30/07; [2007] VSC 182

SUPREME COURT OF VICTORIA

C COCKERILL & SONS (Vic) PTY LTD v COUNTY COURT of VICTORIA & ANOR

Mandie J

24, 25, 31 May 2007 — (2007) 18 VR 222; (2007) 211 FLR 452; (2007) 48 MVR 162

MOTOR TRAFFIC – OVERLOADING – HEAVY HAULAGE VEHICLES – PROOF THAT DEFENDANT WAS THE REGISTERED OPERATOR OF A PRIME MOVER – NO PROOF THAT THE SEMI-TRAILER FORMING PART OF COMBINATION WAS OPERATED BY DEFENDANT – FINDING BY COURT THAT REGISTRATION OF SEMI-TRAILER ATTACHED TO PRIME MOVER WAS NOT AN ELEMENT OF THE OFFENCE – WHETHER COURT IN ERROR – *PRIVACY ACT* – EVIDENCE OF PRIVATE WEIGHBRIDGE TICKETS ADMITTED INTO EVIDENCE – WHETHER PROVISIONS OF THE *PRIVACY ACT* CONTRAVENED – WHETHER COURT IN ERROR IN ADMITTING WEIGHBRIDGE TICKETS INTO EVIDENCE – WHETHER OPEN TO COURT TO BE SATISFIED THAT VEHICLE WEIGHED WAS IN THE SAME CONFIGURATION AS THAT IN WHICH IT TRAVELLED ON THE HIGHWAY – WHETHER COURT IN ERROR IN CONVICTING: *ROAD SAFETY (VEHICLES) REGULATIONS* 1999, R417(1): *PRIVACY ACT* 1988 (CTH); *INFORMATION PRIVACY ACT* 2000 (VIC).

CP/L was charged with being the registered operator of a combination exceeding 42.5 tonnes being the limit specified by the *Road Safety (Vehicles) Regulations* 1999, reg 404(a). At the hearing, the informant produced evidence that CP/L was the registered proprietor of the prime mover but no evidence that CP/L was the registered proprietor of the semi-trailer. Evidence was also given of the weight or mass of the combination (i.e., prime mover plus semi-trailer) by production of three weighbridge tickets obtained from the records of another firm. It was submitted that such evidence breached the provisions of the Privacy legislation, that it had been illegally/unfairly obtained and should be held to be inadmissible. The court found the charges proved. Upon appeal—

HELD: No error of law on the record. Originating motion dismissed with costs.
1. The registration of the attached semi-trailer was not an element of the offence that needed to be proved. It was sufficient to prove that CP/L was the registered proprietor of the prime mover. The reference in the charge-sheet to the registered number of the prime mover in the context of the language of the charges, made it clear to CP/L that it was being charged in its capacity as the registered operator of the specified registered prime mover that formed part of the allegedly overweight combination. Accordingly, the court was not in error in convicting CP/L of the charges.

2. Assuming that the firm contravened the Commonwealth *Privacy Act* and/or the State *Privacy Act*, or at least on the assumption that the informant acted unfairly, having regard to the disclosure and use of the weighbridge tickets, it was open to the court in the exercise of its discretion to admit the evidence of the tickets into evidence. In performing the balancing exercise as required by *R v Ireland* [1970] HCA 21; (1970) 126 CLR 321; [1970] ALR 727; (1970) 44 ALJR 263 and *Bunning v Cross* [1978] HCA 22; (1978) 141 CLR 54; 19 ALR 641; 52 ALJR 561, the court was correct in taking into account that broader questions of high public policy existed in which the unfairness to CP/L was only one factor. The court was right to consider that CP/L was a body corporate which derived no protection from the privacy legislation, there was no unfairness to CP/L and there was the strong countervailing consideration of the public importance of road safety.

3. On the basis of evidence called by the informant it was open to the court to be satisfied beyond reasonable doubt that the vehicle had been used on each charged occasion in the same configuration in respect of which it was weighed shortly thereafter.

MANDIE J:

Introduction

1. In the County Court at Melbourne on 16 February 2006, the plaintiff company (as appellant) [1] was convicted of three offences against reg 417(1) of the *Road Safety (Vehicles) Regulations* 1999 ("the Regulations") and fined the sum of $1000 as an aggregate fine. The convictions related to a registered vehicle QZH 859[2]. Another 53 charges relating to a registered vehicle OIC 716[3] were dismissed.

2. By originating motion filed 13 April 2006 the plaintiff seeks judicial review of the convictions and primarily seeks an order in the nature of *certiorari* quashing the convictions for error of law on the face of the record.[4]

3. The charges in respect of which the plaintiff was convicted were that, on specified occasions in 2002[5], at Ballarto Road, Clyde, the plaintiff "was the registered operator of a combination exceeding 42.5 tonnes being the limit specified by Regulation 404(a)[6] of [the Regulations]".[7] A registration number (QZH 859) was set out in a box on the charge and summons (Form 7).

4. The Regulations relevantly provide that:

> (a) by reg 105, "combination" means a group of vehicles consisting of a motor vehicle[8] connected to one or more other vehicles[9];
>
> (b) by reg 106, unless the context otherwise requires, a reference to a vehicle includes a reference to a combination.
> (c) by reg 417(1):
> "if a vehicle that does not comply with a relevant mass limit ... is used on a highway, the registered operator of the vehicle, the driver of the vehicle and any person who caused or permitted the vehicle to be used on the highway are each guilty of an offence."

Alleged failure to prove an element of the charge

5. The first ground relied upon by the plaintiff was that the second defendant (hereinafter " the informant") had failed to prove that the plaintiff was the registered operator of the combination, having only produced evidence to the County Court that the plaintiff was the registered operator of the prime mover[10] (QZH 859) and not the semi-trailer[11] forming part of the combination. It was submitted on behalf of the plaintiff that the convictions of the plaintiff, in the absence of evidence that it was the registered operator of the semi-trailer, constituted an error of law on the face of the record because an element of each charge had not been proved.

6. It was submitted by counsel on behalf of the plaintiff ("Plaintiff's counsel") to the County Court Judge ("the Judge") that the manner in which the charge was framed required proof, as an essential element of each charge, that the plaintiff was the registered operator of the trailer or of the combination and not just of the prime mover. After hearing arguments by the parties as to this submission, the Judge gave a ruling and stated reasons for the same. The Judge ruled that if the plaintiff was the operator of the prime mover it must necessarily be the operator of the vehicle (as defined for the purposes of reg 417) or the whole of the vehicle of which the prime mover was part. The Judge said that evidence that the plaintiff was the operator of the prime mover necessarily meant that it was the operator of the vehicle consisting of the prime mover and attached trailer.

7. In my opinion, the Judge's reasons were substantially correct and I would additionally say the following.

8. It is apparent that the charges were not perfectly drawn because, as the parties agreed, a "combination" cannot have a registered operator as such. Section 3 of the *Road Safety Act* 1986 defines the "'registered operator' of a vehicle" to mean "the person recorded on the register as the person responsible for the vehicle". It was common ground that there would be separate registrations in respect of the prime mover and of the attached semi-trailer that were alleged to form the combination in this case. The informant had proved that the plaintiff was the registered operator of the prime mover, and hence responsible for that vehicle and for the combination being driven by the driver of such vehicle. The informant did not prove that the plaintiff was the registered operator of each part of the combination – indeed the plaintiff may or may not have been the registered operator of the attached semi-trailer and it was even theoretically possible that the attached semi-trailer was unregistered.

9. It seems to me that the plaintiff could have been charged, for example, in terms that, on a date and at a place, "it was the registered operator of a prime mover (QZH 859) forming part of a combination used on a highway, the mass of the combination exceeding 42.5 tonnes [*etc*]". However it cannot seriously be contended that the plaintiff would not have understood the charges as framed to mean exactly that. I cannot conceive that the plaintiff was unable to identify the nature of the offences with which it had been charged or was misled or prejudiced by the way in

which the charges were formulated. The reference on the charge sheets to the registered number of the prime mover, in the context of the language of the charges, made it clear that the plaintiff was being charged in its capacity as the registered operator of the specified registered prime mover that formed part of the allegedly overweight combination. That in my view is sufficient, if proved, to establish the offence. The registration of the attached semi-trailer was not an element of the offence, and hence of the charge, that needed to be proved.[12]

10. I conclude that there was no error of law on the face of the record involved in convicting the plaintiff in the absence of proof that it was the registered operator of the semi-trailer attached to the prime mover or the registered operator of "the combination". It was sufficient to prove that the plaintiff was the registered operator of the prime mover.

Alleged breaches of privacy legislation

11. The next ground relied upon by the plaintiff related to the impact of privacy legislation. The argument arises in the following way.

12. An essential element of the prosecution evidence was proof of the weight or mass of the combination in respect of each charge. This element was sought to be proved by production in evidence of three weighbridge tickets obtained from the records of Inghams Enterprises Pty. Limited ("Inghams") of 1680 Ballarto Road, Clyde.

13. It is necessary now to refer to some of the evidence that was given in the County Court.

14. Inghams operated a poultry feed mill at its Clyde premises. The plaintiff was a heavy haulage contractor employed by Inghams to move mill feed from a supplier (Weston Milling) to its Clyde facility on a "round the clock" basis. The vehicles would leave the highway (Ballarto Road) and travel via a private bitumen driveway on Inghams' property in the direction of a private weighbridge some 360[13] metres from Ballarto Road. Along this private road were carparks, a truck wash and turnaround areas. There was room for the coupling and uncoupling of trailers. A fully loaded truck would enter the weighbridge and the gross weight would be recorded on the weighbridge ticket (or docket). The truck would then enter the facility, tip and unload its load. The truck would then re-enter the weighbridge and its empty "tare" weight would be recorded. The difference between the gross weight and the tare weight was the contract tonnage for the purpose of calculating the payment to which the plaintiff would be entitled. The weights and other information were recorded by or in a computer and after the weighing operation was completed the weighbridge tickets would be printed out. The tickets would subsequently be collated for contractual purposes and then filed. They would also be used to cross-check the suppliers' invoices.

15. The three weighbridge tickets that were tendered in evidence by the prosecution each contained various items of information including the "VEHICLE No." (namely QZH 859), the time and date of the two weighings, the gross, tare and net weight of the vehicle and the contract number. The weighbridge tickets also identified the carrier ("Cockerill") and the driver of the vehicle described on two of the tickets as "Kevin 'I hate Bobby'" and on the other ticket as "Kevin & his new truck".

16. As earlier stated, the weighings took place in June and July 2002. In early September 2002 the informant telephoned David Edward Colquitt ("Colquitt"), Inghams' Feed Mill Manager. The informant told Colquitt that Vic Roads were interested in coming to talk to Inghams about overloading that they perceived was going on in the road transport industry, that they had approached Ridley Stockfeeds, a similar organisation, and that they had had some success in dealing with these matters and could he (the informant) come and talk to Colquitt about it.

17. By a letter dated 9 September 2002 from the Roads Corporation ("Vic Roads") to Inghams and signed by the Manager, Transport Safety Services, South East Metropolitan Region, it was stated:

> "I refer to recent discussions between you and [the informant] regarding heavy vehicle mass audits. The Corporation as the principal government agency charged with ensuring operator compliance with legislated vehicle mass limits is currently undertaking a series of audits of companies accepting bulk product into their facilities. The audit purpose is to ensure mass limit compliance as a road safety issue, to encourage operator involvement in mass accreditation programs and to enable chain

> of responsibility provisions to be adhered to where applicable. Accordingly it is requested that the company provide details of weighbridge documentation held with respect to vehicle movements into and out of the Clyde facility. [The informant] is the Corporation designated audit officer in this case and will contact the company again in the near future. Thank you for your co-operation."

18. On 11 September 2002 the informant met Colquitt at his (Colquitt's) office. According to the informant he handed the letter dated 9 September 2002 to Colquitt at this meeting. According to Colquitt, the informant told Colquitt that they had been successful in using weighbridge documents as a means of finding out if overloading was going on and asked whether Inghams would be cooperative like Ridleys had been.

19. Either prior to or after this meeting, Colquitt met with senior management of Inghams who were agreeable to the request from Vic Roads. At some stage Colquitt told the informant that the records would be made available (and they were subsequently provided).

20. At some stage, either in the initial telephone conversation or at the meeting on 11 September, according to Colquitt, the informant told Colquitt that the information obtained would be used "initially as a means of educating drivers, maybe encouraging them to go into mass management if overloading was occurring and that there may be some prosecutions result from the exercise"[14] or that "prosecutions may result from this whole investigation"[15].

21. Colquitt testified that, at the time of these contacts with the informant, no aspect of the privacy laws had crossed his mind and it had not come up with his senior management; nor was any statement made to him by the informant that Vic Roads were entitled to require production of the documents. The informant testified that Colquitt had said to him that if Inghams did not comply, Vic Roads could probably subpoena the material and that he made no response to that statement.

22. The foregoing evidence was initially given for the purposes of a *voir dire* before the Judge. It was then submitted to the Judge on behalf of the plaintiff that, having regard to the provisions of the *Privacy Act* 1988 (Cth) ("the Commonwealth *Privacy Act*") and the *Information Privacy Act* 2000 (Vic) ("the State *Privacy Act*") that the evidence constituted by the weighbridge tickets had been illegally and/or unfairly obtained and in the discretion of the Court should be held to be inadmissible evidence, alternatively to put them in evidence would be an abuse of process.

23. The following submissions were made to the Judge by Plaintiff's counsel. Plaintiff's counsel said that the purpose of the privacy legislation was to protect the confidentiality of citizens both federally and by mirror legislation in each State and Territory. Plaintiff's counsel said to the Judge:

> "These Acts are not without teeth. The Commonwealth Act, for instance, makes any breaches a criminal offence."

24. The above quoted statement by Plaintiff's counsel was incorrect, even if read in the context of the other statements made by him to the Judge, because it did not distinguish between breaches of the Commonwealth *Privacy Act* that might constitute criminal offences and breaches of the National Privacy Principles that do not constitute criminal offences. This was compounded in an exchange between Plaintiff's counsel and the Judge set out below in para [28].

25. Plaintiff's counsel told the Judge that the Commonwealth *Privacy Act* applied, *inter alia*, to bodies corporate. He took the Judge to the definition of "personal information" and submitted that personal information as defined included a record on a weighbridge docket identifying a driver. He said to the Judge that there was an obligation imposed upon Inghams not to divest itself of such personal information (subject to the terms of the Commonwealth Act) and an obligation on Vic Roads under the State *Privacy Act* in relation to collection of such information. He told the Judge that Vic Roads came under the ambit of s9 of the State *Privacy Act*.

26. In relation to the Commonwealth *Privacy Act*, Plaintiff's counsel submitted to the Judge that, by virtue of s16A(2) thereof, Inghams was required not to do any act that breached a National Privacy Principle. Plaintiff's counsel then referred to the National Privacy Principle that prohibited an organisation from using or disclosing personal information about an individual for a secondary purpose that was not related to the primary purpose of collection without the consent of the relevant individual.

27. Plaintiff's counsel pointed out to the Judge that both of the privacy Acts protected information relating to individuals and not information relating to corporations such as the plaintiff.

28. The following exchange then took place between Plaintiff's counsel and the Judge:

> "MR BILLINGS: Yes. Well, if the *[Commonwealth] Privacy Act* is applied - -
> HIS HONOUR: Yes.
> MR BILLINGS: - - And clearly it does, in my respectful submission, then the handing over of the documents to VicRoads by Mr Colquitt, albeit in ignorance of his obligations under the *Privacy Act*, nonetheless is a breach. That was unlawful and then the unlawfulness is doubled by the acts of ---
> HIS HONOUR: Well, you say it's unlawful. You say that a breach of the Commonwealth *Privacy Act* constitutes an offence?
> MR BILLINGS: Yes.
> HIS HONOUR: So you're saying, although unwittingly, the handing over of the documents constitutes an offence by - -
> MR BILLINGS: Absolutely.
> HIS HONOUR: By Inghams or by their –
> MR BILLINGS: Albeit though – I'm not suggesting he had the appropriate *mens rea* but nonetheless the offence is complete.
> HIS HONOUR: Yes.
> MR BILLINGS: And then VicRoads, in the guise of the informant, also commits a breach of the State Act in collecting the data unless they fit within the exception. So that doubles the illegality, if we're going to talk about quantum of illegality, but it certainly increases the illegality..."

29. For reasons which appear later below, these submissions were clearly incorrect.

30. In his submissions to the Judge, Plaintiff's counsel then referred to the Court's discretion in terms of *R v Ireland* and *Bunning v Cross*. He said that the offence was not serious but the penalties were and that "in all the circumstances ... the interests of the defendant are paramount ... with regards to the balancing exercise." He said "clearly it's unlawful ... but ... it's also unfair."

31. Plaintiff's counsel then referred to abuse of process and submitted that if there was illegality, or taint of fraud or dishonesty, then there was an abuse of process. Plaintiff's counsel submitted to the Judge that "[i]t is a collateral advantage obtained by the Crown having obtained the documents illegally with respect to the driver then to say, 'Well, look, we can't use it against the driver because we've breached the *Privacy Act*, it's illegally obtained evidence. But the corporation isn't covered under the *Privacy Act*.'"

32. The Judge then heard submissions from Counsel for the informant ("Informant's counsel"). Informant's counsel submitted that the weighbridge dockets did not contain personal information simply because they revealed that the truck was driven by a particular individual – this was stretching the definition beyond its intended purpose. Informant's counsel then made submissions in substance that in any event there were no breaches of Privacy Principles. Informant's counsel adopted a statement by the Judge indicating that any breach of the privacy legislation related to the driver as an individual and not to the corporate defendant that had been charged with the offences (i.e. the plaintiff). After this, the Judge indicated he would not trouble Informant's counsel further on the privacy question.

33. After hearing these submissions from the parties, the Judge ruled that the evidence constituted by the weighbridge tickets be admitted. The Judge said that he found the question of whether there had been a breach of the relevant privacy legislation a difficult question. His Honour then said that "even if I am satisfied that a breach of that legislation was committed by [the informant] at the time that he sought those weighbridge certificates, then I should exercise a discretion in favour of admission." After referring to certain authorities,[16] the Judge went on to say:

> "... it seems to me that there is no doubt that my task is to undertake a balancing act and to look at the nature of the illegality. In these cases I assume the illegality rather than concluding that it existed ...
>
> The factors that I take into account in exercising the discretion are, first, my view that if illegality occurred, it is very much a passing illegality not designed to cover or not arising out of the purpose

> for which the document was being sought here. Any illegality would relate only to the disclosure of an individual rather than the corporate defendant here. It is true that perhaps an individual can be identified by the same document but for the present purposes it is the identification of the corporate entity that has led to the document being before me.
>
> Secondly, I accept what [the informant] said, and that is that he did not give consideration to privacy issues at the time that he undertook the conversation with Mr Colquitt ...
>
> Thirdly, the illegality, if any, was, as I say, a passing one and unintentional on the part of [the informant] if it occurred. There are no public policy reasons, in my opinion, why a discretion should be exercised in favour of exclusion. It follows therefore that on an assumption that a breach of the privacy legislation took place, then perhaps an offence has been committed but it is one in the circumstances to which I have referred, and it seems to me that it is not the sort of situation where, as a matter of public policy, the Court ought to exercise its disapproval. I do not feel the need to express disapproval. I think the breach is a technical one and accordingly does not call for the exercise of the discretion."

34. In this Court, the plaintiff submitted that the Judge ought first to have determined whether the evidence had been illegally or unfairly obtained in order that he might properly exercise his discretion. The plaintiff maintained in this Court that the evidence had indeed been illegally or unfairly obtained. The plaintiff submitted that, in any event, by admitting the evidence, the discretion of the Judge had miscarried and there was therefore an error of law on the face of the record.

35. In my opinion it was not necessary for the Judge to expressly determine whether the weighbridge tickets had been illegally or unfairly obtained in order to exercise his discretion. The Judge was entitled to assume that the submissions on behalf of the plaintiff were correct and to then consider the exercise of his discretion on the basis of that assumption. That is what he did. I do not think that there was any error of law involved in so doing. It is true that in order to exercise his discretion the Judge had to understand the nature of the illegality or unfairness involved in the obtaining of the evidence. However that was explained to the Judge by Plaintiff's counsel and he was entitled to assume, for the purpose of exercising his discretion, that the explanation given to him was correct.

36. It is now appropriate to turn to the relevant provisions of the privacy legislation, both Commonwealth and State, before considering whether the Judge made any error of law in the way that he exercised his discretion not to reject the evidence constituted by the weighbridge tickets.

37. Section 6 of the Commonwealth Privacy Act defines "personal information" as follows:

> "**personal information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion."

38. In this Court, it was submitted on behalf of the plaintiff, as it had been to the Judge, that the weighbridge tickets contained information about an individual, namely the driver of the vehicle, whose identity was apparent from those documents. The relevant information "about" the individual contained in the weighbridge tickets was that the individual was the driver of the vehicle. It seems to me to be curious and somewhat far-reaching that such a reference (arguably incidental) to an individual in a commercial document or record should constitute personal information for the purposes of protection under privacy principles. However, like the Judge, I find it unnecessary to decide whether personal information is involved and, in what follows, I will assume that it is.

39. The plaintiff submitted in this Court that there had been a breach of National Privacy Principles within the meaning of s6A of the Commonwealth *Privacy Act* by Inghams' provision of the weighbridge documents to the informant without the consent of the driver (Kevin). The main National Privacy Principle relied upon by the plaintiff was cl.2.1 which relevantly provides:

> "An organisation must not use or disclose personal information about an individual for a purpose (the **secondary purpose**) other than the primary purpose of collection unless:

(a) [*the secondary purpose is related to the primary purpose of collection and the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose*]; or

(b) the individual has consented to the use or disclosure ..."

40. *Prima facie* there was a breach of cl.2.1 in that the requirements of sub-para (a) are clearly not met and the requirement of sub-para (b) was not satisfied. Sub-para (h) of cl.2.1 provides another exception where the organisation reasonably believes that the use or disclosure is reasonably necessary for various actions by or on behalf of an enforcement body, including the prevention, detection, investigation and prosecution of criminal offences or breaches of a law imposing a penalty. I do not think that the evidence in the County Court showed that the relevant "organisation" had such a belief.

41. In setting out the foregoing, I have not as yet referred to the definition of "organisation" which is important in this context. Section 6C(1) relevantly defines "organisation" to mean an individual or a body corporate that is not (among other things) a State authority. It was accepted by Mr Billings, who appeared with Mr Cole, of counsel for the plaintiff, that the "organisation" for the purposes of the Commonwealth *Privacy Act*, was Inghams[17] (and not Vic Roads or the informant). As I understood the submission, it was Inghams that was in breach of the National Privacy Principles and thus in breach of the Commonwealth *Privacy Act*. Accordingly for the purposes of these reasons, I will assume that Inghams was in breach of the Commonwealth *Privacy Act* in the way alleged by the plaintiff. As I understand it, the plaintiff took the same stance in the County Court and, despite some vacillation in written submissions to this Court, Mr Billings did not maintain that the informant had acted illegally insofar as the provisions of the Commonwealth *Privacy Act* were concerned.

42. Although I make the assumption that Inghams acted in breach of a National Privacy Principle by disclosing the weighbridge tickets to the informant without the consent of the driver and that such breach constitutes a contravention of the Act[18], I do not think that the plaintiff's submissions[19] to the Judge that such disclosure was "illegal" were correct if by that it was intended to convey, as I think it was, that a contravention of the Act constituted an offence. On the contrary, the Commonwealth *Privacy Act* does not make a breach of National Privacy Principles a criminal offence or an offence against the Commonwealth *Privacy Act*. There is no provision to this effect in the Commonwealth *Privacy Act*. The "remedies" for breach of National Privacy Principles are contained in Part V of the Commonwealth *Privacy Act*. An individual may complain to the Privacy Commissioner[20] who may investigate the same and *inter alia* require persons to attend a compulsory conference[21]. The Privacy Commissioner may make a determination that includes a declaration that an organisation has engaged in conduct constituting an interference with the privacy of an individual (as defined) and such determination may grant relief to a complainant, including compensation.[22] A determination can be enforced in the Federal Court or Federal Magistrates Court.[23] In addition, s98 of the Commonwealth *Privacy Act* empowers the Federal Court or the Federal Magistrates Court, on the application of the Privacy Commissioner or of any other person, to grant a variety of injunctions where a person is engaging or is proposing to engage in any conduct that would constitute a contravention of the Commonwealth *Privacy Act*. There are no relevant provisions other than those to which I have just referred making such a contravention of the Commonwealth *Privacy Act* actionable in any court, either in its civil or criminal jurisdiction.[24]

43. It is now necessary to turn to the provisions of the State *Privacy Act*.

44. Section 3 of the State Privacy Act contains a definition of "personal information" that is substantially the same as that contained in the Commonwealth *Privacy Act*. However the State *Privacy Act* expressly applies, by s9(1)(e) to "a body established or appointed for a public purpose by or under an Act" and hence applies to Vic Roads which is, accordingly, an "organisation" as defined is s3 of the Act. Section 16 of the Act provides that an organisation must not contravene an Information Privacy Principle in respect of personal information collected, held, managed, used, disclosed or transferred by it.

45. A Schedule to the Act sets out the Information Privacy Principles. Relevantly, an organisation must not use or disclose personal information about an individual for a secondary purpose unless

the secondary purpose is related to the primary purpose of collection and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or the individual has consented to such disclosure.[25] Another exception is where the organisation reasonably believes that the use or disclosure is reasonably necessary for various specified purposes of a law enforcement agency[26], but there was no evidence before the Judge to establish this exception.

46. Accordingly it was at least reasonably arguable that the State *Privacy Act* had been contravened by the informant and I am content to assume the existence of such contravention. However, it should be noted that s7 of the State *Privacy Act* provides that nothing in the Act gives rise to any civil cause of action or operates to create in any person any legal right enforceable in any court or tribunal, otherwise than in accordance with the procedures set out in the Act and a contravention of the Act does not create any criminal liability except to the extent expressly provided by the Act.

47. On the assumption that Inghams contravened the Commonwealth *Privacy Act* and/or on the assumption that the informant contravened the State *Privacy Act*, or at least on the assumption that the informant acted unfairly, having regard to the privacy legislation, in relation to the disclosure and use of the weighbridge tickets, I am of the view, for the reasons that follow, that it was open to the Judge in the exercise of his discretion not to reject but to admit the weighbridge tickets into evidence.

48. In *R v Ireland*, Barwick CJ said:[27]

> "Evidence of relevant facts or things ascertained or procured by means of unlawful or unfair acts is not, for that reason alone, inadmissible. This is so, in my opinion, whether the unlawfulness derives from the common law or from statute. But it may be that acts in breach of a statute would more readily warrant the rejection of the evidence as a matter of discretion: or the statute may on its proper construction itself impliedly forbid the use of facts or things obtained or procured in breach of its terms. On the other hand evidence of facts or things so ascertained or procured is not necessarily to be admitted, ignoring the unlawful or unfair quality of the acts by which the facts sought to be evidenced were ascertained or procured. Whenever such unlawfulness or unfairness appears, the judge has a discretion to reject the evidence. He must consider its exercise. In the exercise of it, the competing public requirements must be considered and weighed against each other. On the one hand there is the public need to bring to conviction those who commit criminal offences. On the other hand there is the public interest in the protection of the individual from unlawful and unfair treatment. Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price. Hence the judicial discretion."

49. In *Bunning v Cross*, Barwick CJ said:[28]

> "The question is whether the public interest in the enforcement of the law as to safety in the driving of vehicles on the roads and in obtaining evidence in aid of that enforcement is so outweighed by unfairness to the applicant in the manner in which the evidence came into existence or into the hands of the Crown that, notwithstanding its admissibility and cogency, it should be rejected."

50. Further Barwick CJ agreed with the principles stated by Stephen and Aickin JJ in their reasons for judgment in that case. Stephen and Aickin JJ referred to the general discretion which in every criminal trial the Court possesses to exclude particular evidence if its reception will operate unfairly against the accused,[29] but their Honours went on to say that the exercise of the discretion "did not turn simply upon the question of fairness to the accused, or upon unfair prejudice to the accused".[30] They went on to say that:[31]

> "[w]hat *Ireland* involves is no simple question of ensuring fairness to an accused but instead the weighing against each other of two competing requirements of public policy, thereby seeking to resolve the apparent conflict between the desirable goal of bringing to conviction the wrongdoer and the undesirable effect of curial approval, or even encouragement, being given to the unlawful conduct of those whose task it is to enforce the law. This being the aim of the discretionary process called for by *Ireland* it follows that it by no means takes as its central point the question of unfairness to the accused. It is, on the contrary, concerned with broader questions of high public policy, unfairness to the accused being only one factor, which, if present, will play its part in the whole process of consideration.

> Since it is with these matters of public policy that the discretionary process called for in *Ireland* is concerned it follows that it will have a more limited sphere of application than has that general discretion ... which applies in all criminal cases."

51. In my opinion the Judge properly exercised his discretion in performing the balancing task required by the principles stated in the above cases. The Judge emphasised that the assumed illegality related to the disclosure of personal information about an individual whereas the prosecution was not directed against the individual but rather against a body corporate. The Judge took into account that the assumed contraventions were "passing" and inadvertent. The Judge said (wrongly I think) that perhaps an offence had been committed, but considered that public policy did not require the Court to express disapproval of the "technical" breach involved.

52. Not only do I think that it was open to the Judge to so exercise his discretion, I consider, with respect, that he was correct in so doing. Although it was emphasised by Stephen and Aickin JJ in *Bunning v Cross* that the question of unfairness to the accused was not the central point of the discretionary process and that there were broader questions of high public policy in which unfairness to the accused was only one factor, in the present case I think that the Judge was right to take into account that the accused was a body corporate that derived no protection from the privacy legislation – thus there was no unfairness to the accused at all involved in the case. The position may perhaps have been otherwise had the driver been charged with an offence. In addition, although contraventions of the privacy legislation were assumed to have been committed, there was otherwise no offence of a criminal nature and the assumed contravening conduct was not actionable otherwise than pursuant to the provisions of the privacy legislation. A strong countervailing consideration to the importance of privacy principles was the high public importance of road safety.

53. Accordingly, I conclude that the Judge made no error of law nor was there any unfairness[32] amounting to an abuse of process involved in using the evidence constituted by the weighbridge tickets.

Failure to prove that the combination weighed was the combination used on the highway

54. The third ground relied upon by the plaintiff was that it was not open to the Judge to have found beyond a reasonable doubt, as he did, that in respect of each of the three charges the combination weighed on the weighbridge was the same combination that had been used on Ballarto Road prior to entering Inghams' property and being weighed.

55. To understand that submission it is necessary to make further reference to the evidence called in the County Court.

56. Geoffrey Alan Watson ("Watson") was called to give evidence on behalf of the informant. Watson was a weighbridge operator employed by Inghams in 2002 and was the operator in relation to two of the three weighbridge tickets involved in the charges for which the plaintiff was convicted (one of the tickets dated 20 June 2002 and the other ticket dated 22 July 2002). He was also the weighbridge operator in relation to a number of the weighbridge tickets relating to the vehicle registration No. OIC 716 in respect of which the charges were subsequently dismissed.

57. In examination in chief, Watson testified that OIC 716 was a Mack prime mover with a single semi-trailer on the back of it and that he thought it was registered as a B-double trailer "truck with B-double rating, but I don't recall whether it ever came in with two drivers on it". He then testified that QZH 859 was a prime mover towing a single semi-trailer and that "on this occasion it was towing a single trailer."

58. Under cross-examination, Watson confirmed that as far as he remembered it vehicle OIC 716 was registered as a B-double but that the weights in the weighbridge dockets relating to OIC 716 were for "the trailer" [*ie the single trailer*] that it was towing.

59. Under further cross-examination, Watson said that the weighbridge was approximately 400 metres from Ballarto Road and between Ballarto Road and the weighbridge there was a carpark, washing facilities for trucks and turnaround room in which the trucks could uncouple the trailers. Watson agreed that sometimes trucks would come in with dual trailers (referred to

as a "B-double") and uncouple, put a single trailer through, come out, re-couple and then put the other trailer through.

60. It was then put to Watson that he wouldn't swear upon his oath that either of those vehicles (QZH 859 and OIC 716) were prime movers with a single semi-trailer – the question was repeated at the Judge's request that he wouldn't swear that he was 100% certain that both those vehicles on any occasion was a Mack prime mover with a single semi-trailer. Watson replied that he would (so swear). Watson said that if OIC 716 came in as a B-double it would be a lot heavier than "44 tonne or something". Watson said that 44.5 [tonne] was the weight of a single trailer with prime mover but if it was a B-double weight it would be weighing anything up to 68 tonnes. Finally Watson agreed that his evidence was based on an assumption from the weights and because he was familiar with the vehicles and weights but then he answered "Yes, I suppose" in answer to a further question suggesting that "such an assumption ... is totally unsafe and without foundation" (although why was not explained). In re-examination Watson said that if OIC 716 had a second trailer attached it would affect the tare weight by about 20-21 tonnes.

61. Darryl Stanley Williams ('Williams") was also called to give evidence on behalf of the informant. Williams was a weighbridge operator employed by Inghams and was responsible for the other weighbridge ticket relating to QZH 859 on 20 June 2002 as well as a number of the weighbridge tickets relating to OIC 716.

62. Williams testified that he was familiar with the vehicle registered OIC 716 because that was the one that came into the weighbridge the most times out of all of them. He said that in 2002 it was a single truck with a trailer. He said that he also knew QZH 859 and that it was also a single truck (as opposed to a B-double). Under cross-examination Williams confirmed that to the best of his recollection both OIC 716 and QZH 859 were single trucks with a trailer and that "Bob" usually drove OIC 716 and "Kevin" usually drove QZH 859.

63. Under further cross-examination, it was put to Williams that the plaintiff like a lot of the other trucking companies might come in with different configurations involving the same prime mover and this was explained by Plaintiff's counsel as "they might have one trailer one time, two trailers another time, you know, pig/dogs, a different configuration" – to which Williams replied that OIC and QZH were "mostly single". The following exchange then took place:

> "Q: Are you in a position to say that, or rather are you in a position to dispute that on every occasion you weighed OIC 716 or QZH 859 with regards to these that they were that configuration?
> A: Yes. I'm pretty sure that it was a single truck.
> Q: Why are you sure?
> A: That was a single trailer – one trailer.
> Q: Are you basing it on the gross weight – that presumption, or are you basing it on a visual observation?
> A: Visual observation and the weight.
> Q: Putting aside your visual observation, what's really in your mind is the weight, isn't it?
> A: Well, when the truck comes on the bridge I can see through the window that it's got one trailer.
> Q: Yes?
> A: Then, when I go to punch the weight into the computer the screen says the weight.
> Q: Okay?
> A: Well, I know that that single trailer OIC 716 cannot physically have 68 tonne on the single trailer."

64. Further on in cross-examination the following exchange took place:

> "Q: Sometimes trucks will come in with a couple of trailers – weigh each one: take it through the weighbridge, come back out; put the other one on; take that through. Do you agree with that?
> A: Yes.
> Q: Now, of course that in this case wouldn't appear on any of the records because that wouldn't be relevant.
> A: Well, it's never happened with Cockerill trucks.
> Q: How do you know that?
> A: Well, my – with all my working in the weighbridge it's never happened with a Cockerill truck.
> Q: How would you know?
> A: Because I was there working and I know that they've never dropped a trailer off or anything in my duration on the bridge.
> Q: Well, what I'm saying to you is how would know because if a trailer was unhitched up the road

that's not something you would know?
A: No. Well, yes, I would agree with that comment. Can I explain my comment? I thought you meant in the driveway.
Q: No, no. Not right in front of you, no. Because that would tie up the weighbridge area. I mean, they might come into – from Ballarto Road onto the road leading to the weighbridge – [d]itch the second trailer and take the first one through. Because they've got to tip down the back of Inghams, don't they? ... It's a bit hard to do it with the trailer, so they've got to unhitch one trailer before they do that. Correct?
A: Yes, but what I'm saying is with the regos they've – they come in with the single truck-trailer. So I've never seen them unhitch a trailer in the driveway. Some trucks have done but they've had a – it could have been a truck and dog or another truck – two trailers and they've unhitched one because they've come in with two different contract numbers. I've weighed them in single and then he's gone out and hooked the next one and I've printed another docket off. That's what I mean.
Q: Alright. But what I'm suggesting to you is that you can't discount that on any of these occasions that a truck might have come in with – as a B-double or even towing two trailers on a prime mover and that each one before it went through the weighbridge dumped that load; came back through and then uncoupled, hitched the second trailer, come back through weighed, and then leave again – being weighed through the weighbridge on two occasions. You can't discount that, can you?
A: No, I can't."

65. However, in re-examination by Informant's counsel, the following exchange took place:

"Q: Now, you were asked about a truck coming in and unhitching and then dropping off the trailer and then re-hitching afterwards. Did you ever see that happen with either of these two Cockerill trucks?

A: No.

Q: Did you see it happen with other operators?

A: Yes.

Q: Where is it done?

A: Out in the driveway where they wait to come in."

66. Colquitt was cross-examined on the same topic and said that it was not an uncommon practice in June to August of 2002 for prime movers to come in with dual trailers and take one off, go through the weighbridge, dump the load and come back, unhitch that trailer and put the second trailer on and take that through, weigh it, unload it and come back through.

67. Derry Ashton (the informant) gave evidence and said that he was an authorised officer of the Roads Corporation. In relation to the registration of OIC 716, he testified that it was registered as MP3 which, he explained, meant that the vehicle was registered by the Roads Corporation to operate in a B-double configuration, that is with prime mover towing up to and including two trailers. It might operate with one trailer or it might operate with two but it was registered at the maximum level to operate with two. In relation to prime mover QZH 859, the informant testified that it was in category SP3 which meant that the vehicle was registered to tow a single trailer only.

68. Mark Andrew Cockerill ("Cockerill") was called on behalf of the plaintiff. Cockerill was a director of the plaintiff. He confirmed that OIC 716 was registered as a B-double. He said that a B-double was a combination of a prime mover and two trailers with a turntable in between the two trailers sitting on top of the front "tri" or whatever axle combination it is.

69. Cockerill testified that between June and August 2002 the procedure on arriving at Inghams (in the case of a prime mover with two trailers) was as follows:

"To pull into the driveway at Inghams off Ballarto Road we have an A trailer and a B trailer to get this combination. We dropped the B trailer at the top of the driveway as to not interfere with other grain trucks. We drive down as a single trailer to the weighbridge, unload your front trailer in a pit, come back out tare, go back out and drop your A trailer, pick up your B trailer, down onto the bridge again as a single trailer, through onto the pit, unload, back out again tare, go out, drop the B, hook up the A and then disembark."

70. Cockerill was then asked about QZH 859. He testified that between June to August 2002 that combination arrived at Inghams as a single trailer. He was then asked to ask to describe the procedure at Inghams in relation to QZH 859:

> "To proceed down to the weighbridge they usually gross their truck before they go in and then onto the dump, tip off, and come back out and tare."

71. The foregoing answer by Cockerill then continued in what, I would think, is fair to describe as an entirely speculative fashion:

> "Depending on the time, the necessity of the load, what product is in the pit at the time, Inghams like to keep the same product through to save swapping and changing and cleaning out lines and whatnot. Depending on the circumstances, he *may* have delivered a load of canola here, *say*, gone out, dropped his trailer, the other A trailer has come in on the back of the OIC, he has dropped his trailer in the runway to Inghams, hooked up to OIC's B trailer and come down onto the weighbridge and gone in straight behind the A trailer into the dump." (*Emphases added*)

72. He was then asked and answered:

> "Q: Would that come across as an unlawful weight on a private weighbridge?
>
> A: Quite possible."

73. In cross-examination, Cockerill confirmed that QZH 859 was always operated to the Inghams property as a prime mover with a single trailer.

74. Informant's counsel then commenced to cross-examine Cockerill about the procedure with OIC 716 and Cockerill confirmed that his description of the procedure relating to OIC 716 in examination in chief was what happened at the relevant time on each occasion that OIC 716 entered the Ingham's property. He confirmed that the usual driver of OIC 716, Bob Corcoran, was still employed by the plaintiff but was not giving evidence as part of the defence case. Cockerill later said that OIC 716 would go through the weighbridge twice in quick succession (as part of the procedure that he described). He said that on the dates in question OIC 716 was operating as a B-double on every occasion.

75. In his decision[33], the Judge said in relation to the question of the configuration of the QZH 859 combination:

> "[3] In a submission made this morning[34] Mr Billings said that I could not be satisfied that the configuration of the vehicles when they went over the weighbridge was as they were when travelling along Ballarto Road. I rejected that submission this morning and adverted to evidence of in particular Mr Williams which was to the effect the vehicles came in as singles as far as he could recall. There was other evidence on that topic but at that stage I was only considering a submission of no case to answer.
>
> [4] The only evidence called on behalf of the defendant has been on that topic. It follows that I am satisfied with the elements of the offence subject to being satisfied to the appropriate criminal standard that the configuration of the vehicles as weighed was the same as it was when they were travelling upon Ballarto Road. ...
>
> [5] ... The thrust of what Mr Cockerill said is that vehicle OIC 716 was used as a B-double and when weighed was not in the configuration it was in when it travelled along Ballarto Road. That was a matter that could have been advanced impressively in the course of cross-examination of the Inghams' operators, but was to only a mild extent. ...
>
> [6] When it emerged in Mr Cockerill's evidence it was surprising to me I must say ... It is inconsistent with the nature of events as I understood them to be in the course of the prosecution case.
>
> [7] I find it surprising that a B-double vehicle would be used for carriage of this character when the unloading process is as complicated as it seems to be from the description given by Mr Cockerill. It seems to me that in respect of vehicle OIC 716, before the prosecution case was successful it would be necessary for me to be satisfied beyond reasonable doubt that the change of configuration referred to by Mr Cockerill in his evidence did not occur.

> [*The Judge then said that if a change of configuration had occurred, the weights in relation to OIC 716 would not relate to that vehicle as it was travelling along Ballarto Road. The Judge noted that Cockerill's evidence was in conflict with part of Williams' evidence and inconsistent with the more general descriptions of an occasional practice by Colquitt and the weighbridge operators. The Judge further noted that the matter could have been more clearly canvassed in cross-examination of the weighbridge operators. The Judge then said that it was an improbable account having regard to the complicated process said to be involved. The Judge then referred to a number of factors which he took into account as favouring the non-rejection of Cockerill's evidence on this aspect and then said:]*
>
> [17] To reject [Cockerill's] evidence I would need to say that it has not created a doubt in my mind. I have, I might say, a great deal of suspicion about what Mr Cockerill has said. I regard it as improbable, but nevertheless I have come to the conclusion that I cannot say that it does not create a reasonable doubt in my mind ... in respect of vehicle OIC 716. The appeal must be allowed and the charges dismissed.
>
> [18] The same thing does not apply in respect of the other vehicle. Vehicle QZH 859 was on any view a single vehicle and was weighed as such. I do not accept the highly improbable evidence that seems to me concerning what might have happened in respect of that vehicle. It seems to me to be clear that it was weighed [*in the same configuration*[35]] as it travelled along Ballarto Road. Accordingly, the charges in respect of QZH 859 are made out but not those in respect of OIC 716."

76. Mr Billings submitted in this Court that it was not open to the Judge to be satisfied beyond a reasonable doubt that QZH 859 travelled on Ballarto Road in the same configuration as when it was weighed as shown by the three weighbridge tickets. Mr Billings further submitted that it was both illogical and inconsistent for the Judge to have formed a reasonable doubt having regard to Cockerill's evidence concerning vehicle OIC 716 but to have been satisfied beyond a reasonable doubt in relation to vehicle QZH 859. Mr Billings submitted that there was no reason to reject Cockerill's evidence as to vehicle QZH 859 and that the Judge's reference to it as "highly improbable" indicated that his Honour had not applied the criminal standard of proof.

77. I reject these submissions. The evidence of Cockerill concerning vehicle OIC 716, however suspicious and although not given by an eyewitness and although given without corroboration from the driver of that vehicle, nevertheless purported to be evidence of a regular practice that led the Judge to have a reasonable doubt as to whether vehicle OIC 716 was used on the highway in the same configuration as that in respect of which it was weighed. On the other hand, Cockerill's evidence in relation to QZH 859 was speculative only. He testified that the procedure he described was something that "may" have happened[36] (and he did not suggest that he was present at any relevant time). His evidence was contradicted by the weighbridge operators who were present at the relevant times. In my opinion it was clearly open to the Judge not to accept Cockerill's evidence and his conclusion as to vehicle QZH 859 was in no way inconsistent with his conclusions as to vehicle OIC 716. Having rejected Cockerill's evidence concerning QZH 859, it was open to the Judge on the basis of the evidence called by the informant, including in particular the evidence of Williams, to be satisfied beyond a reasonable doubt that vehicle QZH 859 had been used (on each charged occasion) on Ballarto Road in the same configuration in respect of which it was weighed shortly thereafter. I conclude that there was therefore was no error of law on the face of the record in this respect.

78. For the foregoing reasons the originating motion is dismissed with costs.

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[1] The proceeding in the County Court was an appeal from the Magistrates' Court and thus a rehearing of charges originally brought in the Magistrates' Court.
[2] This was a 1995 Mack prime mover registered in the name of the plaintiff.
[3] This was a 1997 Mack prime mover registered in the name of the plaintiff.
[4] It was common ground that the "record" for this purpose included, as well as the record of the convictions, the reasons for decision and rulings of the County Court Judge, the transcript of the evidence in the County Court and those exhibits tendered in the County Court that were also tendered in this proceeding – see s10 of the *Administrative Law Act* 1978, *Hansford v Judge Neesham* (1994) 7 VAR 172 and *Wilson v County Court of Victoria* [2006] VSC 322; (2006) 14 VR 461; (2006) 164 A Crim R 525; (2006) 46 MVR 117.
[5] Two occasions on 20 June 2002 and one occasion on 22 July 2002.
[6] It was common ground that the relevant total mass limit for the particular combination was 42.5 tonnes.
[7] The actual masses of the combination alleged were 44.02 tonnes, 44.38 tonnes and 46.18 tonnes on the three respective occasions.
[8] Section 3 of the *Road Safety Act* 1986 relevantly defines "motor vehicle" to mean a vehicle that is used or intended to be used on a highway and that is built to be propelled by a motor that forms part of the vehicle.

[9] Section 3 of the *Road Safety Act* 1986 defines "vehicle" to mean a conveyance that is designed to be propelled or drawn by any means.
[10] Section 3 of the *Road Safety Act* 1986 defines "prime mover" to mean "a motor vehicle which is constructed, designed or adapted for connecting to a semi-trailer".
[11] Section 3 of the *Road Safety Act* 1986 defines "semi-trailer" to mean "a vehicle without its own motive power which is capable of being drawn by a prime mover ...".
[12] The point is somewhat reminiscent of the case of *Blair v County Court of Victoria* [2005] VSC 213 at [25] and [26] in which a similar argument in relation to different legislation was rejected – upheld on appeal in *Ian Blair v The County Court of Victoria* [2005] VSCA 237 at [8]-[12].
[13] Various estimates of the distance of the weighbridge from Ballarto Road were given by various witnesses but one witness said that he had measured the distance as being 360 metres.
[14] County Court transcript pages 25-26 (part of exhibit G to the affidavit of Mark Andrew Cockerill sworn 13 February 2007).
[15] County Court transcript page 38 (part of exhibit G to the affidavit of Mark Andrew Cockerill sworn 13 February 2007)
[16] *R v Ireland* [1970] HCA 21; (1970) 126 CLR 321; [1970] ALR 727; (1970) 44 ALJR 263; *Bunning v Cross* [1978] HCA 22; (1978) 141 CLR 54; 19 ALR 641; 52 ALJR 561 and *DPP v Moore* [2003] VSCA 90; (2003) 6 VR 430; (2003) 39 MVR 323.
[17] See transcript of this proceeding at pages 10, 43 and 48.
[18] See s16A(2) of the Commonwealth *Privacy Act*.
[19] See paras [23] and [28] above.
[20] Section 36 of the Commonwealth *Privacy Act*.
[21] Section 46 of the Commonwealth *Privacy Act* – it is an offence to fail to attend such a conference without a reasonable excuse.
[22] Section 52 of the Commonwealth *Privacy Act*.
[23] Section 55A of the Commonwealth *Privacy Act*.
[24] See *Seven Network (Operations) Ltd v Media Entertainment and Arts Alliance* [2004] FCA 637; (2004) 148 FCR 145 158-160 per Gyles J; (2004) 134 IR 19; [2004] AIPC 91-998.
[25] Principle 2.1(a) and (b).
[26] Principle 2.1(g).
[27] [1970] HCA 21; (1970) 126 CLR 321, 334-335; [1970] ALR 727; (1970) 44 ALJR 263.
[28] [1978] HCA 22; (1978) 141 CLR 54, 64; 19 ALR 641; 52 ALJR 561.
[29] [1978] HCA 22; (1978) 141 CLR 54, 68-69; 19 ALR 641; 52 ALJR 561
[30] [1978] HCA 22; (1978) 141 CLR 54, 69; 19 ALR 641; 52 ALJR 561
[31] [1978] HCA 22; (1978) 141 CLR 54, 74-75; 19 ALR 641; 52 ALJR 561
[32] In that regard I note that Inghams was informed, when the informant spoke to Colquitt, that prosecutions might result from the investigation.
[33] See exhibit N to the affidavit of Mark Andrew Cockerill sworn 13 February 2007.
[34] This was a no case submission that was rejected by the Judge.
[35] I insert these words because that is what the Judge clearly intended to say.
[36] See para [71] above.

APPEARANCES: For the plaintiff C Cockerill & Sons (Vic) Pty Ltd: Mr P Billings with Mr D Cole, counsel. Pearce Webster Dugdales, solicitors. For the second defendant Ashton. Mr D Gurvich, counsel. Hunt & Hunt, solicitors.
