

injunction, it is unlikely these proceedings will go further. He opposes costs.

- [3] Counsel for the defendant states costs should follow the event. Fiji Television Limited (Fiji TV) has been put to considerable expense to resist the continuation of an Interlocutory Injunction which he submits was obtained ex-parte by the plaintiff and without full and proper disclosure of all those facts and law which should have been disclosed when an ex-parte application was being made for an Interlocutory Injunction. Further, Fiji TV has lost the newsworthiness inherent in publication of the Report and was, in effect, "gagged" by the Injunction.
- [4] Plaintiff counsel responds that each party should bear its own costs. He points out that at paragraph 20 of the Ruling I stated that "this case raises a number of issues of great importance to Fiji". He avers that the issues raised have not been fully canvassed before a court before and the Ruling is far reaching. The Court has had to deal with, for the first time, the tort of breach of confidence in conjunction with matters of public interest. As a result of the Ruling, the Government and its agencies should now have a clearer and better understanding of their responsibilities vis-à-vis the media, the media's right to report on activities of Government and the public right to information. The Court also had to decide upon the conflicting approaches in dealing with cases of this kind, the 'American Cyanamid Test' and the 'Fahey Test'.
- [5] Counsel for the National Provident Fund Board (The Board) continues that if costs are to be assessed and awarded against the Board then regard must be had to the usual scales of costs and a figure in the region of \$1,500.00 to \$2,000.00 awarded.
- [6] Counsel for the defendant responded that my Ruling made specific reference to the shortcomings in the disclosure by the defendants in the

ex-parte application. He cited the change in stance by the Board over the "ownership" of the information in the report. He continued that the question of novelty and the Constitutional implications were apparent from the very beginning and should have been clearly highlighted at the initial hearing. Counsel put before the court a number of cases including the Supreme Court of Victoria case of Westpac Banking Corporation v. Hilliard and Another [2001] VSC 198 where, at paragraph 10, eight points were set out for consideration when solicitor and own client or indemnity costs are being considered. He urges the court to find that in this case before me the plaintiff's shortcomings fit within most if not all of those points. He said the scale costs, as urged by the plaintiff, are too low. He placed before the court the actual itemised bill which will in due course be presented to Fiji TV. He accepts it did not necessarily follow that the full sum should be awarded, but it did give a realistic idea of the figures involved.

- [7] It is common practice when issues of public importance are raised in litigation for the first time that at the conclusion of proceedings no order for costs is made. I accept that issues of novelty and public importance were raised in this action and raised for the first time in this jurisdiction. However, I do consider that the plaintiff's failure to be full and frank with all issues of fact and law is a matter that can and should be taken into consideration when deciding issues of costs. Even then the overall nature of these proceedings might have saved the plaintiff from a costs order but for the fact it became increasingly obvious that the plaintiff was going to publish parts or all of the report, in any event. It had in fact published one part while the proceedings were on foot and had promised, in effect, to release the whole report in time.
- [8] In these circumstances, the initial issue of the Interlocutory Injunction must be called into question. I therefore find that the defendant is entitled to costs and on an indemnity basis. I intend to assess those

costs as both counsel accept I have the power to do. I consider a figure substantially in excess of the standard scale is correct, but not full reimbursement of the sum billed by the defendants solicitors to them, namely \$18,670.00 plus VAT.

- [10] In my judgment the figure which meets the overall justice of the circumstances vis-à-vis costs is one of \$12,000.00 plus VAT. Accordingly I order the plaintiff to pay the defendant the sum of \$13,500.00 by 3.00 p.m. on 16th November, 2007.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', with a long horizontal flourish extending to the right.

(R.J. Coventry)

JUDGE