

Balancing the Demands of Judicial Life

The Hon. Justice Clyde Croft**

Supreme Court of Victoria

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As many of you may know, for a significant part of the previous four years, much of my time at the Court was spent managing the Great Southern Group Proceedings. Today, I'd like to share some of my experiences from that time, particularly the manner in which my staff and I managed the workload, the effect this work had on all of us, as well as some thoughts and ideas regarding how the Court may look to handle large cases in the future.

First, I'd like to provide a very brief overview of the proceedings to give a sense of the size and magnitude of the case. The proceedings related to the collapse of the Great Southern Group in 2009. There were over 23 000 investors in the managed investment schemes which the Group was responsible for, investment schemes which related to timber, cattle and other agricultural products. The majority of these investors had obtained finance through one of the entities within the Great Southern Group - Great Southern Finance.

Broadly speaking, the Great Southern Proceedings involved disputes surrounding allegedly misleading statements in the product disclosure statements which the Group had issued in relation to the managed investment schemes, while there were also a number of proceedings which were brought by the bank parties against investors who had defaulted in their loan repayments. Between the time the first of the proceedings was issued in the Supreme Court, approximately 80 proceedings which had been issued in the County Court were transferred to be managed in the Supreme Court, along with a number of proceedings which had been issued in the Supreme Court and District Court of New South Wales, the Supreme Court of South Australia and the Supreme Court of Western Australia. These transferred cases were all stayed pending the outcome of the main trial; a trial which involved 16 group proceedings and 8 individual proceedings that had been selected as representative of all of the main issues in the proceeding and each of the managed investment schemes which were the subject of the dispute.

Much of the time spent leading up to the trial was spent dealing with quite extensive issues surrounding discovery, brought about by the fact that there were over 10

million discoverable documents. While I won't go into too much detail regarding the procedure to deal with the issues such an enormous number of documents, it is worth noting that this process could have potentially taken up years of both the parties and the Court's time were it not for the invaluable assistance of Mr Tony Nolan QC, who I appointed as a Special Referee, under the Court rules, to specifically assist with managing the discovery issues. I will speak about this a bit more shortly, as I firmly believe such procedures are essential to assist trial judges manage large cases. After Tony's work, the parties managed to reduce the court book to 17, 346 documents, 104 witness statements, and 517 case authorities. Still very daunting numbers.

The trial itself ran for 90 days over a 12 month period, with various adjournments to allow for a mediation, as well as further discovery. During the time the trial ran for, much of the work done in the management of the proceeding – outside of the regular sitting hours – was spent preparing summaries of the evidence and the legal principles involved. Assisting me in this work were my two associates, as well as one of the Court researchers. Their work in this sense was critical, and I believe very much highlights both the importance of employing as Associates highly capable individuals, as well as ensuring that we as judges utilize our support staff in an effective manner. This point became even more salient when the trial was completed, and the task of putting the judgment together became the main priority.

Looking back with the benefit of hindsight, this was perhaps the most exhaustive and exhausting part of the whole process, given how much work was involved, although at the time it was probably not immediately apparent to me how much of a toll this was taking on me and my staff, both mentally and physically. It can often happen when undertaking a task of this magnitude that the adrenaline and focus can take over, and a desire to finish the job can take precedence over everything else, including your health. The writing of the judgment took around 6 months to complete, in addition to the work which was undertaken during the trial. Many late

nights and weekends were spent by my associates and I working in chambers, averaging around 70-80 hours a week during this time.

Adding to the stress the whole process created were the events which happened some 36 hours before the judgment was to be published. After all but completing the judgment - all 2030 pages of it - my Associates notified the parties on the Wednesday afternoon that it was to be delivered that Friday. Some four hours later, we received an email saying that the parties had settled. Needless to say, my reactions and those of my Associates are not ones which I can share in this forum. Of course, the practical effect of this was that the settlement approval process then had to take occur, which added another five months to the whole proceeding. I finally handed down the settlement approval on 5 December 2014.

The relief which I felt once the whole process was completed was perhaps as great as any I have felt during my whole career in the law. Looking back now, I think that that sense of relief somewhat hid some of the mental and physical exhaustion which I was feeling, and it really wasn't until a number of months later that the effect of the whole proceeding became apparent. While I had some time off over the Christmas break, it clearly wasn't sufficient, as it wasn't before long that I found myself becoming irritable and short-tempered at trivial things, traits which I hope I can say I had rarely displayed before. Having just returned from a six-week break now, and being able to compare my energy levels and passion for my work with what I was feeling prior to the break, it is easy to see that I was completely worn-out from the whole proceeding, and should have taken an extensive break as soon as the proceeding had finished.

I think it is often difficult for us as judges to be objective about how stressful the job can be, particularly during lengthy trials and periods of judgment writing, where the isolation of the job really becomes apparent. Making sure you take sufficient time to unwind and de-stress after such periods is, in my opinion, absolutely essential. Being more aware of the signs of stress, and being able to listen to others around you who may recognize these signs is also incredibly important. One lesson which I have

taken out of this which I may not have turned my mind to much before is that often this work-related stress may not manifest itself until sometime after the event. I think it is important for us as colleagues to recognize this as well, and to aware that while it may be that everything is normal during periods of potentially high stress, it may not be for some time that these periods actually take their toll.

There are a number of procedures which I believe courts should look to when undertaking proceedings the size of Great Southern in the future. As I have mentioned, the work of Tony Nolan was invaluable in assisting me with the management of the discovery issues, and I shudder to think how more stressful the case may have been had I had to manage all of these issues on my own. This special referee process is an important tool which can greatly assist the trial judge in managing proceedings of all sizes, and which can greatly reduce both the time it takes for a proceeding to get to trial, as well as the length of the trial itself. These aspects are extremely important not only for the judges, but also for the parties, as they of course are also under an incredible amount of stress. Any process which can help reduce these twin causes of stress should be looked at, and the Special Referee process is certainly one which I will implement again whenever appropriate.

A perhaps slightly more radical idea is the introduction of second judge to help manage the trial and the workload. In effect, the additional judge would sit and hear the trial with the primary judge, and would assist with all aspects of the proceeding, including the writing of the judgment. While it might seem like too much of a significant departure from traditional practice, it is important to remember that large class actions such as Great Southern are a relatively new phenomenon. It is vital that the Court look to all possibilities in the future to assist in the management of such proceedings, not only to assist the judges, but also to make the operation of the legal system as a whole run more efficiently with as little stress as possible for all participants.

The other aspect that requires consideration is a mechanism whereby those outside the "adrenaline circle" of the judge and his or her staff – who are, as I have observed

fairly much blind to the real stress they are under – are able to mentor and assist as the circumstances require. Perhaps a group of judicial mentors – those who have conducted such large and demanding proceedings – could be identified and an individual allocated to each such proceeding. A cup of coffee and a chat every week or so with the trial judge would, I think, provide a means of providing support and assistance.

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