

28/08; [2008] VSC 184

SUPREME COURT OF VICTORIA

DPP v ZIERK

Warren CJ

20 February, 30 May 2008 — (2008) 184 A Crim R 582

CRIMINAL LAW – POLICE RIGHTS AND DUTIES – ALLEGED OFFENCE BY POLICE OFFICER – DISCLOSURE OF INFORMATION CONTAINED IN VICTORIA POLICE MANUAL TO ANOTHER PERSON – LEGAL DUTY OF POLICE OFFICER NOT TO DISCLOSE – SOURCE AND SCOPE OF POLICE OFFICER'S DUTY – WHETHER POLICE OFFICER IN BREACH OF DUTY – CHARGE DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: POLICE REGULATION ACT 1958, S127A.

Section 127A(1) of the *Police Regulation Act* ('Act') 1958 provides:

Any member of the police force who publishes or communicates, except to some person to whom he is authorised to publish or communicate it, any fact or document which comes to his knowledge or into his possession by virtue of his office and which it is his duty not to disclose shall be guilty of an offence against this Act and liable to a fine of not more than 20 penalty units.

Z, a police officer, sent an email to a friend who was facing a speeding charge attached to which were copies of five police manuals for the operation of all currently used speed detection devices. As a result, Z. was interviewed by members of the Police Ethical Standards Department and was subsequently charged with a breach of s127A(1) of the Act. On the later hearing of the charge, the magistrate upheld a 'no case' submission on the ground that the informant had failed to establish the element in s127A(1) that Z. had a duty not to disclose the material. Upon appeal—

HELD: Appeal dismissed.

1. On the authorities, the meaning of 'duty' is dependent upon the context in which it is used. It may refer to a legal duty: an obligation to act, imposed by law, and generally mandatory; or, it may refer to the functions of an office. Whether the officer-bearer performs the functions, and in what manner, is generally discretionary. The courts have been reticent to state exhaustively the legal duties imposed on police officers. With competing policy objectives and limited resources, legal duties are imposed cautiously. Many 'duties' of a police officer are more aptly described as functions of office and the discretion in performing these functions is wide. The 'duties' of a police officer are ancient and include: the duty to preserve the peace; the duty to protect life and property; the duty to prevent crime; the duty to detect crimes when they occur; the duty to apprehend offenders; the duty to prevent obstructions of highways; and the duty to uphold the law. However, these must be sensibly read as functions of the office of police member rather than legal, mandatory obligations. It would be a nonsense to say that a police member had a legal duty to prevent crime, a breach of which would result with every crime committed. The member has a responsibility to prevent crime, or function of preventing crime.

2. Applying a commonsense approach, one should consider how the functions of Z. and other police officers were impeded by Z.'s actions. On analysis, the disclosure did not impede crime prevention, detection, pursuit of offenders or the like. Whilst it may have assisted an alleged offender to avoid conviction, the information released was either already available, would have been available upon application, or, in any event, was possibly exculpatory and therefore may have been required to be provided by the prosecution. There was no dispute that Z. came into possession of the documents in the course of her employment, that authorisation had not been given to release the material, nor that an application had not been made to the Freedom of Information Office. The standing and application of the Victoria Police Manual seems essentially to be as an internal disciplinary document and, whilst it does not appear to have been specifically raised, it is highly arguable that there was a breach of the Victoria Police Manual and the policies therein.

3. A duty not to disclose the information did not arise in the present case. It is not necessary, nor appropriate, to define where the line is to be drawn in determining the existence of a duty, as it must depend on the nature of the information and the circumstances of its disclosure. However, here, where some of the released information was freely available and the rest was otherwise available by application, and where the proper exercise of police functions could not be said to have been

jeopardised, it has not been demonstrated that Z. was subject to a duty of non-disclosure of the information. Accordingly, the magistrate was not in error in finding that Z.'s unauthorised release to a member of the public of information available to her in her capacity as a member of the Victoria Police was not a breach of her duty as a police constable.

WARREN CJ:

1. In January 2006, the respondent, who is a member of the Victoria Police, was Acting Senior Sergeant in charge of the Wimmera Division Support Services. The functions of that section include 'Prosecutions and Traffic Advisor'. A friend of the respondent, who was a former police officer, wished to contest a charge of exceeding the speed limit and had conducted research into the operation of the speed detection device used in respect of the charge. On 12 January 2006, the respondent sent an email, via the Victoria Police email network, to the email address of the friend. Attached to the email were electronic copies of five separate police manuals for the operation of all currently used speed detection devices. The email included the words, 'Just remember, you didn't get them from me'. Due to the attachments, the email exceeded the size limit imposed on emails sent during business hours and was automatically set aside for transmission after 6.30pm. That same day, the respondent sent five separate emails to the email address of the friend, attaching separately one manual to each email. The final email included the words, 'PS make sure you don't tell anyone where you got these from'.

2. The size of the first email attracted the attention of a member of Victoria Police Online Services who examined its content and reported it to the Police Ethical Standards Department. Subsequently, the five further emails were identified.

3. On 2 February 2006, the respondent was interviewed by members of the Police Ethical Standards Department. The respondent produced a written statement which was read out during the recorded interview. In that statement, the respondent confirmed that she had emailed the manuals to the friend and stated that she did not believe that the information was restricted or classified because she believed that most of it was on the internet and the friend already possessed the information that was not on the internet. The respondent produced copies of material available on the internet.

4. The respondent said the statements in the emails were 'a saying we had at the Academy and I was simply repeating it', which was later corroborated by evidence of the friend in the hearing before the magistrate.

5. Statements obtained from other police officers confirmed that the respondent was not authorised to release the manuals and neither the respondent nor the friend had applied to the Victoria Police Freedom of Information Office for the release of the manuals.

6. The respondent was charged pursuant to s127A(1) of the *Police Regulation Act 1958* ('the Act'), which, at the time of the alleged offence, provided:

Any member of the police force who publishes or communicates, except to some person to whom he is authorised to publish or communicate it, any fact or document which comes to his knowledge or into his possession by virtue of his office and which it is his duty not to disclose shall be guilty of an offence against this Act and liable to a fine of not more than 20 penalty units.

7. At first instance, in response to a no case submission by the respondent, the magistrate found that the appellant had failed to establish the element in s127A(1) that the respondent had a duty not to disclose the material.

8. This is an appeal from that decision pursuant to s92(1) of the *Magistrates' Court Act 1989*.

The nature of the appeal

9. The questions of law posed by the appeal are:

1. Did the learned magistrate err in law in finding there was no case to answer?

2. Did the learned magistrate err in law by finding that the respondent's unauthorised release to a member of the public of information available to her in her capacity as a member of the Victoria Police was not a breach of her duty as a police constable?

10. The two grounds of appeal are the above questions phrased as statements.

11. Counsel for the appellant submitted that whilst duty is not defined in the Act, it is a concept borne of the common law and involves, at its highest, the maintenance of the Queen's peace and the protection of life and property.^[1] It was submitted that it is a concept that should not be interpreted narrowly and in order to uphold these broadly or highly stated duties, there are necessarily other subordinate duties imposed on members. Counsel provided the examples of 'the duty of attendance' and 'the duty to perform tasks as lawfully directed by superiors'. The appellant submitted that it was in the course of performing these duties that the respondent came into the possession of the documents in question. In effect, the submission was that a police officer had a duty not to disclose documents that were received in the course of performing duties because that receipt was an incident of the police officer's role. Hence, it was submitted that to say an officer had no duty of non-disclosure because the officer was not involved in an investigation or arrest at the time of the possession and release is not to the point.

12. The appellant put before the magistrate, and before this Court, two extracts of the Victoria Police Manual, in support of the charge against the respondent. The manual governs the activities of members and is issued by the Chief Commissioner pursuant to s17 of the Act, which provides:

17. Standing orders etc

The Chief Commissioner may from time to time issue, amend and revoke –

(a) orders, to be known as standing orders, for the general administration of the force;

(b) instructions for the effective and efficient conduct of the force's operations.

13. The first extract of the manual is headed VPM Instruction and is subheaded 'Releasing and advising on Victoria Police policies and publications'. It states the policy that 'Victoria Police publications must not be released before seeking advice from the Freedom of Information Unit'. The second is also headed VPM Instruction and is subheaded 'Release of Information – general principles'. It states the policy that '[e]mployees must not release any information, including documents, that come to their knowledge or possession by virtue of their employment, except where the release or communication of that information is authorised by: legislation and/or Victoria Police policy.' Although there is no reference to 'duty' in the extracts, the appellant argued that the duty of non-disclosure arises at common law and is informed by the instructions in the manual.

14. The respondent also provided an extract from the Victoria Police Manual, headed 'Application and Accountability'. It states:

The Victoria Police Manual is relevant to all Victoria Police employees. While the primary focus of the Victoria Police Manual is operational policing and sworn employees, some policies and procedures apply to all employees or specifically unsworn employees. Employees, line managers and supervisors are responsible for ensuring that all employees are familiar with the sections of the Victoria Police Manual that apply to them. As outlined in the Chief Commissioner's foreword, employees are encouraged to apply the policies, procedures and guidelines outlined in the Victoria Police Manual and use their common sense, initiative and judgment to effectively deal with the situations they encounter.

15. The respondent submitted that the duty in s127A(1) is a reference to the kind of duties that are imposed by the common law and statute and that it does not, and cannot, extend to the orders or instructions issued by the Chief Commissioner. Furthermore, neither extract refers to a duty imposed on the member (irrespective of whether the Chief Commissioner has power to create such a duty). On their face, the documents are instructions on implementing policy.

16. The respondent submitted that the instructions and guidelines did not carry the status of statute. To hold otherwise would mean that any and all internal police instructions and policies would become statutory requirements, a breach of which, no matter how small, would be a criminal offence punishable by 6 months' imprisonment or 25 penalty units.^[2]

17. In the decision below, applying *Pense v Hemy*,^[3] the magistrate held that duties must be derived from the common law or statute and, in these circumstances, there was no evidence or

authority for a duty of non-disclosure at common law and the manual did not 'reach the status of statute'.

Issues and application of the law

18. On the authorities, the meaning of 'duty' is dependent upon the context in which it is used. It may refer to a legal duty: an obligation to act, imposed by law, and generally mandatory; or, it may refer to the functions of an office. Whether the officer-bearer performs the functions, and in what manner, is generally discretionary. The courts have been reticent to state exhaustively the legal duties imposed on police officers. With competing policy objectives and limited resources, legal duties are imposed cautiously. Many 'duties' of a police officer are more aptly described as functions of office and the discretion in performing these functions is wide.^[4] The 'duties' of a police officer are ancient^[5] and include: the duty to preserve the peace;^[6] the duty to protect life and property;^[7] the duty to prevent crime;^[8] the duty to detect crimes when they occur;^[9] the duty to apprehend offenders;^[10] the duty to prevent obstructions of highways;^[11] and the duty to uphold the law.^[12]

19. However, these must be sensibly read as functions of the office of police member rather than legal, mandatory obligations. It would be a nonsense to say that a police member had a legal duty to prevent crime, a breach of which would result with every crime committed. The member has a responsibility to prevent crime, or function of preventing crime.

20. The duty to obey a lawful order is one example of a legal duty. It is mandatory and discretion does not apply. In *Police Services Board v Morris*,^[13] two police officers had disobeyed a lawful order of their superior officer by refusing to answer questions in relation to an alleged disciplinary offence on the ground of privilege against self-incrimination. It was not disputed that the order was lawful and that the officers were required to obey it. The issue was whether the privilege was capable of applying and, if so, whether it was nonetheless excluded by operation of the relevant statute. The High Court held that by construction of the statute, the legislature intended that there should be no qualification on the requirement to obey a lawful order. Brennan J observed that:

The Victoria Police, like other Police Forces in Australia, is a force governed by legislation which Crockett J in the Full Court [hearing the matter below] appropriately described in these terms:

'The legislation is designed to regulate and control the activities of what is a disciplined force in such way as to achieve an effective and efficient organisation in which the members are to perform their duties in conformity with a code so as to afford protection to the community and allow the disciplining of members who breach that code.'

The effectiveness of the police in protecting the community rests heavily upon the community's confidence in the integrity of the members of the police force, upon their assiduous performance of duty and upon the judicious exercise of their powers. Internal disciplinary authority over members of the police force is a means – the primary and usual means – of ensuring that individual police officers do not jeopardize public confidence by their conduct, nor neglect the performance of their police duty, nor abuse their powers. The purpose of police discipline is the maintenance of public confidence in the police force, of the self-esteem of police officers and of efficiency. It cannot be thought that the Police Regulations intend a police officer to be able to cloak with his silence activities that are prejudicial to the achievement of these purposes. To permit, under a claim of privilege, a subordinate officer to refuse to give an account of his activities whilst on duty when an account is required by his superior officer would subvert the discipline of the police force.^[14]

21. Wilson and Dawson JJ further observed that:

It is essential to bear in mind that the Act and regulations here are dealing with a disciplined force, the members of which voluntarily undertake the curtailment of freedoms which they would otherwise enjoy.^[15]

22. A function or duty of office, on the other hand, involves an element of discretion. Determining the presence, nature and scope of a function of office is a contextual inquiry. *Pense v Hemy*^[16] articulated the distinction between a duty of office and a duty arising from a rule or regulation made pursuant to statute. In that case, a member of the police force was charged with neglect of duty in his office arising out of a failure to comply with a regulation that required the member to obtain medical assistance for a prisoner in need of such attention. Whilst it was held that the

member did fail to comply with the regulation, it was held that the regulation did not create a duty in the member's office. The regulation was made by the Commissioner of Police, pursuant to a provision in similar terms to that of s17.^[17] Burt J,^[18] in the lead judgment, observed that:

The Police Force is a disciplined force and rules are required to establish and to maintain that discipline. That is the evident, and indeed it is the declared, purpose of the power conferred by s9 it being a power to make rules, orders and regulations for a number of specified matters, none of which relate to the duties of the office and "all such other rules, orders and regulations relative to the said Police Force, and the control, management and discipline thereof as may be necessary for rendering the same efficient for the discharge of the several duties thereof..."^[19]

23. It was contended in that case that as statute gave the Commissioner the power to make regulations, the regulations were therefore 'statute law' and could as such create a duty of office. As observed by Burt J, this reasoning 'proceeds from the misconception of the power conferred upon the Commissioner. The product of the exercise of the power ... is not and cannot be statute law'^[20] for the purposes of grounding a duty.

24. In this case, if the duty is created by statute, no evidence was put before the magistrate that it arises from a statute other than the *Police Regulation Act*. The only reference in that Act to a duty of non-disclosure by a current member is s127A.^[21] The section comprises four elements: first, that the member communicated the information; second, the member did not have authority to do so; third, the information came into the member's possession by virtue of office; and, fourth, it was the member's duty not to disclose the information. That the second and fourth elements are provided separately, and conjunctively, implies that there is a situation where a member may not be authorised but does not have a duty not to disclose the information. The Act provides no guidance as to the scope of the duty or how or when it arises.

25. Section 17 of the Act provides that the Commissioner may make orders and instructions,^[22] pursuant to which the Victoria Police Manual exists. If it is possible for the Commissioner to create a duty of office, the extracts of the manual concerning release of information outlined above do not so provide. They do not purport to create a duty of non-disclosure. Furthermore, the extract of the manual pertaining to Application and Accountability 'encourages' employees to apply the policies in the Manual, using 'their common sense, initiative and judgment'.^[23] Whilst it may not have been common sense to release the information, at a minimum, these terms imply that there is a discretionary element to the application of the manual.

26. I consider the situation here to be in line with the observation in *Enever v R*,^[24] that the section should be taken as having 'intended merely to deal with the ... disciplinary control of constables leaving the nature of their powers and duties and the responsibility for their actions to be governed by the common law as modified by the Statutes (if any) dealing with that subject'.^[25]

27. Similarly, in *Reedman v Hoare*,^[26] Windeyer J observed that 'the Police Acts themselves do little more than provide for the organization, discipline and government of the force. They presuppose ... a body of law, independently existing concerning the powers, privileges, duties and responsibilities of a constable'.^[27]

28. Section 17 provides that the Commissioner makes orders for the general administration of the force and instructions for the effective and efficient conduct of the force's operations. It is not a section that purports to confer, or should be read as conferring, the authority of the legislature to create duties of office.

29. In this case, if there is a duty of non-disclosure it does not arise from the Act or the manual.

30. Counsel for the appellant submitted that the duty arises in the course of performing the other duties attendant upon members that arise at common law. Properly construed, I consider this argument must refer to duties in the nature of functions of office as opposed to legal duties.

31. In *Herscu v R*,^[28] in the context of determining whether acts of a Minister were done 'in the discharge of the duties of his office', Brennan J, agreeing with the majority, held:

In ordinary speech, "the discharge of the duties" of the holder of a public office connotes far more

than performance of duties which the holder of the office is legally bound to perform: rather the term connotes the performance of the functions of that office. The functions of an office consist in the things done or omitted which are done or omitted in an official capacity. The phrase "being charged with the performance of any duty" thus means no more than being responsible for performing the functions of the public office. That phrase distinguishes the holder of a merely honorific public office from the holder of a public office responsible for the performance of official functions. A broad interpretation of s87 is better adapted to effect its purpose than a narrow interpretation. When the office is such that the holder wields influence or is in a position to wield influence in matters of a particular kind, the wielding of influence in a matter of that kind is a discharge of the duties of the office. Such a wielding of influence is something done in an official capacity.^[29]

32. The majority^[30] held:

Whilst it is possible to point to particular statutory functions which may be regarded as imposing a duty upon the Minister, these by no means exhaust the whole of his executive or administrative responsibilities. Conferred upon him by his office were many other functions of a general as well as a particular kind. It is hardly likely that s87 was aimed against the corrupt performance by public officials of the responsibilities of their office only where a specific statutory duty could be identified and not otherwise. There is, moreover, nothing in the section which requires it to be construed in that way. In the context of s87 the phrase "duties of his office" may be read, as it ought to be, in the sense of "functions of his office".

33. Confidentiality and disclosure of information by police officers is an issue confronted by all jurisdictions and usually involves a conflict of duties and rights. For example, in cases involving the disclosure of personal information of convicted sex offenders, the duty to protect the public conflicts with the right of the offender to live undisturbed having served the sentence imposed.^[31] In cases involving domestic violence and the removal of children from their home, the duty to protect the child conflicts the right of the parent to know the child's whereabouts.^[32] In police operations involving informants, the duty to prevent crime and apprehend offenders conflicts with the duty to protect the informant from harm.^[33] Each of these situations deals with whether in the circumstances disclosure of the information is required or appropriate. Most deal with sensitive information that will bring harm of some kind to another if disclosed, or not, as the case may be.

34. Whether a duty not to disclose information exists must be determined by reference to the context. As stated above, a breach of s127A(1) requires both that the member not be authorised and be under a duty not to disclose the information. Therefore, there must be situations where the member is not authorised and is under a duty of non-disclosure; as well as where the member is not authorised but is not under such a duty. The existence of a duty of non-disclosure may be clear, on the facts of a given case, where the disclosure of the information bears sufficient connection to another duty of office.

35. For example, if a member comes into possession, by virtue of being a member, of information that a search warrant is soon to be executed at the premises of an acquaintance on a suspicion of stolen property and the member disclosed this information to the acquaintance, such a disclosure would be in conflict with the duty of the member to prevent crime and apprehend offenders and a duty of non-disclosure would arise.^[34]

36. However, if a member comes into possession of a document pertaining to the handling of weapons and is not authorised to disclose it, the effect of the disclosure may be relevant to whether the duty arises. If the disclosure would impede the detection, investigation or prosecution of criminal acts, or place members at risk, a duty of non-disclosure would arise. Conversely, if the disclosure would ensure adherence to safety requirements to prevent injury to members in the performance of their police functions, a duty of non-disclosure would not arise.

37. As a matter of logic and common sense, there must be situations almost daily where a member is not expressly authorised to release information but is not under a duty of non-disclosure. A member staffing the local police station must give out information regularly that he or she is unlikely to have received authority to disclose. Standard operational information, such as contact details for victims' assistance schemes or even the opening times of the station, could not be said to be within the member's duty of non-disclosure.

38. I acknowledge the appellant's argument that it may not be correct to say that where there

is no investigation or arrest there is no duty. However, as shown by the simple examples above, the inquiry must be contextual.

39. Applying a commonsense approach, one should consider how the functions of the respondent and other police officers were impeded by the respondent's actions. On analysis, the disclosure did not impede crime prevention, detection, pursuit of offenders or the like. Whilst it may have assisted an alleged offender to avoid conviction, the information released was either already available, would have been available upon application, or, in any event, was possibly exculpatory and therefore may have been required to be provided by the prosecution.

40. There was no dispute that the respondent came into possession of the documents in the course of her employment, that authorisation had not been given to release the material, nor that an application had not been made to the Freedom of Information Office. The standing and application of the Victoria Police Manual seems essentially to be as an internal disciplinary document and, whilst it does not appear to have been specifically raised, it is highly arguable that there was a breach of the Victoria Police Manual and the policies therein.

41. That said, a duty not to disclose the information did not arise in the present circumstances. It is not necessary, nor appropriate, to define where the line is to be drawn in determining the existence of a duty, as it must depend on the nature of the information and the circumstances of its disclosure. However, here, where some of the released information was freely available and the rest was otherwise available by application, and where the proper exercise of police functions could not be said to have been jeopardised, it has not been demonstrated that the respondent was subject to a duty of non-disclosure of the information.

Ground two – Breach of duty

42. As there was no duty not to disclose the information, ground two concerning breach of the alleged duty necessarily fails.

The Charter of Human Rights argument

43. The respondent also raised an argument based on the *Charter of Human Rights and Responsibilities Act 2006*. Whilst it was acknowledged that these events took place prior to the introduction of the Charter, the respondent cited two decisions of this court which commented that the *International Covenant on Civil and Political Rights* ('the ICCPR') may have significance by informing the interpretation of statutes, among other things.^[35] The respondent submitted that the ICCPR articulates what is generally referred to as 'the right to freedom of expression'.^[36] Any restriction to this right, it was argued, must be imposed by law and as the Victoria Police Manual, its policies and instructions, do not have the force of law, they cannot limit the respondent's right to freedom of expression.

44. As I have found that there was no duty not to disclose the information, this issue does not fall to be determined. However, I observe that careful consideration must be given to the application of such instruments. Irrespective of whether there was a duty not to disclose, the respondent was not authorised to release the information. The Victoria Police, as with all organisations, must keep some material confidential. That confidentiality will not always, and perhaps rarely, be overridden by the unauthorised person's 'right to freedom of expression'.

Conclusion

45. The appellant failed to establish that the respondent had a duty of non-disclosure at law. As such, the magistrate was correct in finding that there was no case to answer. I therefore dismiss the appeal.

[1] Citing *Enever v R* [1906] HCA 3; (1906) 3 CLR 969; 12 ALR 592; *Attorney-General (NSW) v Perpetual Trustee Co* [1952] HCA 2; (1952) 85 CLR 237; [1952] ALR 125.

[2] *Summary Offences Act 1966* s52.

[3] [1973] WAR 40.

[4] See generally *Enever v R* [1906] HCA 3; (1906) 3 CLR 969; 12 ALR 592; *State of Victoria v Horvath* [2002] VSCA 177; (2002) 6 VR 326.

[5] See generally *Halsbury's Laws of England*, (4th ed, 2007), [477] and following; *Halsbury's Laws of Australia*, vol 20 'Police', 585,175 and following; Also see *Duncan v Jones* [1936] 1 KB 215; *Glasbrook Brothers v Glamorgan County Council* [1924] UKHL 3; (1925) AC 270; *Haynes v Harwood* [1935] 1 KB 146;

- [1934] All ER 103; *R v Waterfield* (1964) 1 QB 164; [1963] 3 All ER 659; (1963) 3 WLR 946; *Attorney-General v Chow Sau-sing* (1966) HKLR 220; *R v Westlie* (1971) 2 CCC (2d) 315; *Donaldson v Police* [1968] NZLR 32; *R v Metropolitan Police Commissioner; Ex parte Blackburn* (1968) 1 All ER 763.
- [6] *Duncan v Jones* [1936] 1 KB 215.
- [7] *Glasbrook Brothers v Glamorgan County Council* [1924] UKHL 3; (1925) AC 270; *Haynes v Harwood* [1935] 1 KB 146; [1934] All ER 103.
- [8] *Haynes v Harwood* (1935) 1 KB 146; [1934] All ER 103; *R v Waterfield* (1964) 1 QB 164; [1963] 3 All ER 659; (1963) 3 WLR 946; *Attorney-General v Chow Sau-sing* (1966) HKLR 220; *R v Westlie* (1971) 2 CCC (2d) 315.
- [9] *Rice v Connolly* (1966) 2 QB 414; [1966] 2 All ER 649; *R v Westlie* (1971) 2 CCC (2d) 315; *Attorney-General v Chow Sau-sing* (1966) HKLR 220.
- [10] *Haynes v Harwood* (1935) 1 KB 146; *R v Waterfield* (1964) 1 QB 164; [1963] 3 All ER 659; (1963) 3 WLR 946; *Rice v Connolly* (1966) 2 QB 414; [1966] 2 All ER 649; *R v Westlie* (1971) 2 CCC (2d) 315; *Haynes v Harwood* (1935) 1 KB 146; *Attorney-General v Chow Sau-sing* (1966) HKLR 220.
- [11] *Haynes v Harwood* (1935) 1 KB 146; *Stunt v Bolton* (1972) RTR 435; *Gelberg v Miller* (1961) 1 All ER 291; [1961] 1 WLR 459; *Donaldson v Police* (1968) NZLR 32.
- [12] *R v Metropolitan Police Commissioner; Ex parte Blackburn* [1968] 2 QB 118; [1968] 1 All ER 763; [1968] 2 WLR 893.
- [13] [1985] HCA 9; (1985) 156 CLR 397; (1985) 58 ALR 1; 59 ALJR 259.
- [14] *Ibid* 411.
- [15] *Ibid* 409.
- [16] *Pense v Hemy* [1973] WAR 40.
- [17] See above, [12].
- [18] As his Honour then was.
- [19] *Pense v Hemy* [1973] WAR 40, 42.
- [20] *Pense v Hemy* [1973] WAR 40, 43.
- [21] The Act refers in other Parts to non-disclosure of information in the context of complaints and investigations of members and the Office of Police Integrity, neither of which are relevant here.
- [22] See above, [12].
- [23] See VPM Extract 'Application and Accountability' set out above, [14].
- [24] [1906] HCA 3; (1906) 3 CLR 969.
- [25] *Enever v R* [1906] HCA 3; (1906) 3 CLR 969; 12 ALR 592.
- [26] 102 CLR 177, 186.
- [27] *Reedman v Hoare* [1959] HCA 50; (1959) 102 CLR 177, 186; [1960] ALR 54.
- [28] [1991] HCA 40; (1991) 173 CLR 276; 103 ALR 1; 56 A Crim R 270; 65 ALJR 677.
- [29] *Ibid*, 287.
- [30] *Ibid*, 287 (Mason CJ, Dawson, Toohey and Gaudron JJ).
- [31] See eg *R v Chief Constable of the North Wales Police and ors; Ex parte Thorpe and anor* [1998] EWCA Civ 486; [1999] QB 396; [1998] 3 All ER 310; [1998] Fam Law 529; [1998] 3 WLR 57.
- [32] See eg *S v S (Chief Constable of West Yorkshire Police intervening)* [1999] 1 All ER 281; [1998] 1 WLR 1716.
- [33] See eg *Swinney v Chief Constable of Northumbria Police Force* [1996] EWCA Civ 1322; [1997] QB 464; [1996] 3 All ER 449; [1996] PNL 473; [1996] 3 WLR 968; *Chambers v Woolley* [1996] TASSC 30; (1996) 6 Tas R 41; *R v Leipert* [1997] 1 SCR 281.
- [34] See eg *DPP v Marks* [2005] VSCA 277.
- [35] *Tomasevic v Travaglini & Anor* [2007] VSC 337; (2007) 17 VR 100; *Ragg v Magistrates' Court of Victoria and Corcoris* [2008] VSC 1; (2008) 18 VR 300; (2008) 179 A Crim R 568.
- [36] ICCPR, Article 19.

APPEARANCES: For the appellant DPP (on behalf of Neil Joseph Smyth): Mr JD McArdle QC, counsel. Ms A Cannon, Solicitor for Public Prosecutions. For the respondent Zierk: Mr AR McKenna, counsel. Tony Hargreaves & Partners, solicitors.