would be within the power (i.e. a use that, if coupled with an intention to use it that was not to cause harm, would be lawful) or in excess of the power (i.e. a use for which, in essence, there is no power because the officer knows that the act is beyond – in excess of – the power). Nonetheless, it is necessary to establish that the alleged misfeasance is connected to a power or function that the officer has by virtue, or as an incident, of his or her public office."

The majority distinguished cases involving false reports to superiors (such as *Emanuele v Hedley* (1998) 179 FCR 290) on the basis that Mr Friend's exercise of his power was complete upon making the complaint, and that the regulatory bodies were not superiors (at [111]-[114]).

The majority judges remitted the assessment of damages, including aggravated and or exemplary damages, to the primary judge who had the advantage of seeing and hearing the witnesses over a lengthy trial (at [119]).

Justice Dowsett dissented. His Honour found that it had not been demonstrated that safeguarding the availability of pharmaceutical services in Kellerberrin was part of the Shire's function, let alone the function of its CEO (at [164]-[165]). Further, Dowsett J held Mr Friend's conduct to be no more performed in public office then the reporting of a conversation to a superior as in *Emanuele* (at [165]).

PRACTICE AND PROCEDURE – EVIDENCE

Advance rulings under s 192A of the *Evidence Act 1995* (Cth)

In Australian Securities and Investments Commission, in the matter of *Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd* [2017] FCA 324 (30 March 2017) ASIC applied for a ruling under s 192A(b) of the Evidence Act 1995 (Cth) about whether certain documents in ASIC's possession were prevented by ss 118 or 119 of that Act from being adduced in evidence at the final hearing of these proceedings. Justice Gleeson considered the principles relevant to the Court's discretion whether to make an advance ruling on the admissibility of evidence (at [21]-[24]). Her Honour held it was appropriate to give the ruling applied for by the ASIC (at [29]) and proceeded to do so.

SECURITY FOR COSTS

Estimates of costs for security for costs application – Duplication and division of work between solicitors and counsel

Armstrong Scalisi Holdings Pty Ltd v Piscopo (Trustee), *in the matter of Collins* [2017] FCA 423 (21 March 2017) was an application for security for costs under s 1335 of the *Corporations Act 2001* (Cth). In this context, Rares J made strong comments concerning the practice of solicitors charging clients substantial fees for work that was primarily the responsibility of counsel. The total amount of security sought was approximately $140 000 which was 60% of the estimate of approximately $240 000 for the defendant's total costs and disbursements (at [17]).

Rares J observed that the amount sought and the total estimate appeared to him to be very large and involved the participation of a large number of solicitors in performing work at rates far greater than counsel's rates for tasks that appeared primarily to be the responsibility of counsel (at [17] and examples at [18]). Rares J said the division of work and costs did not comply with the requirements of Part VB of the *Federal Court of Australia Act 1976* (Cth) and the overarching purpose of the civil practice and procedure rules; and reflected, on its face, an inefficient and inappropriate way of dealing with the preparation for, and conduct of the hearing of, the case (at [20]).

Rares J stated at [23]: "I am not intending to direct criticism in these reasons towards the particular solicitor … That is because I am not suggesting that this is an isolated situation. To the contrary, it appears to have become a more general model for solicitors to do work that the purpose of having a separate bar was originally intended to ensure be done by the specialised and most cost-efficient advocate, namely counsel. All too often, in looking at security for costs applications, the amounts estimated to be incurred by solicitors in preparing cases, as opposed to the amounts estimated to be incurred by counsel, involve a skewing of work towards the solicitors' efforts that does not seem to be efficient or appropriate in the preparation or presentation of the particular case. Where counsel has to make the forensic decisions as to how the material facts should be pleaded, what pleadings are maintainable, what evidence is to be led and what submissions should be drafted, it is of vital importance that counsel undertake the burden of doing that work themselves and not have it duplicated unnecessarily by the involvement in preparing drafts of one, let alone multiple, solicitors."

Security for costs was granted in stages for a total amount of $77 000 (at [30]).

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Crossword Answers

ACROSS: 1. Deed 5. Verdict 7. Advocacy 10. Clerk 11. Void 13. Convict 14. Perpetrator 17. Probate 20. Bond 21. Gag 22. Undue 25. May 27. Cyber Precedent 30. Bench 31. Prenuptial 32. Accused 33. Beneficiary 34. Quasi 35. Restitution 36. Comply 39. Habeas Corpus 40. In situ 41. FOI
DOWN: 1. Deal 2. Entrapment 3. Parole 4. CCTV 6. Testify 8. Vexatious 9. Cite 12. Arraign 13. Chopper 15. Presumption 16. Trust account 17. Peggy Cheong 18. Annul 19. Debtor 23. Blue Heelers 24. Substantiation 25. Mandamus 26. Preliminary 28. Per se 29. Ante 32. Adjourn 34. Quash 36. Costs 37. Proof 38. Real 39. Hoc