instrument and its legal obligations. This applies, for example, to the failure to keep employee records.

57. In other cases, they were a result of deliberate decisions taken by Mr Shepley on behalf of himself and the first respondent not to comply with obligations that were identified early in the history of the matter. While Mr Shepley may not have known of the particular industrial law he was contravening, he well knew that he was not paying the Adnesses their outstanding pay, annual leave and superannuation.

58. The applicable maximum penalty that may be imposed in respect of the first respondent is $33,000 in respect of each contravention.

59. Bearing in mind all the matters to which I have referred, I think a penalty of 40 per cent of that maximum is appropriate for each contravention. This would produce a total of $66,000 for the five contraventions ($13,200 x 5).

60. In relation to Mr Shepley, the maximum total is $6,600 per contravention. Unlike the first respondent, he has not elected to adduce any evidence as to his finances, and I assume he will be able to pay without undue hardship any penalty I might impose (bearing in mind that the maximum for the three contraventions is a cumulative total of $19,800).

61. In the case of the second respondent, there are a number of matters to be borne in mind. First, Mr Shepley has only been found to have contravened three times, and the maximum applicable penalty to him is $19,800 for the three. On the other hand, in a sense, his conduct is more deserving of censure. Unlike the first respondent which is liable for what I would describe as passive non-compliance (failure to observe Award obligations and the like of which the first respondent was clearly unaware), the conduct of Mr Shepley (and through him that of the first respondent) was far more active in character.

62. It is, however, important to avoid imposing two penalties on the same person for the same thing. In truth Mr Shepley's actions were, from the time of his involvement, those also of the first respondent. In all the circumstances, I think that the same level of penalty should be imposed upon Mr Shepley. He will pay 40 per cent of $19,800 i.e. $7,920.

The application of the totality principle

63. In my opinion it is quite clear that the imposition of a penalty in excess of $65,000 upon an organisation apparently already losing hundreds of thousands of dollars a year would indeed be crushing. Nonetheless, the first respondent is continuing to operate and must be taken to have some sort of reserves or assistance which enables it to sustain losses on such a scale.

64. The application of the totality principle in these cases is a matter of intuitive synthesis, and in my opinion the result that it is appropriate to impose is that the first respondent pay a total of $40,000 in respect of all its contraventions.

65. In the case of Mr Shepley, there is nothing to suggest that any penalty that I impose upon him is likely to be crushing. As I have indicated, he has expressly declined to provide any information as to his financial circumstances. He should pay a total of 40 per cent of the applicable maximum this being, as I have said, $7,920.

66. These sums should be paid, as the applicant seeks, to the Consolidated Revenue Fund.

67. The applicant has provided the Court with a form of order proposed, and the form of order itself was accepted by the respondents' counsel. The orders of the Court will, therefore, reflect that format.

I certify that the preceding sixty-seven (67) paragraphs are a true copy of the reasons for judgment of Burchardt FM

Associate:

Date: 21 April 2011