IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2005 485 527

UNDER	The Human Rights Act 1993 and The Privacy Commissioner Act 1993
BETWEEN	SIEVWRIGHTS Appellant
AND	KATHY APOSTOLAKIS Respondent

Hearing: 13 November 2007

Counsel: C Langstone for Appellant
Respondent in person
R Stevens for Privacy Commissioner

Judgment: 17 December 2007 at 11.00 a.m.

JUDGMENT OF THE COURT

Introduction

[1] Mrs Apostolakis, together with her husband, owned a commercial building in Wellington in 1997. Sievwrights were their solicitors. Sievwrights wrote a letter to Mr and Mrs Apostolakis's mortgagee, Guardian Trust, on 3 March 1997 which told Guardian Trust that the insurance on the building may have been or was about to be cancelled by the insurer. Guardian Trust responded on 10 April. A copy of this reply was sent to Mrs Apostolakis on 22 April 1997. She immediately asked Sievwrights for a copy of the letter of 3 March. They doubted they had ever sent such a letter but in any event said they could not find a copy of it. Years later the

respondent contacted the Privacy Commissioner and after a false start a claim (filed in 2003) against Sievwrights was lodged. The claim alleged Sievwrights had breached Principle 6 of the Privacy Act 1993 when they failed to give access to personal information to Mrs Apostolakis when she asked for a copy of her letter in 1997. Shortly after the proceedings began the Chairperson of the Human Rights Review Tribunal suggested that Sievwrights ask Guardian Trust for a copy of the letter of 3 March. This was provided by Guardian Trust to Sievwrights and in turn to the respondent early in 2004.

[2] These proceedings were heard and completed in a decision delivered in February 2005. The Human Rights Review Tribunal concluded:

(a) The letter of 3 March contained personal information about Mrs Apostolakis.

(b) There were no grounds justifying Sievwrights' failure to make the information available to Mrs Apostolakis.

(c) Mrs Apostolakis's privacy had therefore been interfered with.

[3] Apart from this declaration the respondent was awarded $2,500 compensatory damages.

[4] The appellant now appeals that decision alleging:

(a) The Tribunal was wrong to conclude the letter of 3 March contained "personal information".

(b) The respondent's request to see the letter of 3 March was not an information request to which the Privacy Act applied.

(c) The letter was not "readily retrievable" by Sievwrights.

(d) Sievwrights did comply with the Privacy Act in respect of any information request.

(e) There was no interference with Mrs Apostolakis's privacy.

(f) The damages awarded were excessive.

[5] Before embarking on a consideration of each of the issues raised by the appellant, we wish to say this. It is difficult to understand how these proceedings have taken a decade to resolve. Stripped of the peripheral issues, at the core was Mrs Apostolakis's request for a copy of a letter sent, on her behalf, by her solicitors to her mortgagee. Self-evidently Sievwrights should have provided a copy of this letter. Indeed, best practice suggests the letter of 3 March should have been copied to Mrs Apostolakis when sent. It is clear from the evidence that when Mrs Apostolakis asked for a copy on 22 April, Sievwrights were in possession of a copy of the letter. It may be their paper copy was missing, but there seems no doubt they would have had an electronic copy. Even if the electronic copy and the paper copy had both gone missing (an unlikely event) it would have been a simple matter for Sievwrights to have rung Guardian Trust and asked them to send a copy of the letter of 3 March to them as the authors. These simple tasks would have avoided years of litigation, cost and expense to all parties.

[6] This is an appeal by way of rehearing with this Court given all the powers conferred on the Tribunal by virtue of s 105 and s 106 of the Human Rights Act 1993. As to this Court's approach see *Pratt v Wanganui Education Board* [1977] 1 NZLR 476; *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA); and *Urbani v Gillions & Sons Ltd* (2004) 17 PRNZ 112 (SC).

Did the letter of 3 March 1997 contain personal information?

[7] Principle 6 of the Privacy Act 1993 provides as follows:

Principle 6

Access to personal information

(1) Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled—

(a) To obtain from the agency confirmation of whether or not the agency holds such personal information; and

(b) To have access to that information.

(2) Where, in accordance with subclause (1)(b) of this principle, an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.

(3) The application of this principle is subject to the provisions of Parts 4 and 5 of this Act.

And personal information is defined at s 2 of the Act as follows:

> **personal information** means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Births, Deaths, and Marriages Registration Act 1995, or any former Act.

[8] We set out in full the contents of the letter of 3 March:

> 3 March 1997
>
> The Manager
> Guardian Trust
> PO Box 913
> WELLINGTON
>
> Attention: Mr Sheppard
>
> Dear Sir
>
> RE: APOSTOLAKIS – PARADISO BUILDING, COURTENAY PLACE, WELLINGTON
>
> I write to confirm my telephone advice of 28 February, to the effect that it is my understanding the fire and general insurance on the Paradiso building may have been or is about to be cancelled by the insurer.
>
> I note your comment that this is all handled by the Guardian Trust Office in Auckland, and that your office may well have already received some notification of the cancellation of the insurance.
>
> If we can be of any further assistance I am happy for you to contact me further to discuss.
>
> Yours faithfully
> SIEVWRIGHTS
>
> John Porter

[9] The appellant's case is that:

(a) There is no personal information in the letter.

(b) The information in the letter was about the insurance on a building and not about Mrs Apostolakis.

(c) The information in the letter is only indirectly about Mrs Apostolakis and is akin to the facts in *C v ASB Bank Ltd* (1997) 4 HRNZ 306.

(d) In any event the letter is not about Mrs Apostolakis but about an unidentified person with the surname Apostolakis: *Proceedings Commissioner v Commissioner of Police* [2000] NZAR 277. The appellant says it is not, therefore, information about an identifiable individual.

(e) Finally, the appellant says, when at the end of its section dealing with personal information the Tribunal said;

> [61] We have come to the conclusion that in this case it would be wrong to dismiss the plaintiff's claim on the basis that the letter of 3 March 1997 does not contain any personal information about her. We accept Ms Donovan's submission that the plaintiff's name appears in the letter, and that the letter does give some information to the reader about the status of her insurance rights in respect of her building. We cannot find any reason of the kind suggested by the Court of Appeal in *Harder* sufficient to conclude that 3 March 1997 letter did not contain any ' ... *personal information about* ...' the plaintiff.

its conclusion was not based on a proper analysis of the facts and the law.

[10] We acknowledge the difference in approach between the Court of Appeal's obiter comments in *Harder v Proceedings Commissioner* [2000] 3 NZLR 80 (at [23]) and the preferred approach of the Tribunal and a number of academic writers not to read down the broad definition of personal information. This judgment, despite invitation, will not resolve that difference. We prefer to approach

this case by a close analysis of the facts. We consider the vast majority of cases where an issue involves consideration of whether the information is "personal information" will be resolved by a fact-based analysis. However, we acknowledge some sympathy for the Tribunal's observations in *Boyle v Manurewa RSA* (HRRT Decision 16/2003; 4 June 2003)

> [55] The issue is important since…the idea of 'personal information' is one that is central to the Act. It may be that when the issue is dealt with again, the Courts will reach a conclusion that it would be better not to read the words down because there are sufficient checks and balances elsewhere in the Act to ensure that the Act can be applied in a pragmatic way, and without having to limit its scope by giving the words 'personal information' a restricted meaning of some sort. Certainly there seems to be room for the view that the observation by the Court of Appeal may warrant reconsideration when the opportunity next arises.

[11] In this case whatever approach is adopted we conclude this is personal information.

[12] We disagree with the thrust of the appellant's proposition that the letter did not contain personal information, and that in any event the letter was not identifiably about Mrs Apostolakis. The Act defines personal information as "information about an identifiable individual". We have no doubt information in the letter was information about an identifiable individual. While it was information about whether the building was insured, it was more than that. The information in the letter includes information that the insurer was about to or had just cancelled the insurance on a building the Apostolakises owned. This is self-evidently personal information. It is essentially information relating to the persons' personal finances; that the Apostolakises insurance on their building was about to or had lapsed. The information was on a file held by the appellants for Mr and Mrs Apostolakis.

[13] Mr Porter, one of the partners in Sievwrights, in his evidence before the Tribunal, explained why he had sent the letter to Guardian Trust. He said:

> And what I was trying to do was just ah, ah, tell the mortgagee that the Apostolakis' were taking steps. Had approached solicitors and ah, we were acting on the matter and they could be assured that um, ah, sensible and concrete progress would be made. That was the point.

[14] Mr Porter's explanation that he was telling the mortgagee that the Apostolakises were taking steps to ensure the insurance remained current illustrates how the information in the letter was clearly personal information.

[15] There may be situations where the fact a building was not insured is not personal information. For example, a newspaper report that a building has been burnt down and was uninsured may not be personal information about the owners in that circumstance. Context is all important. Here, as we have stressed, the context illustrates the information was personal.

[16] We are also satisfied that the information in the letter was about an identifiable individual. In this case it was also about two persons who were able to be identified, Mr and Mrs Apostolakis. The letter from Sievwrights, in our view, clearly identified who they were writing about when it referred to the Apostolakises in the context of the ownership of the Paradiso building. The writer of the letter knew who he was referring to as did the recipients Guardian Trust. Guardian Trust in their acknowledgement of the letter of 3 March (their letter of 10 April) included Mr and Mrs Apostolakis's initials illustrating they understood exactly who was being referred to by Sievwrights.

[17] Counsel for the appellant suggested that the "test" as to whether the information was about an "identifiable individual" was to construct a theoretical person who had not heard of the Apostolakises and consider whether that person would be able to identify the individual in the letter. We reject the proposition that the individual concerned must be able to be identified in the information without the use of any extrinsic information or knowledge. The definition in s 2 of personal information only requires that the information be about an identifiable individual not that the individual be identified in the information. Here, self-evidently, Sievwrights and Guardian Trust knew the information was about Mr and Mrs Apostolakis as a result of their relationship with them.

[18] We note that the OECD Guidelines upon which the Privacy Act is intended to be in general accordance (long title to the Act) suggests that the use of the word "identifiable" allows linked data to establish identity whereas "identified" indicates

the individual is identified from the information itself (see OECD Guidelines Article Art. 1(b)).

[19] We are therefore satisfied that this was personal information and that it was information about an identifiable individual, in this case, Mrs Apostolakis.

Privacy Act triggered by 22 April request?

[20] The second issue raised by Mr Langstone for the appellants can be described in this way: *was Mrs Apostolakis's request on 22 April 1997 for a copy of the letter of 3 March an information request such that the obligations under the Privacy Act were triggered?* There seems to be no doubt Mrs Apostolakis did make a Privacy Act request in 2002. However, the focus of the Tribunal and this Court is on the 1997 request.

[21] As to the 22 April request the Tribunal said:

> [72] In the circumstances, we conclude that Mr Sadler did know enough about the letter he was asked to look for to understand that it would almost certainly contain some information relevant to the insurance status of the Paradiso building. For reasons we have already given we consider that to have been a kind of personal information about the plaintiff.

[22] We agree with both counsel that the Tribunal's approach as set out in [72] was wrong. Counsel agreed that whether the request for access to information triggers the Privacy Act is to be assessed objectively, taking account of all relevant facts. The Tribunal's view was that, given the way Mr Sadler of Sievwrights treated the request, the request "just" qualified as an information request triggering the Privacy Act. This approach was wrong in law. It was also common ground that to qualify as an information request it was not necessary to specifically mention the Privacy Act in such a request. Again, we agree. Self-evidently requiring such formality would, without statutory obligation, significantly narrow the circumstances under which the Act applied.

[23] The appellant also submitted that the Tribunal (at [70]) effectively concluded that the request in this case, viewed objectively, could not be said to carry with it the obligations under the Act. The Tribunal said at [70]:

> [70] The plaintiff's evidence was that when she met Mr Sadler on 22 April 1997 she asked him to provide her with a copy of the firm's 3 March 1997 letter to the Guardian Trust. If there had been nothing more than that, we are inclined to think that her request would have been insufficient to constitute an information access request to which the Act applied. The plaintiff asked for access to a document which she described in terms of a reference to a specific date. One would expect the document itself to have been on a file kept for the plaintiff in respect of commercial matters. We do not think that an agency who is asked to provide a document identified in that way and in those circumstances can reasonably be expected to understand that the request carries with it all of the obligations of the Privacy Act.

[24] However at [71] they said:

> [71] However, in this case we think it is safe to infer that Mr Sadler must have had some more information about the letter than simply the date on which it was written and its recipient. He had, after all, sent a copy of the Guardian Trust's letter of 10 April 1997 to the plaintiff on 15 April 1997. His letter asked the plaintiff to contact him urgently so that he could respond to the Guardian Trust's letter. Mr Sadler knew or must have had sufficient information to understand that the plaintiff was asking him what his firm had said to the Guardian Trust about the status of insurance over the Paradiso building. We also note the evidence that Mr Sadler allowed the plaintiff to look through his files to satisfy herself that the 3 March 1997 letter was not there. It is not standard for a solicitor to offer to show a client the entirety of his or her file. The fact that Mr Sadler did so suggests that he had been put under some pressure to satisfy the plaintiff that he truly did not have the letter she was looking for.

[25] While the Tribunal's conclusions in [71] and [72] were criticised as indicating that a subjective test (Mr Sadler's view) had been applied as to whether a request had been made under the Privacy Act, [71] does identify the factual circumstances to which the objective test must be applied. The "facts" in [71] are all relevant to whether, judged objectively, a Privacy Act request was being made. The error of the Tribunal was in the following paragraph (see [21] this judgment). There the Tribunal focused on Mr Sadler's reaction (subjective) to the facts rather than an objective look at the facts described in [71]. For reasons given, this was the wrong approach but the facts in [71] were highly relevant to the objective assessment. The proper approach was for the Tribunal to ask the question given the facts they identified as established at [70] and [71]; was, objectively assessed, this an

information request? It is necessary, therefore, for us to ourselves consider this matter afresh.

[26] We are in no doubt here this was an information request covered by the Act. The circumstances of the request in our view make it clear. This was a request by a client to her lawyer for a copy of the letter sent by them on her behalf and for which she was presumably to be charged a fee. The letter was able to be specifically identified by her both as to date and intended recipient. It was about a matter which was of obvious concern to her and a matter of importance. This was information which, in the context of a solicitor-client relationship, Mrs Apostolakis was entitled to. In this context, Mr Sadler's reaction to the request was, in our view, predictable. When he searched the file for the letter and could not find it he expressed doubt about whether the letter had ever been sent. There was evidence by Sievwrights of the considerable pride they had in the integrity of their filing system, and so Mr Sadler gave Mrs Apostolakis the file herself to look through to confirm the letter was not there. And finally, Mr Sadler agreed to speak to other possible authors of the letter within the firm and continue his search for it.

[27] As we have said, these actions were no more than predictable in the context. They illustrate the importance of the request and the seriousness of the request. This was a client asking her lawyer for a copy of the letter sent on her behalf and paid for by her. She was able to specifically identify the letter she wanted, and Mrs Apostolakis and Mr Sadler understood from the Guardian Trust's reply of 10 April that the letter was about matters relating to Mrs Apostolakis. These factors in our view all point toward a serious request for a specific document which Mrs Apostolakis was entitled to.

[28] In addition, in support of the proposition that this was not an information request the appellant claimed that Mrs Apostolakis, after her meeting on 22 April with Mr Sadler, had been satisfied by the efforts of Sievwrights to find the letter.

[29] As to this the Tribunal said:

> [20] Whatever the reasons for the 3 March 1997 letter may have been, it is common ground that on 22 April 1997 the plaintiff went to the firm's

> offices and spoke with Mr Sadler. She asked to have a copy of the 3 March 1997 letter. Mr Sadler allowed her to look through his files, but they did not contain a copy of the letter. The discussion was left on the basis that Mr Sadler would make further enquiries about the letter. The plaintiff said in particular that Mr Sadler was going to talk to Mr Porter about it.

[30] More broadly though, we reject the claim that Mrs Apostolakis was content with what had been done on 22 April to comply with her request for a copy of the letter. This submission was made together with the associated submission that the fact that Mrs Apostolakis did not then formally contact Sievwrights until five years later indicated she had either been satisfied that her request had been complied with, or alternatively this was not a request which was covered by the Privacy Act.

[31] The Tribunal expressed some concern about the detail of Mrs Apostolakis's evidence as to what happened after 1997 through until 2002. They expressed concern about the reliability of her evidence, as to the extent to which she contacted Sievwrights during this time. However, we think it is clear from the evidence, accepted by the Tribunal, that the obligation was on Sievwrights after 22 April to get back to Mrs Apostolakis with the result of their inquiries. On 22 April Sievwrights expressed doubt about whether or not they had ever sent such a letter. Mr Sadler did, however, advise Mrs Apostolakis that he would check with Mr Porter as to whether he had sent such a letter, and in addition carry out investigations within the firm to find one if the letter existed. It is clear, therefore, that the obligation was on Sievwrights to get back to Mrs Apostolakis with the result of their investigation. Any thorough investigation would have revealed that the letter did exist and that Sievwrights then had a copy. We therefore reject the proposition that there was any failure on Mrs Apostolakis's part to pursue her request. The obligation, on the contrary, was on Sievwrights to respond.

[32] We are, therefore, in no doubt that, viewed objectively, this was an information request to which the obligations of the Act attached.

Readily retrievable?

[33] This conclusion also effectively resolves the question of whether the information was "readily retrievable". It is a "defence" to an alleged failure to

comply with an information request that the information was either not readily retrievable or was lost (s 29(2)). We have concluded that an information request was made to Sievwrights by Mrs Apostolakis on 22 April 1997 for a copy of the letter of 3 March. It seems that a paper copy of that letter could not be found on Mr Sadler's file. In fact the letter of 3 March was sent by Mr Porter of Sievwrights. It is impossible to know now whether a copy of the letter was then on Mr Porter's file. Although Mr Sadler told Mrs Apostolakis, after the fruitless search of 22 April, he would check the firm's files, and with Mr Porter, for a copy of the letter there is no evidence that he ever did so. What is clear is that an electronic copy of the correspondence was kept by the firm and counsel for the appellant accepted there is no evidence to suppose an electronic copy of the letter was not available on 22 April. We agree with the Tribunal that on the balance of probabilities there would have been a copy of the letter either on a file or held electronically by Sievwrights which, within a few days of 22 April, could readily have been retrieved and sent to Mrs Apostolakis. We are therefore satisfied the letter was readily retrievable when asked for on 22 April 1997.

[34] As to the 2002 request, by then Sievwrights' computer records for 1997 had been purged and after a diligent search by Sievwrights a paper copy of the letter could not be found. Of course a copy was readily available if Sievwrights had only asked Guardian Trust to photocopy and send them the letter of 3 March.

[35] The appellant submitted that the "right of access under Privacy Principle 6 applies only to information held". Thus in 2002 the appellant says the information was no longer "held" by Sievwrights given all of the copies of the letter had disappeared from Sievwrights' premises. Counsel submitted, therefore, that the letter of 3 March in Guardian Trust's possession was not "held by" Sievwrights and therefore could not be the subject of a valid information request to them.

[36] Counsel for the Commission accepted the inevitability of such an interpretation given the way the Act is currently framed. It is not necessary for us, however, to finally decide this point given that it applies only to the 2002 request. We note, however, s 39 of the Act which obliges a request under the Privacy Act for personal information to be passed onto another where the first recipient believes

another agency has the information. However, the appellant was not subject to a complaint of a breach of s 39 before the Tribunal and we, therefore, do not consider it.

[37] For reasons given, therefore, we are satisfied that the document was readily retrievable when the information request was made in April 1997.

Harm and interference with privacy

[38] The appellant submits that Mrs Apostolakis had effectively received the information contained in the 3 March letter by virtue of her possession of the 10 April letter from Guardian Trust. Thus the appellant submits there was no interference with her privacy because Mrs Apostolakis already had the information.

[39] We disagree. It is simply not possible to know the contents of the letter of 3 March from reading the letter of 10 April. Nor, as counsel for the Privacy Commissioner pointed out, would Mrs Apostolakis be able to judge the focus or tone of the letter, let alone the precise contents, without seeing it.

[40] Nor is it necessary in our view to prove, as the appellant claimed, separate "harm" to the respondent in such circumstances. Section 66(1) provides as follows:

> **66 Interference with privacy**
>
> (1) For the purposes of this Part of this Act, an action is an interference with the privacy of an individual if, and only if,—
>
> (a) In relation to that individual,—
>
> (i) The action breaches an information privacy principle; or
>
> (ii) The action breaches a code of practice issued under section 63 of this Act (which relates to public registers); or
>
> (iii) The provisions of Part 10 of this Act (which relates to information matching) have not been complied with; and

(b) In the opinion of the Commissioner or, as the case may be, the Tribunal, the action—

(i) Has caused, or may cause, loss, detriment, damage, or injury to that individual; or

(ii) Has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or

(iii) Has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[41] We agree with the comments of the High Court in *Winter v Jans* HC HAM CIV-2003-419-000854 6 April 2004 when they said:

> [82] We accept, as did Mr Stevens, that the words "if, and only if" in s 66(1) suggest that an action cannot be an interference with the privacy of an individual unless the criteria of s 66(1) are satisfied. However, this cannot be so as s 66(2) clearly establishes a further type of action which is defined as an interference with the privacy of an individual, and which does not come within the criteria of s 66 (1)(a). In these circumstances, despite both provisions appearing in one section, and despite the natural meaning of "if, and only if" we are of the view that those words must be read down in relation to s 66(2). We think it likely that Mr Stevens' submission is correct and the words appear because the significance of them was not appreciated when a change was made to what is now s 66(2) of the Act during the Bill stage. There is an inconsistency in the Act if it is interpreted as requiring that "an interference with the privacy of an individual" under s 66(2) must satisfy the provisions of s 66(1)(b) when in fact it also does not satisfy the provisions of s 66(1)(a). The words "without limiting subsection (1)" in s 66(2) mean that the new class of interference with the privacy of an individual created by s 66(2) does not in any way restrict classifications already made under s 66(1).

Proceedings frivolous and vexatious

[42] The appellant submitted further that "really the whole complaint is nonsense" and in those circumstances said that the request for information was frivolous or vexatious or that the information request was trivial and we should therefore dismiss the proceedings. It will be self-evident why we disagree with this submission given the conclusions we have reached. We also note our observations at [5] of this judgment.

Damages

[43] The appellant submitted that the damages ordered were too high and indeed says the Tribunal was wrong when it took into account in assessing damages, that the appellant eventually came to see the respondent as an irritating nuisance. The award of damages in our view was well open to the Tribunal in this case. As we said at the beginning of this judgment, this matter has gone on for far too long and could easily have been resolved in a sensible and fair manner to both parties many years before. It is relevant in assessing damages that Sievwrights continued until relatively recently, including in their response to these proceedings, to equivocate about whether or not they had sent a letter of 3 March 1997. This was an extraordinary attitude in our view. It no doubt caused considerable further stress to Mrs Apostolakis. The damages award was well within the range open to the Tribunal and we see nothing wrong in the way in which they approached their decision.

Costs Appeal

[44] The final matter raised in support of the appeal relates to a refusal to grant a costs order sought by Sievwrights with respect to the aborted first set of proceedings. Two months before these proceedings were issued another set of identical proceedings were issued by the Commission. They were premature and were dismissed. The Tribunal refused to order costs in favour of Sievwrights for this dismissal. Sievwrights argue they are entitled to costs in the circumstances and that the Tribunal was wrong to refuse them costs.

[45] We disagree. The question of costs was at the discretion of the Tribunal who have a wide discretion as to whether an order is made and, if so, how much. In our view the order here has not been shown to be clearly wrong, nor has the Tribunal been shown to take into account clearly irrelevant matters or failed to take into account relevant matters. Much of the material prepared by both the Commission and Sievwrights for the first set of proceedings was used in these proceedings. Indeed, it appears as though Sievwrights' response to the second set of proceedings

is essentially identical to that filed with regard to the first set of proceedings. Any costs award would therefore have been extremely modest. Against that must be the fact that these proceedings have been successfully brought and prosecuted. Once again we refer to our remarks in para [5].

Costs

[46] The Privacy Commissioner took the burden of the argument in this Court. Given the failure of this appeal she should have costs payable by the appellant on a 2B basis. In addition, Mrs Apostolakis, who represented herself, is entitled to her out of pocket expenses. These, we stress, must be limited to actual costs incurred by her. She should provide a memorandum for the appellant to comment on and for the Registrar's approval. As to the extent of costs able to be sought, these should include not just the hearing in November 2007 but also the aborted hearing in May 2007. The hearing in May 2007 did not proceed because counsel for the appellant had failed to complete a proper bundle of paginated documents and had failed to file and serve his submissions prior to hearing. This was of course especially difficult for Mrs Apostolakis, a litigant representing herself. It was on this basis that we were forced to adjourn the May hearing to the November date.

"Ronald Young J" **"Dr A Trlin"** **"G Kerr"**