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## ASIC handed right to pursue AWB appeal

### >> BAR & BENCH

THE corporate regulator has been handed the opportunity to continue its fight against former Australian Wheat Board director Andrew Lindberg.

The Court of Appeal of the Supreme Court of Victoria today allowed the appeal by ASIC against the decision made by Justice Robson on 9 December 2009 to permanently stay ASIC's second civil penalty case against Lindberg, finding that there was no abuse of process in the commencement by ASIC of a second claim.

Three years after commissioner Terence Cole QC released his multi-volume report into AWB's payment of kickbacks to Iraq, ASIC was left holding the can. It announced in December last year that it would appeal the Supreme Court decision to halt half of its proceedings against Lindberg.

In halting the case, Justice Robson said this element of ASIC's case against Lindberg would be vexatious and oppressive. He said that to pursue it would bring the administration of justice into disrepute.

It is expected that in its appeal, ASIC will raise what it considers to be the judge's erroneous interpretation of its statement of claim.

In his written decision, Justice

Robson suggested Lindberg suffered "strain and stress and humiliation of sitting through the opening", which resulted in "considerable publicity ... that was especially damaging to Lindberg's credit and reputation".

ASIC's second case concerns allegations that Lindberg misled the AWB board about its internal investigation - known as Project Rose - and the United Nations' Volcker Inquiry into the Iraqi Oil-for-Food scandal.

The Court of Appeal overturned the trial judge's ruling that ASIC had acted unreasonably in failing to include these allegations in the first proceedings and held that his honour had overlooked three matters:

The evidence from the Cole Inquiry was not in a form that could be relied upon in Court.

Commissioner Cole had not found wrong-doing on the part of Lindberg.

The evidence that ASIC had properly employed its limited resources to launch the first proceeding before it was statute barred.

The Court of Appeal found that ASIC officer Brendan Caridi's evidence as to ASIC's conduct leading up to the filing of the first proceeding was clear cogent and consistent and in no respect misleading. The court also found that

ASIC's setting of priorities in the investigation was entirely appropriate and it would have been quite improper for ASIC to have included the matters the subject of the second proceeding in its December 2007 pleading.

The trial of ASIC's first case against Lindberg - which has been adjourned pending the appeal outcome - concerns allegations that Lindberg contravened sections of the Corporations Act arising from AWB entering into contracts for the supply of wheat to Iraq.

ASIC commenced civil penalty proceedings in the Supreme Court of Victoria against six former directors and officers of AWB in December 2007.

The matter will return for a directions hearing before Justice Robson on 24 February 2010.

ASIC said today it will not be commenting further on this matter.



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# DibbsBarker advises Xplore on takeover

>> DEALS

DIBBSBARKER has advised financial services company Xplore Capital Ltd in the recent takeover bid by Firstfolio Limited.

Firstfolio has made an off-market takeover bid for all issued shares in Xplore Capital and both parties have entered into a Takeover Bid Implementation Agreement.

Under the takeover arrangements, Xplore Capital shareholders have been offered two options for their shares; either a cash alternative or a share and cash alternative. The cash alternative values Xplore Capital's equity at approximately \$3.08 million.

DibbsBarker has assisted the Xplore Capital Directors throughout this process. The DibbsBarker team was led by partners Lis Boyce and Geoff Cairns.

Of the acquisition, Firstfolio said: "The acquisition of Xplore Capital will achieve long-term synergy benefits by reducing or eliminating costs incurred by



Dibbs advises on Xplore deal.

Xplore Capital as a public company and related overheads."

Xplore's directors unanimously recommended its shareholders accept Firstfolio's offer and said they intended to accept the deal for shares that they own, in the absence of a superior proposal, Firstfolio said.

The offer is subject to a number of conditions, including acceptance of the deal by 75 per cent of issued shares and regulatory approvals.

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# In-house experience pays off in the law

>> APPOINTMENTS

SLIPPING between in-house and law firm practice roles would appear to be increasingly easy if Antra Hood's experience is anything to go by.

Minter Ellison has claimed the former general counsel and company secretary in its Brisbane office.

Hood, former general counsel and company secretary of Springfield Land Corporation, has joined Minter Ellison's national property practice as a special counsel.

Hood is a senior lawyer with more than 18 years' experience as a corporate counsel and in private practice. She is a former partner of Mallesons Stephen Jaques and also general counsel of South Bank Corporation.

Commenting on the significance of Hood's appointment, Cameron Charlton, head of Minter Ellison's national property practice said that lawyers of her calibre are rare.

"[Hood] is an outstanding lawyer and a strategic and clear thinker with an ability to grasp big picture issues," he said.

"As general counsel at Springfield Land Corporation

she was a fierce protector of the business, focused on extracting value for the company, and a sophisticated manager of external legal providers."

Hood's experience on both sides of the fence makes her all the more employable, the firm said.

"She understands the benefits of a true partnering approach between lawyer and client. That is ultimately what sets a good lawyer apart from a really great lawyer.

"And as Minter Ellison nationally is involved in a number of high profile developments and urban renewal projects ... [Hood's] insights into the challenges of master planned communities from the client's viewpoint will be invaluable."

Queensland-based Springfield Land Corporation (SLC) is developing a new city – the A\$2.2 billion Greater Springfield master planned community – outside Brisbane. It comprises suburbs that will eventually house some 105,000 residents, a CBD, recreational and lifestyle facilities and precincts for education, health, industry and information technology.

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THE NEW LAWYER EXPERTS WEEK IN REVIEW

# Law: All guff and discontent?



Andrew Hughes

&gt;&gt; COMMENT &amp; DEBATE

I make a habit nowadays of asking senior lawyers whether or not they enjoy their jobs. Surprisingly, many of them don't, but they see it as a means to an end. Plus, they think it's too late to do anything else. Some even see their careers as wasted years.

Occasionally I speak to someone within the ranks of the profession who really does enjoy the work they do. Those lucky few have usually found their larger contribution to the community in what they do, working in an area in which they are talented. More than that, they have structured their role so that they do plenty of what they love to do. Their success demonstrates the impact of genuine employee engagement. It also illuminates an escape route from the alarmingly high levels of discontent experienced in the legal industry.

***"I learnt that having new ideas was not a talent anyone seemed overly interested in. Better to learn how it had always been done and follow the tried and tested method."***

#### The way its always been

In many ways the HR problems in the profession aren't all that surprising. While there has been radical change in many other industries, the rate of change in the legal profession has been less than glacial. A common theme



*Is there a way around the high levels of discontent experienced in the legal profession? Leadership expert Andrew Hughes writes.*

seems to be "it was good enough for me so it ought be good enough for you."

I learnt early in my career that passion and a desire to genuinely contribute to the broader community (or be part of something bigger than yourself) were not generally seen as particularly useful traits - unless they lead to more billable hours or new clients. However, if you were a good biller, you could get away with just about anything.

I also learnt that having new ideas was not a talent anyone seemed overly interested in. Better to learn how it had always been done and follow the tried and tested method.

(Ironically, when I moved into the senior ranks I was expected to generate lots of new ideas. Unfortunately, as I'd spent the previous 10 years demonstrating that I could think like everyone else, it was a harder process than it ought to have been.)

The point is, these practices are almost Dickensian - they don't fit well in the 21st Century and nor do they encourage loyalty, trust or commitment.

#### Values have changed

As illustrated by the problems firms are experiencing with X and Y geners, there has been a global values evolution. These generations are less willing to accept the same incursions on their family and social lives in return for rewards in the future. They are also less tolerant of organisations that fail to give them the opportunity to be part of a larger cause, one that exists outside of a profit motive or the meaningless client service guff that is often dished up.

The large firm structure and the historical leadership practices in the legal profession are at odds with this new dynamic. If neither radically changes, it's hard to see any of the current problems abating.

#### What's the answer?

The answer is not a larger pay packet. Ultimately, the profession needs to rediscover its passion and grander reason for being, inviting its members to take a similar journey.

A good place to start is to approach leadership from an empowerment perspective, rather than seeing it purely as a license to exert power. A fundamental part of leadership is maximizing the positive impact the leader has on

their teams. In that context, leadership becomes less about what happened in the past and more about what will get the best results in the future, both short and long term. It becomes less about the leader and more about the led.

Getting people engaged in a business is not just a process of articulating a goal or a journey that they can intellectually accept. It's about also engaging them emotionally - creating an environment where they can fulfill their values and contribute to something bigger than themselves. It's a process of providing the oxygen to the fire that burns in everyone.

And therein lies the challenge.

***Andrew Hughes is a leadership expert and coach with Dare2XL. Prior to that he was the chief client partner in a national firm.***









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