# FEDERAL CIRCUIT COURT OF AUSTRALIA

*FAIR WORK OMBUDSMAN v CARDAMONE* *[2015] FCCA 3238*

Catchwords:
INDUSTRIAL LAW – Penalties – misrepresentation that employees were independent contractors – failure to pay casual loading, overtime, penalty rates and minimum wages – failure to comply with notices to produce – failure to provide payslips.

Legislation:
*Fair Work Act 2009* ss.45, 293, 357(1), 536(1), 539(2), 546(1), 546(2)(a) 546(3)(a), 712(3)
*Federal Circuit Court Rules 2001* r.16.05(2)(a)

Cases cited:
*Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* (2008) 165 FCR 560; (2008) 246 ALR 35; [2008] FCAFC 8
*Community and Public Sector Union v Telstra Corporation Limited* (2001) 108 IR 228; [2001] FCA 1364
*Cotis v McPherson* (2007) 169 IR 30; [2007] FMCA 2060; 5 ABC(NS) 405; [2009] ALMD 5310
*Darlaston v Risetop Constructions Pty Ltd* [2011] FMCA 220
*Director, Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* (2015) 105 ACSR 403; (2015) 229 FCR 331; (2015) 320 ALR 631; [2015] FCAFC 59
*Fair Work Ombudsman v Bound for Glory Enterprises* [2014] FCCA 432
*Fair Work Ombudsman v Quest South Perth Holdings (No 2)* [2013] FCA 582
*Kelly v Fitzpatrick* (2007) 166 IR 14; [2007] FCA 1080
*Mason v Harrington Corporation Pty Ltd* [2007] FMCA 7
*Mornington Inn Pty Ltd v Jordan* (2008) 171 IR 455; (2008) 168 FCR 383; (2008) 247 ALR 714; [2008] FCAFC 70
*Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union* (2008) 171 FCR 357; (2008) 177 IR 243; [2008] FCAFC 170
*Ponzio v B & P Caelli Constructions Pty Ltd* (2007) 162 IR 444; (2007) 158 FCR 543; [2007] FCAFC 65
*Rajagopalan v BM Sydney Building Materials Pty Ltd* [2007] FMCA 1412

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| Applicant: | FAIR WORK OMBUDSMAN |
| First respondent: | FRANCO CARDAMONE |

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| File number: | MLG 1019 of 2015 |
| Judgment of: | Judge Riley |
| Hearing date: | 12 October 2015 |
| Date of last submission: | 12 October 2015 |
| Delivered at: | Melbourne |
| Delivered on: | 8 December 2015 |

**REPRESENTATION**

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| Solicitor advocate for the applicant: | Peter Harris |
| Solicitors for the applicant: | Office of the Fair Work Ombudsman |
| Counsel for the respondent: | No appearance |
| Solicitors for the respondent: | The respondent was not represented |

**THE COURT ORDERS THAT:**

(1) Pursuant to s.546(1) of the *Fair Work Act 2009*, the respondent pay an aggregate penalty of $42,840 in respect of the contraventions referred to in declarations 1(a) to (k) made on 21 August 2015.

(2) Pursuant to s.546(3)(a) of the *Fair Work Act 2009*, the respondent pay the said penalty to the Consolidated Revenue Fund of the Commonwealth within 28 days.

(3) The applicant have liberty to apply on seven days' notice in the event that the penalties are not paid within 28 days.

**NOTATION**

Pursuant to rule 16.05(2)(a) of the *Federal Circuit Court Rules 2001*, the court may vary or set aside a judgment or order made in the absence of a party.

**FEDERAL CIRCUIT**
**COURT OF AUSTRALIA AT**
**MELBOURNE**

**MLG 1019 of 2015**

**FAIR WORK OMBUDSMAN**
Applicant

And

**FRANCO CARDAMONE**
Respondent

# REASONS FOR JUDGMENT

## Introduction

1. This matter concerns the penalties to be imposed for certain contraventions of the *Fair Work Act 2009* ("the Act"). The respondent has not participated in this proceeding, although the court was satisfied by various affidavits of service that he was properly notified of them.

2. The court made declarations and orders in the respondent's absence on 21 August 2015 as follows:

> *Upon the admissions which the respondent is taken to have made, consequent upon default by the respondent pursuant to r.13.03A, 13.03B and 13.03C of the* Federal Circuit Court Rules 2001 *("the rules")*
>
> ***THE COURT DECLARES THAT:***
>
> *1. The respondent has contravened:*

a. *section 357(1) of the* Fair Work Act 2009 *("the Act") by representing to Mr Daniel Da Silva Tedim (Mr Tedim) that the contract of employment under which he was employed by the respondent was a contract for services under which Mr Tedim performed work as an independent contractor;*

b. *section 45 of the Act by failing to pay casual loading to Mr Tedim and Mr Francis Youds (Mr Youds) (together, the Employees) pursuant to cl.11.4(b) of the* Storage Services and Wholesale Award 2010 *(Storage Services Award);*

c. *section 45 of the Act by failing to pay casual loading to the employees pursuant to cl.12.5(c) of the* Road Transport and Distribution Award 2010 *(Road Transport Award);*

d. *section 45 of the Act by failing to pay overtime to the employees pursuant to cl.12.5(d) of the Road Transport Award;*

e. *section 45 of the Act by failing to pay penalty rates to Mr Youds pursuant to cl.28.1(a) of the Road Transport Award;*

f. *section 45 of the Act by failing to pay casual loading to Mr Youds pursuant to cl.13.2 of the* Wine Industry Award 2010 *(Wine Industry Award);*

g. *section 45 of the Act by failing to pay minimum wages to Mr Youds pursuant to cl.16.1 of the Wine Industry Award;*

h. *section 293 of the Act by failing to pay casual loading to Mr Youds pursuant to cl.5.2 of the* National Minimum Wage Order 2013*;*

*i. subsection 712(3) of the Act by failing to comply with the first notice to produce;*

*j. subsection 712(3) of the Act by failing to comply with the second notice to produce; and*

*k. subsection 536(1) of the Act by failing to provide pay slips to the employees.*

***THE COURT ORDERS THAT:***

*2. The matter be adjourned to 12 October 2015 at 10am for a penalty hearing.*

*3. Default judgment be entered for the applicant against the respondent pursuant to rr.13.03A(2)(a) and (b)(ii), (iv) and (vii), 13.03B(2)(c) and 13.03C(2) of the rules.*

*4. Pursuant to s.545(1) of the Act, the respondent pay the following outstanding amounts to the employees:*

*a. $1,516.25 to Mr Youds; and*

*b. $454.71 to Mr Tedim*

*within 28 days of service of this order on the respondent.*

*5. Pursuant to s.547(2) of the Act, the respondent pay interest on the sums referred to in order 4 above for the period from 7 May 2015 to the date of this order as follows:*

*a. $27.81 to Mr Youds; and*

*b. $8.34 to Mr Tedim.*

*6. The applicant file and serve any affidavit and an outline of submissions regarding penalties on or before 11 September 2015.*

7. *The respondent file and serve any affidavit and an outline of submissions regarding penalties on or before 5 October 2015.*

8. *The applicant has liberty to apply on seven days' notice in the event that any of the proceeding orders are not complied with.*

***AND THE COURT NOTES THAT:***

*Pursuant to rule 16.05(2)(a) of the* Federal Circuit Court Rules 2001, *the court may vary or set aside a judgment or order made in the absence of a party.*

3. When the matter returned to court on 12 October 2015, the respondent again did not appear, although the court was satisfied that he had been properly served.

## The respondent's bankruptcy

4. The respondent is currently an undischarged bankrupt. The applicant submitted that the court could proceed to impose penalties regardless of the respondent's bankruptcy. The applicant relied on the decision of Driver FM, as his Honour then was, in *Cotis v McPherson* (2007) 169 IR 30; [2007] FMCA 2060; 5 ABC(NS) 405; [2009] ALMD 5310 at [7] to [10]. For reasons of judicial comity, I should follow that decision unless I am satisfied that it is plainly wrong. I am not so satisfied, and, accordingly, I do follow it.

## Approach to determining penalty

5. In view of the decision of the Full Court of the Federal Court in *Director, Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* (2015) 105 ACSR 403; (2015) 229 FCR 331; (2015) 320 ALR 631; [2015] FCAFC 59, it is not permitted for the applicant to suggest to the court a range of appropriate penalties. The High Court has granted special leave to appeal from that

decision. The appeal has been heard and the High Court's decision is presently reserved. It was not suggested that my decision in this matter should await the outcome of the High Court appeal. Consequently, I will proceed on the basis of the law as it presently stands. That is, I will form my own view of the appropriate penalty, bearing in mind comparable decisions of other courts.

6. In general, the proper approach to determining penalty in cases such as this is as follows. The first step for the court is to identify each separate contravention involved.

7. Where there are multiple contraventions, the second step is to consider whether any of the various contraventions constituted a single course of conduct, such that multiple breaches should be treated as a single breach.

8. The third step is for the court to consider the extent, if any, to which two or more contraventions have common elements. A person should not be penalised more than once for the same conduct. The penalty imposed by the court should be an appropriate response to the contravenor's conduct.[1] This is a separate process from the application of the totality principle.[2]

9. The fourth step is for the court to consider the appropriate penalty for each breach, treating multiple breaches arising from a course of conduct as a single breach, and taking into account any common elements shared by the various breaches.

10. The fifth step is for the court to apply the totality principle. This requires the court to consider the aggregate penalty overall, and determine whether it is an appropriate response to the conduct which resulted in the breaches.[3] The court in this step makes an "instinctive synthesis".[4]

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[1] *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* (2008) 165 FCR 560; (2008) 246 ALR 35; [2008] FCAFC 8 at [46] (Graham J).
[2] *Mornington Inn Pty Ltd v Jordan* (2008) 171 IR 455; (2008) 168 FCR 383; (2008) 247 ALR 714; [2008] FCAFC 70 at [41]-[46] (Stone and Buchanan JJ).
[3] See *Kelly v Fitzpatrick* (2007) 166 IR 14; [2007] FCA 1080 at [30] (Tracey J); *Ophthalmic*, supra at [23] (Gray J), [71] (Graham J) and [102] (Buchanan J).
[4] *Ophthalmic*, supra at [27] (Gray J) and [55] and [78] (Graham J).

11. A convenient checklist of the factors that the court might consider in determining penalty include the matters that were identified by Mowbray FM in *Mason v Harrington Corporation Pty Ltd* [2007] FMCA 7 at [26]-[59] and adopted by Tracey J in *Kelly v Fitzpatrick* (2007) 166 IR 14; [2007] FCA 1080 at [14]. That list is as follows, (with paragraph letters inserted):

> *(a) The nature and extent of the conduct which led to the breaches.*
>
> *(b) The circumstances in which that conduct took place.*
>
> *(c) The nature and extent of any loss or damage sustained as a result of the breaches.*
>
> *(d) Whether there had been similar previous conduct by the respondent.*
>
> *(e) Whether the breaches were properly distinct or arose out of the one course of conduct.*
>
> *(f) The size of the business enterprise involved.*
>
> *(g) Whether or not the breaches were deliberate.*
>
> *(h) Whether senior management was involved in the breaches.*
>
> *(i) Whether the party committing the breach had exhibited contrition.*
>
> *(j) Whether the party committing the breach had taken corrective action.*
>
> *(k) Whether the party committing the breach had cooperated with the enforcement authorities.*
>
> *(l) The need to ensure compliance with minimum standards by provision of an effective means for investigation and enforcement of employee entitlements.*
>
> *(m) The need for specific and general deterrence.*

12. The court must, of course, be mindful of the caution expressed by Buchanan J in *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* (2008) 165 FCR 560; (2008) 246 ALR 35; [2008] FCAFC 8 at [91] as follows:

> *Checklists of this kind can be useful providing they do not become transformed into a rigid catalogue of matters for attention. At the end of the day the task of the Court is to fix a penalty which pays appropriate regard to the circumstances in which the contraventions have occurred and the need to sustain public confidence in the statutory regime which imposes the obligations. There is no suggestion in the present case that the learned magistrate made any relevant error in her identification of the matters which she should consider in fixing penalties.*

13. The court will consider the circumstances of the case under the various headings suggested by Mowbray FM, and then consider whether any other matters are relevant.

14. There was no cross examination of any witness. I accept all of the affidavit evidence.

## Step 1: identifying the breaches

15. The respondent breached workplace laws as described above.

## Step 2: single course of conduct

16. The applicant submitted that it would be appropriate to treat the failure to pay casual loading breaches as single courses of conduct as follows:

    a) a single breach of the Storage Services Award in respect of both employees;

    b) a single breach of the Road Transport Award in respect of both employees; and

    c) a single breach of the *National Minimum Wage Order 2013* ("NMWO").

17. The applicant also submitted that it would be appropriate to treat the failure to pay overtime breaches as a single breach in respect of both employees. Otherwise, the applicant submitted that no breaches should be regarded as part of a single course of conduct.

18. I do not entirely accept those submissions. I consider that all of the casual loading breaches should be treated as a single course of conduct.

It seems to me to make no difference which industrial instrument required the casual loading. I also consider that both failures to comply with notices to produce should be regarded as a single course of conduct. Otherwise, I accept the applicant's submissions on the course of conduct issue.

## Step 3: grouped breaches

19. Except as described above, the applicant submitted that all other breaches should be treated as separate acts. I accept that. Consequently, there are seven groups of contraventions as follows:

a) one breach of s.357(1) of the Act by representing to Mr Tedim that the contract of employment under which he was employed by the respondent was a contract for services under which Mr Tedim performed work as an independent contractor;

b) one breach of failing to pay casual loading:

i) to Mr Tedim and Mr Youds pursuant to the Storage Services Award and s.45 of the Act;

ii) to Mr Tedim and Mr Youds pursuant to cl.12.5(c) of the Road Transport Award and s.45 of the Act;

iii) to Mr Youds pursuant to cl.13.2 of the Wine Industry Award and s.45 of the Act; and

iv) one breach of s.293 of the Act by failing to pay casual loading to Mr Youds pursuant to cl.5.2 of the NMWO and s.293 of the Act;

c) one breach of s.45 of the Act by failing to pay overtime to Mr Youds and Mr Tedim pursuant to cl.12.5(d) of the Road Transport Award;

d) one breach of s.45 of the Act by failing to pay penalty rates to Mr Youds pursuant to cl.28.1(a) of the Road Transport Award;

e) one breach of s.45 of the Act by failing to pay minimum wages to Mr Youds pursuant to cl.16.1 of the Wine Industry Award;

f) one breach of s.712(3) of the Act by failing to comply with the first and second notices to produce; and

g) one breach of s536(1) of the Act by failing to provide pay slips to Mr Youds and Mr Tedim.

## Step 4: the appropriate penalty for the breaches

20. In determining what penalty is appropriate, I will consider the various factors set out above.

## The nature and extent of the conduct which led to the breach

21. The nature and extent of the conduct has been described above in the context of the declarations made on 21 August 2015.

## The circumstances in which the conduct took place

22. The respondent operates as a sole trader. He carries on a labour hire business. His clients include companies in various industries including removals, warehousing and storage. He purports to engage staff as independent contractors although, in fact, they are employees. That is, the respondent engages in sham contracting.

23. The effects of sham contracting were described by Barnes FM, as her Honour then was, in *Darlaston v Risetop Constructions Pty Ltd* [2011] FMCA 220 at [48] as follows:

> *The indirect avoidance of entitlements by sham contracting cannot be measured in monetary terms. As pointed out, a contractor does not have recourse to paid sick leave. It can be inferred that such a person may be more likely to work when not well than an employee who has the protection of regulated standards of paid sick leave. Matters such as maximum weekly hours, requests for flexible working arrangements, parental leave and related entitlements, annual leave, personal carers' leave and compassionate leave, community service leave, long service leave, public holidays and notice of termination and redundancy pay may be similarly "*devalued*" and even effectively negated by such sham contractual arrangements. The Award which would have applied to the workers as employees is in evidence before the court. It contains such protections. It may be that other rights*

> *that employees have or may have recourse to (such as protections for unfair dismissal) are negated and avoided by such arrangements, although there is no evidence of any particular issues in this respect in this case.*

24. In addition, McKerracher J in *Fair Work Ombudsman v Quest South Perth Holdings (No 2)* [2013] FCA 582 said at [1.1.2]:

> *… As the applicant notes, sham contracting occurs where an employer disguises an employment relationship as an independent contracting relationship. The vice of this conduct is that it unfairly deprives workers of the benefits of employment and undermines the effective operation of the system established by the* Fair Work Act 2009 (Cth) ***(the FW Act)*** *and other industrial legislation. Additionally, it arguably distorts competition to the disadvantage of employers who honour their statutory obligations. It constitutes an offence under the FW Act.*

25. Mr Youds was employed by the respondent from 14 August 2013 to 7 November 2013 and Mr Tedim was employed by the respondent from 14 May 2014 to 30 May 2015.

## The nature and extent of any loss or damage sustained as a result of the breaches

26. The applicant calculated that the respondent overall underpaid Mr Youds by 18.4% and Mr Tedim by 36.7% of their lawful entitlements. I accept that calculation.

27. Additionally, there are the unquantifiable losses described in *Darlaston.*

## Whether there had been similar previous conduct by the respondent

28. The respondent was previously the director of numerous corporations. The respondent personally has been the subject of a litany of complaints to the applicant and its predecessor regarding unpaid wages, unauthorised deductions from wages, failure to give pay in lieu of notice and failure to pay annual leave. Companies of which the respondent was a director have been subject to a further litany of complaints to the applicant or its predecessor about similar matters. Some of those complaints resulted in rectification following action by

the applicant or its predecessor. In some cases, the company concerned went into liquidation. None of the complaints has been determined by the court. As a result, the court cannot conclude that the previous complaints were well-founded.

29. However, there is evidence before the court that the respondent has had substantial dealings with the applicant and its predecessor, which brought to the respondent's attention relevant details of Australia's workplace laws. Consequently, the court is satisfied that the requirements of Australia's workplace laws were brought to the attention of the respondent in the context of the complaints to the applicant or its predecessor and he was well aware of those requirements.

30. I also note that on or about 17 November 2011, the respondent was disqualified by the Australian Securities and Investment Commission for five years from managing a corporation. The reasons for the disqualification appear to be that:

a) the respondent had been involved with five failed companies that had combined deficiencies of over $26 million;

b) in relation to Stafford Services Pty Ltd, between 2003 and 2006:

i) the respondent had failed to lodge appropriate documents with the Australian Taxation Office;

ii) he had failed to prevent the company from incurring debts when there were reasonable grounds for suspecting the company was insolvent;

iii) he had failed to respond to requests from the liquidator for information; and

iv) he had failed to ensure the maintenance of financial records; and

c) in relation to Good to Go Admin Pty Ltd in 2008, the respondent had failed to submit a report as to affairs to the receiver.

31. While these regulatory failings are quite different to breaches of workplace laws, they do display a serious disregard for laws which, one way or another, are designed to benefit our community.

## Whether the breaches were properly distinct or arose out of the one course of conduct

32. This point has already been addressed.

## The size of the business enterprise involved

33. The respondent is a sole trader. As such, his enterprise is small. However, Tracey J said 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" ... (citation omitted)*

34. Similarly, in *Rajagopalan v BM Sydney Building Materials Pty Ltd* [2007] FMCA 1412, the court said at [27]:

> *Employers must not be left under the impression that because of their size or financial difficulty that they are able to breach an award. Obligations by employers for adherence to industrial instruments arise regardless of their size. Such a factor should be of limited relevance to the Court's consideration of penalty. ... (citation omitted)*

## Whether or not the breaches were deliberate

35. The affidavit evidence before the court shows that the respondent had been made aware by officers of the applicant that his conduct was unlawful. However, he continued to engage in it. Consequently, the court can only conclude that the breaches were deliberate.

## Whether senior management was involved in the breach

36. As a sole trader, the respondent was entirely responsible for the breaches.

## Whether the party committing the breach has exhibited contrition, corrective action and co-operation with the authorities

37. The respondent has not exhibited any contrition, has not taken any corrective action and has not cooperated with the authorities.

## The need to ensure compliance with minimum standards by provision of an effective means for investigation and enforcement of employee entitlements

38. The respondent breached the employees' minimum entitlements. I adopt what was said by Judge O'Sullivan in *Fair Work Ombudsman v Bound for Glory Enterprises* [2014] FCCA 432 at [76]:

> *Ensuring compliance with minimum standards is an important consideration in this case. One of the principal objects of the FW Act is the maintenance of an effective safety net of employer obligations, and effective enforcement mechanisms. The failure to keep records by the respondents which is admitted arguably undermines and frustrates the attainment of that object. There is also the issue that the failure to keep the records themselves and the vice that conduct gives rise to. As was identified in* Fair Work Ombudsman v Taj Palace Tandoori Indian Restaurant Pty Ltd & Anor *[2012] FMCA 258 and* Fair Work Ombudsman v Orwill Pty Ltd & Anor *[2011] FMCA 730 the problem where employers don't keep proper records is that it creates a structure within which breaches of the industrial laws can easily be perpetrated. (citation omitted)*

## The need for specific and general deterrence

39. In relation to specific deterrence, Gray J observed in *Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union* (2008) 171 FCR 357; (2008) 177 IR 243; [2008] FCAFC 170 at [37] that:

> *… Specific deterrence focuses on the party on whom the penalty is to be imposed and the likelihood of that party being involved in*

> *a similar breach in the future. Much will depend on the attitude expressed by that party as to things like remorse and steps taken to ensure that no future breach will occur. …*

40. Given that the respondent:

a) has refused to participate in the proceedings;

b) did not comply with a contravention notice sent to him by the applicant;

c) has not compensated Mr Youds or Mr Tedim for their losses;

d) embarked on a course of conduct with the apparent intention of defeating the legitimate entitlements of Mr Youds and Mr Tedim;

e) continues to operate from business premises in St Kilda Road and maintains an internet presence; and

f) has a substantial history of being associated with corporations law breaches,

specific deterrence is a significant factor in this case.

41. In relation to general deterrence, Lander J noted in *Ponzio v B & P Caelli Constructions Pty Ltd* (2007) 158 FCR 543; (2007) 162 IR 444; [2007] FCAFC 65 at [93]:

> *… In regard to general deterrence, it is assumed that an appropriate penalty will act as a deterrent to others who might be likely to offend:* Yardley v Betts *(1979) 22 SASR 108. The penalty therefore should be of a kind that it would be likely to act as a deterrent in preventing similar contraventions by like minded persons or organisations. If the penalty does not demonstrate an appropriate assessment of the seriousness of the offending, the penalty will not operate to deter others from contravening the section. However, the penalty should not be such as to crush the person upon whom the penalty is imposed or used to make that person a scapegoat. In some cases, general deterrence will be the paramount factor in fixing the penalty:* R v Thompson *(1975) 11 SASR 217. …*

42. Similarly, in *Community and Public Sector Union v Telstra Corporation Limited* (2001) 108 IR 228; [2001] FCA 1364 at 230-231, Finkelstein J said:

> *... even if there be no need for specific deterrence, there will be occasions when general deterrence must take priority, and in that case a penalty should be imposed to mark the law's disapproval of the conduct in question, and to act as a warning to others not to engage in similar conduct ....*

43. Consequently, I consider that there is a need to factor in the requirement for general deterrence in this case.

### Other issues

44. I do not consider that there are any other relevant issues in this case.

## Step 4: the appropriate penalty

45. The maximum penalty for each of the breaches is 60 penalty units (or $10,200) for each breach of s.357, s.45 and s.293 of the Act and 30 penalty units (or $5,100) for each breach of s.712 and s.536 of the Act.[5] On my calculation, the total maximum penalty that could be imposed is $61,200, being five times $10,200 and two times $5,100.

46. I consider that, in all of the circumstances of this case, an appropriate penalty for each breach is 70% of the maximum, or $42,840 in total. In my view, this reflects the considerable need in this case for specific deterrence, as well as the other matters mentioned above. Clearly, the respondent has chosen not to put any material before the court in mitigation or any material as to his financial circumstances.

## Step 5: the totality principle

47. In relation to the check that is required by the totality principle, I consider that the aggregate penalties indicated above are appropriate for the whole of the contravening conduct engaged in by the respondent.

[5] At the time of the breaches, the value of a penalty unit was $170. See also s.539(2) and s.546(2)(a) of the Act.

48. The applicant also sought orders that:

a) the penalties be paid into the Consolidated Revenue Fund of the Commonwealth pursuant to s.546(3) of the Act within 28 days; and

b) the applicant have liberty to apply on seven days' notice in the event the penalties are not paid within 28 days.

49. Those proposed orders are appropriate. There will be orders accordingly. In addition, there will be the usual notation under r.16.05(2)(a) of the *Federal Circuit Court Rules 2001*.

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**I certify that the preceding forty-nine (49) paragraphs are a true copy of the reasons for judgment of Judge Riley.**

Associate: Amelia Phipps

Date: 8 December 2015