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3 HIS HONOUR: Ms Ryan, I understand you're here in the matter I
4 asked to be the subject of mention this morning
5 concerning certain correspondence to the Chief Justice.

6 MS RYAN: Yes, Your Honour, I appear for the two practitioners,
7 Mr Goulder and Mr Glesson.

8 HIS HONOUR: I'm not sure that appearance is necessary, but you
9 probably appreciate the court's a little concerned at
10 what's transpired.

11 MS RYAN: Yes.

12 HIS HONOUR: Is there anything you wish to say?

13 MS RYAN: Yes, I am instructed, Your Honour, to say that both
14 practitioners unreservedly apologise and sincerely
15 apologise for sending what was, in hindsight, a very
16 inappropriate and indefensible letter to have sent. They
17 realise now the consequences of the actions and are
18 extremely remorseful and happy to make that apology to
19 Your Honour in person, if needs be.

20 In the terms of the contents of sending that letter,
21 it's not an excuse but the explanation is that it was
22 drafted by senior counsel, Mr Garret. He recommended that
23 the advice - that that letter be sent. The sequence of
24 events were that last Thursday evening he rang Mr Goulder,
25 said he had a problem, mentioned the matter that had
26 occurred before Her Honour Justice Davies in the course of
27 the day that he had said that he had a case in the Full
28 Federal Court this Wednesday and Thursday. Allens appear
29 - act for the Australia Post in that matter and it's a
30 trademarks appeal of some complexity. I think Your Honour
31 may have seen the transcript.

1 HER HONOUR: I've seen the transcript and I've seen the
2 correspondence and I accept that it was a most unfortunate
3 circumstance requiring some urgent action to be taken.
4 The action which was taken was the wrong action.

5 MS RYAN: Yes. Mr Garret then sent a draft of the letter, that
6 Your Honour will have seen, at 10.41 pm on Thursday night.
7 Apart from some very minor amendments, it's in exactly the
8 same form as the letter that was sent to the court. The
9 solicitors acted upon the recommendation advice of counsel
10 that it was appropriate to proceed in this manner. They
11 realise now that they should have exercised their own
12 judgment and should never have sent the letter and realise
13 that it was most unfortunate. But they were - there was
14 some degree of panic because they were going to lose
15 counsel of choice. They were concerned to act in the
16 interests of Australia Post. They accepted counsel's
17 advice and they sent the letter that he drafted but they
18 are extremely, as Your Honour can appreciate, remorseful
19 and apologise to the court for having done so.

20 HIS HONOUR: Yes. The apology is of course accepted.

21 MS RYAN: Thank you, Your Honour. The solicitors - - -

22 HIS HONOUR: I would have expected nothing less.

23 MS RYAN: Yes, Your Honour. I appreciate how serious it is.

24 HIS HONOUR: I think I should say something, though, just for
25 the record, as it were, although I'm sure it's
26 appreciated.

27 I must say I am most concerned to hear that that
28 particular piece of correspondence was drafted by senior
29 counsel but that's another matter and the comments I'm
30 about to make can now be taken to be directed at him as
31 much as to those who signed the letter.

1 Obviously the court's concerned about correspondence
2 of that kind which ought never to have been sent. That's
3 been frankly acknowledged.

4 I think it's good to record the reasons.

5 First, the appropriate course was for Mr Garret to
6 have raised the issue by application to Her Honour on
7 notice on Friday. She was, after all, sitting in
8 directions in the usual course. Had the full situation
9 been explained to her and the views of other counsel
10 sought, a pragmatic solution accommodating everybody's
11 interests is likely to have been the result.

12 The matter was mentioned this morning. I'm assuming
13 something to that effect has happened, I don't know.

14 MS RYAN: Yes. I can assist you, Your Honour. Apparently the
15 other counsel in the case are prepared to accommodate
16 Mr Garret. It's likely that Her Honour won't be sitting
17 this Wednesday and Thursday.

18 HIS HONOUR: Second, the letter contains, I think, a thinly
19 veiled threat. I won't quote the passage. You know what
20 I'm talking about, as I'm sure do the two authors of the
21 letter although - the two signatories of the letter, I
22 should now say.

23 For solicitors or counsel, senior counsel at that,
24 for a non party, to endeavour to pressure the Chief
25 Justice to influence the conduct of a trial judge in a
26 part heard case can have no justification, however extreme
27 the circumstances may be perceived and whatever injustice
28 it may be thought is about to happen. Such conduct smacks
29 of pure arrogance.

30 Third, the email does not indicate whether it was
31 even sent to the other parties in the part heard trial.

1 If that is the case, it was grossly improper, tantamount
2 to seeking to influence the conduct of a part heard trial
3 by secret communication with the court. Senior counsel, a
4 partner and a senior associate should know better. I hope
5 you're about to tell me that it was copied to the other
6 parties.

7 MS RYAN: No, it wasn't, Your Honour, but Allens did not appear
8 in the case that's running before Her Honour Justice
9 Davies so they only were acting in the Federal Court
10 proceeding.

11 HIS HONOUR: I understand that but I'm sure Mr Garret could
12 have told them the email addresses of the relevant parties
13 who might be affected by the conduct. As it turns out
14 there's no problem but there might have been.

15 MS RYAN: Yes, Your Honour.

16 HIS HONOUR: There are the convenience of other parties and
17 counsel to be considered.

18 So I would say simply, gentlemen, in future exercise
19 your own judgment, as Ms Ryan has frankly acknowledged
20 that you both ought to have done. Mr Garret, perhaps
21 given the very difficult position in which he was placed,
22 wasn't placed to give you objective advice about this and
23 although understandable that you've adopted correspondence
24 he's drafted, I am fortified to hear that you appreciate
25 it was not justifiable.

26 It has, of course, led to a waste of judicial
27 resources. I've had to distract myself from the Practice
28 Court on Friday to discuss the matter with the judge in
29 charge of the commercial court and with the trial judge
30 and with the executive associate to the Chief Justice in
31 her absence and so on and so forth. I think enough has

