54/08; [2008] VSC 526

SUPREME COURT OF VICTORIA

R v NATIONWIDE NEWS PTY LTD

Mandie J

21-23 April, 4 December 2008 — (2008) 22 VR 116; (2008) 222 FLR 295

SUPPRESSION ORDER MADE BY MAGISTRATE PROHIBITING PUBLICATION IDENTIFYING WITNESS – ORDER POSTED ON COURT DOOR – ORDER REFERRED TO "WITNESS A" – WHETHER ORDER BAD ON ITS FACE BECAUSE WITNESS NOT NAMED IN ORDER – WHETHER S126 EMPOWERED THE MAGISTRATE TO PROSCRIBE CONDUCT OCCURRING OUTSIDE VICTORIA: *MAGISTRATES' COURT ACT* 1989, S126.

STATUTORY INTERPRETATION – RULE OF CONSTRUCTION THAT WHEN A SPECIAL REMEDY IS GIVEN BY STATUTE IT IS TAKEN TO BE EXCLUSIVE – WHETHER LEGISLATURE INTENDED TO PROSCRIBE ACTS DONE OUTSIDE THE TERRITORY OF THE LEGISLATURE – WHETHER FEDERAL ACT OPERATES WHEN SUPPRESSION ORDER MADE: *JUDICIARY ACT* 1903 (CTH) S79.

1. Where a suppression order made by a Magistrate prohibited publication of the true identity of "witness A", the order was not unclear, uncertain or ambiguous. Whilst it was true that "witness A" could not be identified by reference to the order itself, the reference to "witness A" was a reference to a particular person identified in the committal proceedings and known to the court and the parties. The identity of "witness A" was readily capable of ascertainment by any person having notice of the order and wishing to publish material concerning the proceedings. Further it would defeat or frustrate the purpose of any order protecting a person's safety if the person's identity were disclosed in the order posted on the court door.

2. The Victorian Parliament has the power to authorise a Court to make orders proscribing conduct by persons in other States of Australia and that the connections with Victoria comprehended by s126 of the *Magistrates' Court Act* ('Act') were more than sufficient to entitle Parliament to expressly so enact. The question was whether, in the absence of express language, Parliament should be taken to have authorised the Magistrates' Court to make orders proscribing conduct of persons outside Victoria or in another State of Australia.

3. There is a common law presumption that, in respect of a statute creating an offence, the legislature did not intend to proscribe acts done outside the territory of the legislature. This rule may be overridden by statute but, in the construction of an offence-creating statute, the presumption is that the legislature did not intend to proscribe acts done outside the territory of the legislature.

4. Given the absence of express provision to the contrary, the local and territorial rule applies to the interpretation of s126 of the Act. That section creates an offence, namely contravention of any order made and posted thereunder. It should be presumed that Parliament intended the conduct constituting such contravention to have occurred in Victoria. It follows that the power to make an order proscribing conduct, including publication of material, must likewise relate to conduct occurring in Victoria. That conclusion is reinforced by the provision analogous to that referred to by the High Court in *Grannall* [1955] HCA 5; (1955) 93 CLR 36; [1955] ALR, and by a parity of reasoning, namely, s48(b) of the *Interpretation of Legislation Act* 1984 which provides:

> **"In an Act or subordinate instrument, unless the contrary intention appears— ...**
> **(b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Victoria."**

5. It is settled law that s79 of the *Judiciary Act* does not give a new and more extensive meaning to State laws which it renders binding on a Court exercising federal jurisdiction – it applies those laws with their meaning unchanged. Section 79 does not therefore transform a State law empowering a Court to make an order proscribing conduct within the State and creating an offence in relation to a contravention within the State into a law empowering the same Court exercising federal jurisdiction to make an order proscribing conduct throughout Australia and creating an offence dealing with contravening conduct occurring anywhere in Australia.

6. Accordingly, the DPP failed to make out any case of contempt because, if the Orders made by

the Magistrate were properly treated as prohibiting publication only in Victoria, their purpose could not be said to be frustrated by publication elsewhere. Further, on the evidence adduced by the DPP, and also having regard to the publicity and available information about witness A throughout the world, it could not be said that the publication of the said newspaper articles in New South Wales and Queensland had any tendency to interfere with or obstruct the due administration of justice. Application dismissed.

MANDIE J:

Introduction

1. The Queen (on the application of the Commonwealth Director of Public Prosecutions) ("the DPP") seeks orders that the defendant newspaper publishers be adjudged guilty of contempt of court and sentenced according to law. In the first instance, this proceeding is concerned as to whether the allegations of contempt are made out.

2. The first defendant ("Nationwide") publishes the *Daily Telegraph* in the State of New South Wales and the second defendant ("Queensland Newspapers") publishes the *Courier Mail* in the State of Queensland.

3. It is alleged that, on 15 August 2006, Deputy Chief Magistrate Paul Smith ("the Magistrate"), the presiding magistrate in the committal hearing of Benbrika and others in the Magistrates' Court of Victoria at Melbourne ("the Magistrates' Court"), made orders ("the Orders") purportedly pursuant to s126(2) of the *Magistrates' Court Act* 1989 (Vic) ("the *Magistrates' Court Act*") that:

> "1. There be no publication of the true identity of witness A.
>
> 2. There be no publication of any information which may reveal the true identity of the said witness A."

4. The DPP seeks an order[1] ("Ground 1") that Nationwide be adjudged guilty of contempt of court and sentenced according to law by reason of its publication on 18 August 2006 in New South Wales of a newspaper article in the *Daily Telegraph* that contained information that was, to its knowledge, the subject of a non-publication order by the Magistrates' Court on 15 August 2006 in circumstances where it was apparent that its conduct would frustrate the evident purpose of the non-publication order. An order in like terms ("Ground 3") is sought in relation to Queensland Newspapers, save that the publication in its case was made in Queensland in the *Courier Mail*.

5. The particulars of the alleged contempt provided by the DPP in relation to Nationwide include the following:

- On 15 August 2006, the Magistrate gave reasons for making the Orders, explaining that they were necessary to prevent prejudice to the administration of justice because if witness A's identity was published he might refuse to give evidence in the committal and as a result the prosecution would be deprived of important evidence in support of its case.

- Legal representatives of Nationwide were present in Court on 15 August 2006 when the Orders were made and the reasons given.

- On 17 August 2006, the Magistrate signed various documents recording the Orders which were posted on the door of the court, and those documents were provided to legal representatives of Nationwide.

- Further or alternatively, on or before 17 August 2006, Nationwide otherwise knew that the Orders had been made.

- On 18 August 2006, Nationwide published an article that revealed the name of witness A, and information (being a photograph and that witness A had been jailed for 20 years in the USA after pleading guilty to assisting the Taliban and carrying an explosive in the commission of the felony, and information that witness A trained at the al-Farooq training camp in Afghanistan in mid-2001) that might reveal the true identity of witness A.

- The publication of the article constituted an actual, or, alternatively, a threatened interference with the administration of justice in that it created a real risk that witness A would refuse to give evidence for the prosecution; caused the Magistrate to order that the evidence of witness A be heard in a closed court in circumstances in which that would not otherwise have been necessary; further or alternatively, will adversely affect the continuing administration of justice in Victoria, particularly in cases (including terrorism cases) in which the evidence of overseas witnesses is required, because

Victorian courts will be unable to make the orders necessary to encourage non-compellable witnesses to co-operate.

6. Similar particulars were provided in relation to Queensland Newspapers save that it is not alleged that legal representatives of Queensland Newspapers were present in Court when the Orders were made and the reasons given. In addition, the particulars provided in relation to Queensland Newspapers allege that the publication in the *Courier Mail* revealed that Queensland Newspapers was aware of the Orders and that it was aware that the reason that the Orders had been made was because witness A might otherwise refuse to testify if his role was made public, so that suppression of his name was needed so as to not deter him from becoming a witness.

7. The DPP, in the alternative, seeks an order ("Ground 2") that Nationwide be adjudged guilty of contempt of court by reason of its breach of the Orders (rather than by reason of any actual or threatened interference with the administration of justice). Additional particulars are provided to support this alternative basis for relief, namely, that the Orders were binding on Nationwide by reason of the extra-territorial operation of s126 of the *Magistrates' Court Act* and, further or alternatively, the Orders were binding on Nationwide by reason of the presence of its agents in Court when the Orders were made. A like alternative order ("Ground 4") is sought against Queensland Newspapers, and the supporting particulars are the same save that it is not alleged that Queensland Newspapers was present in Court.

8. The DPP placed no reliance upon the circulation (if any) of the newspaper articles within Victoria.

9. Sections 125 and 126 of the *Magistrates' Court Act* provide:

> "125. (1) All proceedings in the Court are to be conducted in open court, except where otherwise provided by this or any other Act ...
> 126. (1) The Court may make an order under this section if in its opinion it is necessary to do so in order not to—
> (a) endanger the national or international security of Australia; or
>
> (b) prejudice the administration of justice; or
>
> (c) endanger the physical safety of any person; or ...
>
> (2) The Court may in the circumstances mentioned in subsection (1)—
> (a) order that the whole or any part of a proceeding be heard in closed court; or ...
>
> (c) make an order prohibiting the publication of a report of the whole or any part of a proceeding or of any information derived from a proceeding; or ...
>
> (3) If an order has been made under this section, the Court must cause of a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
>
> (4) A person must not contravene an order made and posted under this section.
>
> Penalty applying to this subsection: 1000 penalty units or imprisonment for 3 months."

10. I note that the above provisions ("the modern provisions") are in substance the same as those contained in ss18 and 19 of the *Supreme Court Act* 1986 (Vic) and in ss80 and 80AA of the *County Court Act* 1958 (Vic). The statutory device, in this context, of requiring the posting of a copy of the order on the door of the court or in another conspicuous place and the creation of an offence and the provision of penalties for contravening an order so made and posted is much older. A brief legislative history is set out in the Schedule to this judgment.

Background facts

11. There was a committal proceeding against thirteen persons, referred to as "Benbrika and Others" or "the Operation Pendennis committal." The accused persons had been charged under Commonwealth legislation with terrorist related offences, and the committal had commenced in the Magistrates' Court and was continuing on 10 August 2006. On that date the Magistrate made an interim order prohibiting the publication of the name, address or location of, or of any details that might identify, two witnesses who were referred to as witness A and witness B.

12. On 14 August 2006, the prosecutor told the Magistrate that he wished to make an application pursuant to s126 of the *Magistrates' Court Act* for orders in relation to non-publication in relation to the identity of two witnesses who would be called to give evidence in the course of the committal proceedings. The prosecutor said that he sought an order that, for the purposes of the committal proceeding, the witnesses identified as witness A and B be referred to only by that description and that there be no publication of their true identity or of any information that might reveal their true identity.

13. Appearances were announced for a number of media organisations – Mr Quill appeared on behalf of Nationwide and a number of other entities (but not Queensland Newspapers).

14. The prosecutor relied upon s126 of the *Magistrates' Court Act*, in particular upon s126(1)(b) and (c) and s126(2)(c). He said that publication of the identity of the witnesses would prejudice the administration of justice and would endanger the physical safety of the witnesses.

15. In the course of submissions, Mr Quill said that the Magistrates' Court had no power to prohibit publication of the material outside of the State of Victoria. In response, the prosecutor said that the Magistrate was exercising federal jurisdiction and that an order under s126 of the *Magistrates' Court Act* would have "federal operation" and he also referred to two other sources of power, namely, s85B of the *Crimes Act* 1914 (Cth) and s93(2) of the *Commonwealth Criminal Code* Act 1995 (Cth). He submitted that publication in New South Wales in breach of the order would be a contempt of court.

16. After hearing submissions, the Magistrate said, *inter alia*:

> "I view ... the evidence in the affidavit in relation to the possible endangerment of each as being speculative in nature. I don't think that there is any direct evidence of either witness being endangered as a result or more endangered, I should say, as a result of the publication of their names. But in relation to the prejudice to the administration of justice if Mr *[witness A]* chooses not to attend because his name is going to be published I would regard that as being a very significant prejudice... and I'll give proper reasons tomorrow morning."

17. After making the foregoing statement, the Magistrate heard further submissions from Mr Quill and then adjourned to the following day.

18. At the commencement of the next day's hearing (Tuesday 15 August 2006), the Magistrate gave reasons for judgment on the application and these reasons (as subsequently revised) were as follows:[2]

> "Application has been made by the Crown to suppress the names and identifying details of two witnesses namely [witness A] and [witness B. The application is made on two grounds namely that it is necessary in order not to prejudice the administration of justice or endanger the physical safety of any person. Dealing with the second ground first, I am not satisfied that either [witness B] or [witness A] would be endangered by the publication of their names to any greater extent than they are already endangered.
>
> Both men possess a notoriety and it is common knowledge that both have chosen to co-operate with authorities. Therefore their co-operation with the authorities in this case is, in my view, unlikely to add to the danger, if any, that was created by their previous co-operation.
>
> Turning to the issue of prejudice to the administration of justice. Some principles emerge from the cases particularly the *John Fairfax* case. The suppression sought must be necessary to secure the proper administration of justice, that is there is a necessity about what is sought.
>
> Secondly, the suppression must not be any more than is necessary to do this. Dealing with [witness B] firstly, I note that he is amenable to subpoena, he is within the boundaries of Australia, in other words, he can be required to give evidence whether he wishes to or not. The blanked out sentence in Paragraph 10 and in Paragraph 12 also blanked out of Mr Scobell's affidavit are relevant to the issue of prejudice to the administration of justice.
>
> However, in my view, the asserted prejudice to the administration of justice that may be bought about by publication of [witness B's] name is too vague, uncertain and speculative as to necessitate a suppression order being made with respect to his name. In relation to [witness A], I note that he is

> not a resident of Australia, he cannot be subpoenaed. The receipt of his evidence therefore applies his co-operation. [Witness A] has made it clear through his lawyers that he does not want his name published in connection with these proceedings because he has fears about his safety.
>
> Paragraph 13 of Mr Scobell's affidavit indicates that both witnesses would be reluctant to co-operate or give evidence should their identities not be suppressed. This is more significant in [witness A's] case than in [witness B's] case because without [witness A's] co-operation, as I have said, his evidence cannot be received. Should [witness A's] evidence not be given the Crown's case would be significantly affected with respect to Mr Kent.
>
> [Witness A's] lawyers expressed strongly on [witness A's] behalf [witness A's] desire not to have his name published indicating that if it was were published it would put [witness A] "at severe and continuing risk throughout the rest of his life".
>
> I am quoting this portion of the letter not because I necessarily accept the assertions but rather because it illustrates [witness A's] belief. The letter from [witness A's] lawyers does not say that if [witness A's] name is not suppressed he would decline to give evidence nor does it say that he would give evidence in these circumstances. The letter is silent on the point.
>
> One [thing] is clear. [Witness A] is greatly concerned about his future safety should his name be published. I am satisfied that it is necessary to ensure that [witness A's] evidence is available to the Crown in this case to suppress publication of his name and any details that may be used to identify him. Should this not be done there is a real risk he may decline to give evidence in this matter. A suppression order is therefore necessary and I shall make it with respect to his name and identifying details."

19. Section 18 of the *Magistrates' Court Act* provides that the principal registrar must cause a register to be kept of all the orders of the Court and that an order made by the Court must be authenticated by the person who constituted the Court. Regulation 301 of the *Magistrates' Court General Regulations* 2000 relevantly provides that, for the purposes of s18(2) of the *Magistrates' Court Act*, an order may be authenticated, if the order is entered into a computerised data storage and retrieval system, by entering confirmation of the order into the system.

20. In August 2006, Frank Joseph Virgona was a Registrar to the Magistrate. He has sworn two affidavits in this proceeding, one on 30 March 2007 ("his first affidavit") and one on 21 April 2008 ("his second affidavit").

21. In his first affidavit, Mr Virgona stated that the order was made on 17 August 2006 rather than 15 August 2006. Further, in his first affidavit, Mr Virgona appears to have believed that the copy order that he posted on the door of the Court was printed out from the Magistrates' Court computer system after the Magistrate had first entered the order into that computer system.

22. Mr Virgona also exhibited to his first affidavit a certified extract of an order (headed In the Matter of B. Condon v Shane Kent and dated 17 August 2006). The relevant part of that extract reads as follows:

> "-Prohibit publication of a report of whole or any part of proceeding or any information derived from proceeding:
>
> 1.THERE BE NO PUBLICATION OF THE TRUE IDENTITY OF WITNESS A
>
> 2.THAT THERE BE NO PUBLICATION OF ANY INFORMATION WHICH MAY REVEAL THE TRUE IDENTITY OF WITNESS A"

23. However, according to his second affidavit, a form of order was presented to the Magistrate during submissions upon the hearing of the application for the non-publication orders and this order was signed by the Magistrate on 15 August 2006, being the day upon which he gave his ruling on the application. Mr Virgona deposed that he posted a copy of this signed order on the door of the Court as soon as it was made. However, the DPP was unable to produce the original order signed by the Magistrate or the copy document that had been posted on the door of the Court nor was the foundation laid for the production of secondary evidence of either of those documents. The copy order identified by Mr Virgona was for those reasons held to be inadmissible.

24. I am satisfied, on a reconciliation of Mr Virgona's affidavits, and having heard his cross-examination, that the probable sequence of events was that:

> • on 15 August 2006, the Magistrate signed an order, in a form not subsequently authenticated, that had been earlier handed up to him by the prosecution, but there is no admissible evidence as to the form or content of this document – a copy of this order may well have been posted on the door of the court on that date;
>
> • probably on 17 August 2006, the Magistrate entered his order into the Court's computer system and it was this form of the order that subsequently was reproduced in certified extracts.

25. I am thus satisfied that the Magistrate duly authenticated his order by entering it into the Court's computer system in the form that is contained in the certified extract set out in para [22] above. The form and content of the authenticated order is sufficient evidence of the order made by the Magistrate. It is immaterial, for present purposes, whether the order was "made" on 15 August 2006 when the Magistrate made his ruling, or on 17 August 2006 when he entered the precise form of the order into the Court's computer system.[3]

26. If it be relevant, and notwithstanding what Mr Virgona said in his first affidavit and on cross-examination, I am not satisfied that there was ever posted on the door of the Court an actual print-out of the form of order that was entered in the computer system.

27. On Friday 18 August 2006, a newspaper article was published in the *Daily Telegraph* naming witness A and stating that he would be a key witness in the Victorian case of 13 accused terrorists. Various details were given in the item, including the name of one of the accused who, according to the article, was alleged to have trained with witness A in Afghanistan.

28. On the same day, a newspaper article was published in the *Courier Mail* along similar lines but containing more detail and, additionally, stating that a "court order will keep his name secret in Victoria after claims he might refuse to testify if his role was made public." The article further stated, naming witness A, that the Magistrate banned the media from revealing his identity in Victoria after hearing he feared for his safety and that the Magistrate had said that he was not satisfied that the witness would be in more danger but had ruled that "suppression of his name was needed so as to not deter him from becoming a witness."

29. After lunch on 18 August 2006, the Magistrates' Court was informed of the publication of these newspaper articles and the prosecution applied to have witness A's evidence taken in camera. On 21 August 2006, that application was heard. In the course of the application, an affidavit of John-Paul Cashen, a solicitor employed by Corrs Chambers Westgarth, was tendered. Mr Cashen deposed that he was present on 15 August when the Magistrate gave his ruling and that he then sought to obtain a copy of the Order but was unsuccessful. Mr Cashen deposed that after 5pm on 17 August 2006 a fax was sent to Corrs from the Melbourne Magistrates' Court of a certified extract of order but that it was of the interim order made on 10 August 2006 and not the order that he was seeking.

30. Mr Cashen deposed that the next day he telephoned the Court and again asked for a copy of the order, which he received, both from the Media Liaison Officer and from the Court's Information Officer during the day. The order was dated 17 August 2006 and signed by the Magistrate and was endorsed with a notice that a person must not contravene an order made and posted under the section and that there was a penalty of 1000 penalty units or imprisonment for 3 months. The operative part of the document was in the same terms as the certified extract referred to in para [22] above.

31. Mr Cashen further deposed that he was informed by Mr Quill that, shortly prior to the Court adjourning on 18 August, Mr Quill was handed by a member of the prosecution team a copy order in a different format.

32. In the course of discussion concerning the apparently differing format of the order signed on 15 August 2006 and the order signed and entered on 17 August 2006, the Magistrate said that his reasons in making the Orders related only to s126 of the *Magistrates' Court Act*. There was also some discussion about whether the Orders had any operation beyond the Victorian border. After

hearing submissions, the Magistrate ordered that the evidence of witness A be taken in closed court. Subsequently, the question of alleged contempt by the defendants was raised before the Magistrate and he referred this question to the Attorneys-General for the Commonwealth and the State of Victoria.

33. One additional matter needs to be mentioned. The defendants placed evidence before this Court showing that witness A had entered into a plea agreement in the United States of America that compelled him to co-operate with U.S. authorities. That plea agreement and the sentencing memorandum of the United States District Court in respect of witness A were publicly available documents. Prior to the making of the Orders, witness A was identified in publications throughout the world as a person who was co-operating with the authorities.

Submissions

34. The following is a brief summary of the submissions made on behalf of the parties.

35. The defendants made seven principal submissions.

36. First, the defendants submitted that the Supreme Court had no power to punish the defendants for contempt constituted by breach of the Orders because s126 of the *Magistrates' Court Act* contained a special remedy, in s126(4), for any contravention of an order made thereunder. As Parliament had made express provision for any contravention of an order made under the section and express provision as to the penalty for any such contravention, neither the Magistrates' Court nor the Supreme Court could go beyond that provision and deal with the defendants for contempt of court constituted by breach of the Orders. Alternatively, if the Supreme Court had power to punish the defendants for contempt constituted by breach of the Orders, it was an essential element to be proved that a copy of the Order had been posted pursuant to the mandatory requirement of s126(3) and the DPP had failed to prove that what had been posted was a copy of the order entered in the register.

37. The DPP submitted that s126 of the *Magistrates' Court Act* (and the like provisions in the *Supreme* and *County Court Acts*) should not be interpreted as impliedly excluding the Supreme Court's contempt jurisdiction. The DPP further submitted that s85 of the *Constitution Act* 1975 (Vic) excluded such an implication by granting the Supreme Court unlimited jurisdiction (s85(1)) and by providing in s85(7) that "a provision of an Act which creates or purports to create a summary offence is not to be taken on that account to repeal, alter or vary this section."

38. Secondly, the defendants submitted that the order was bad on its face because it failed to identify witness A. The order was unclear or uncertain in that it did not set out in clear terms what was said to be prohibited and what was prohibited could not be ascertained by any person who was bound by the order without making further enquiries or obtaining a transcript of the proceeding. The test was objective and did not depend on the actual knowledge of the person charged. A person merely reading the order would not know what conduct would constitute a contempt thereof. Further, the defendants submitted that, if it was intended by the Magistrates' Court to prohibit publication outside Victoria, the order on its face should have so provided. A person reading the order would not understand that it extended to material, wherever published. The defendants also relied on the fact that the order appeared to be restricted to the matter of Shane Kent and not to have been made in relation to each of the thirteen accused persons.

39. The DPP submitted that the order was clear and, in addition, that suppression orders were often expressed in terms that required knowledge or understanding of another piece of information such as, in this case, the name of witness A. The DPP further submitted that nothing could be more calculated to undermine the purpose of such an order if it was incumbent upon a court to place in the order the actual name of a witness, such as a police informer or other person in a sensitive situation.

40. Thirdly, the defendants submitted that the order was not binding upon them with respect to publications outside Victoria. While accepting that the State had power to make laws having extra-territorial effect where there was a sufficient connection with the subject matter, there was a presumption that a State statute was intended to operate only within the territorial limits of the State in the absence of a clear legislative intent, express or implied, to the contrary. The defendants submitted that there was no such legislative intent, express or implied, contained in

s126 of the *Magistrates' Court Act*. Further, the defendants referred to s48(b) of the *Interpretation of Legislation Act* 1984 (Vic), which provides that "in an Act ..., unless the contrary intention appears ... a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Victoria." Accordingly, s126(2)(c) should be construed as empowering the Court to make an order prohibiting a relevant publication in Victoria. Further, s79 of the *Judiciary Act* 1903 (Cth) ("*Judiciary Act*") did no more than "pick up" State laws but did not enlarge their area of operation.

41. The DPP submitted that the territorial presumption cases no longer accurately represented the law having regard to the Australia Acts and the development of trans-border communications. As regards s48(b) of the *Interpretation of Legislation Act*, the DPP submitted that it was subject to a contrary intention; that it was unclear whether the "matter or thing" could refer to a court order; and that section referred to "of" as well as "in" Victoria. Finally, on this aspect, the DPP submitted that, when s126 of the *Magistrates' Court Act* was "picked up" by s79 of the *Judiciary Act*, the Magistrates' Court had the power to make an order under s126 extending throughout the geographical area covered by its federal jurisdiction – jurisdiction was exercised "in Australia" not in a particular State or Territory and the order operated nationally.

42. Fourthly, as far as the presence of Nationwide in court was concerned, that fact did not make it a contempt of court to publish outside Victoria if the order did not so extend.

43. Fifthly, the defendants submitted that, in order to make out a case of contempt based on conduct that knowingly frustrated an order of the court, the order and its intended effect must be clear and unambiguous. Where there was room for genuine doubt as to the purpose and effect of the order, it would be difficult to establish the requisite intent to frustrate the purpose of the court. The order was silent as to its purpose and intended sphere of operation and, indeed, the Magistrate during submissions appeared to have assumed that his "jurisdiction stops at the Murray."[4] Further, the defendants submitted that, if the purpose of the order was to suppress publication of the identity of witness A, that purpose could not be said to have been frustrated when witness A was already identified in publications throughout the world as a person who was co-operating with the authorities.

44. Sixthly, the defendants submitted that it was not open to the Magistrate to be satisfied that the Orders were necessary in order not to prejudice the administration of justice. As a result, the Magistrates' Court had no power to make the order and it was a nullity.

45. Seventhly, the defendants submitted that, in respect of Grounds 2 and 4, in order to establish contempt of court, the DPP had to prove that the breach of the Orders by the defendants led to or had as a consequence a threatened or actual interference with the due administration of justice and this had not been established.

46. As I have indicated, the DPP submitted that the defendants had committed a contempt of court because they had acted in breach of the Orders and those Orders were binding on them:

(a) because s126 of the *Magistrates' Court Act* operated extra-territorially of its own force;

(b) alternatively, because the Orders operated extra-territorially because the Magistrates' Court was exercising federal jurisdiction when the Orders were made and, as a consequence of ss68(1) and 79 of the *Judiciary Act,* the Court was exercising a national jurisdiction and such orders would operate throughout Australia (unless indicated to the contrary in the orders);

(c) alternatively, in the case of Nationwide, because the orders were made when agents of Nationwide were present in Court.

47. Alternatively, the DPP submitted that, even if the defendants were not bound by the Orders, they were in contempt of court because they published the information in circumstances in which they were aware that such conduct would frustrate the evident purpose of the Orders.

Does s126 of the *Magistrates' Court Act* exclude the Supreme Court's contempt jurisdiction?

48. This submission is based upon the rule of construction that when a special remedy is given by a statute for the failure to comply with its provisions, that remedy is taken to be exclusive.

49. In *Attorney-General v Kernahan*,[5] the Attorney-General of South Australia proceeded against the defendants for contempt of court constituted by breach of non-publication orders made under s69(1)(d) and (e) of the *Evidence Act* 1929 (SA). Section 71(1) of the *Evidence Act* provided that any person who disobeyed any order under s69(1)(c) or s70 thereof was guilty of contempt of court and was punishable accordingly – however, s71(2) of the *Evidence Act* provided that any person who disobeyed an order made under s69(1)(d) or (e) thereof was liable to a penalty of not more than $200 or to be imprisoned for any period not exceeding 6 months.

50. King CJ said:[6]

> "...The relevant rule of construction may be taken from the judgment of *Brett MR* in *Bailey v Bailey* ((1884) 13 QBD 855, 859): "It is an old and well known rule of construing a statute that when a special remedy is given for the failure to comply with the directions of a statute, that remedy must be followed, and no other can be supposed to exist." Rules of construction, however, are no more than guides in the ascertainment of the meaning of the statute. In *Graziers' Association of NSW v Durkin* ([1930] HCA 22; 44 CLR 29; 36 ALR 306) the High Court applied the rule to s48 of the *Conciliation and Arbitration Act* of the Commonwealth, which gave power to the High Court to make orders by way of mandamus or injunction to compel compliance with an industrial award and provided that "no person to whom such order applies shall, after written notice of the order be guilty of any contravention of the Act or the award by act or omission ... Penalty one hundred pounds or three months imprisonment". The High Court held that that provision created new rights and duties and gave a specific remedy or penalty for the violation of such rights or such duties and that the remedy of attachment for contempt which would have been available for disobedience of the order made in the Court's ordinary jurisdiction did not apply.
>
> Where a statute confers power on a court to make an order and provides a specific remedy or penalty for disobedience of an order made under the provision, it is a matter of construction as to whether parliament intended to deprive the court of its inherent power to punish such disobedience as a contempt of court. The rule of construction referred to above is a guide, but the question can only be answered by a careful consideration of the statutory provision itself and its apparent purpose and intention. It is not to be assumed too readily, in the absence of express words, that the inherent power is abrogated. The power of the court to punish disobedience of its orders as contempt is a valuable weapon in ensuring that the rule of law and justice prevails in the society. It is not to be thought that parliament will lightly deprive the court of that power. It may be found, perhaps generally will be found, that parliament intends only to add a further and perhaps in some situations a more satisfactory means of adjudicating upon and punishing non-compliance with the order."

51. The Full Court held that these provisions of the *Evidence Act* constituted a code. King CJ said:[7]

> "Section 69 conveys every indication, to my mind, of being a statutory provision designed to deal comprehensively and exhaustively with the powers of courts to prevent publicity which would tend to defeat the ends of justice and, as I have said, I think that its provisions are in substitution for any pre-existing inherent powers. That, however, is quite a different issue from the issue whether s71 excludes the Court's inherent power to punish disobedience of an order made under s69 as contempt of court. ... *[He set out s71]* There is, of course, no express exclusion of the Court's inherent power to punish breaches of orders under paragraphs (d) and (e) as contempts of court. Nevertheless ... I think that the implication in s71 is compelling ... *[He pointed to the nature of and juxtaposition of sub-sections 1 and 2 of s71]* The complementary nature of these two provisions and their juxtaposition led inexorably, in my opinion, to the conclusion that parliament intended that disobedience of orders pursuant to the second category of powers should not be punishable as contempt of court."

52. Mitchell J agreed with King CJ, as did Williams J who said that, in his opinion, the contrast between the two methods of punishment was so striking that the legislature must have intended the second method of punishment to be the only method of punishment for breach of an order under s69(1)(d) or (e).[8]

53. The question is always one of construction of the particular statutory provision. *Attorney-General v Kernahan* was a strong case for the exclusion of the court's contempt jurisdiction because of the contrast to be drawn between s71(1) and s71(2) of the South Australian *Evidence Act*.

54. In the present case, the modern provisions appearing in the *Supreme Court*, *County Court* and *Magistrates' Court Act*s, and their predecessors, make no reference to the Supreme Court's contempt jurisdiction. Nevertheless, those sections, and their predecessors, have the appearance of a code or of a self-contained set of provisions dealing not only with the circumstances in which

an order may be made and the kinds of orders that may be made but also with the remedy for contravention of any such order. Over many years, in a series of statutory provisions, Parliament created a specific remedy in respect of contravention of an order made and posted on the door of the court or other place by creating an offence and providing maximum penalties for such offence.

55. The reason for statutory provisions of the kind contained in s126 of the *Magistrates' Court Act* (and its related and predecessor provisions) was explained by McHugh JA (as he then was) in *Attorney-General of New South Wales v Mayas Pty Ltd*[9] when he said:

> "Whether a person, who breaches a court order of which he is unaware, is guilty of contempt depends upon whether the order is binding upon him. *Courts have general authority to make orders binding on the parties, witnesses and other persons present in the court room. But they have no general authority to make orders binding on persons unconnected with the proceedings before them: John Fairfax & Sons Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465 at 477. *For a court order to operate as a common rule and to bind people generally, it needs the express or implicit sanction of the legislature.* If, pursuant to statutory authority, a court makes an order binding on persons outside the court room, breach of it will *prima facie* constitute a contempt whether or not a person is aware of the order. But a different rule applies when a person, who is not bound by an order of the court, says or does something which has the effect of frustrating or interfering with the order. In that class of case, the person will be guilty of contempt only if he is aware of the order and it is apparent to anyone that the effect of the order would be frustrated by his act: *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at 452, 456, 458, 467, 471-472; [1979] 1 All ER 745; [1979] 2 WLR 247; (1979) 68 Cr App R 342. It is not necessary that the court should have given a warning concerning the purpose of its order. It is enough that the purpose of the order speaks for itself: *Attorney General v Leveller Magazine Ltd* (at 452, 453). However, when no warning of explanation is given, the purpose of the order must be clear for "no one ought to be exposed to penal sanctions for criminal contempt of court for failing to draw and inference or recognise an implication as to what is permissible to publish about those proceedings, unless the inference or implication is so obvious or so familiar that it may be said to speak for itself": *Attorney-General v Leveller Magazine Ltd* (at 452) per Lord Diplock."

(emphases added)

56. Provisions such as s126 of the *Magistrates' Court Act* were thus enacted to enable appropriate orders to be made that would bind people generally, whether or not they were connected with the case or present in court. The device adopted, to give some form of notice to the world at large, was the mandatory requirement that a copy of the order be posted on a door of, or in another conspicuous place at, the court venue. The legislature then provided the remedy for contravention of an order "made and posted" under the section by creating a specific offence.

57. In my opinion, given that background and looking at the particular provision, it is strongly arguable that Parliament has evinced an intention to deal comprehensively with the subject-matter and with the penalties for default and that it would subvert that intention if recourse could be had to the common law contempt jurisdiction, thereby avoiding the specific and delimited penalty provisions.

58. However, having regard to my reasons stated further below, it is unnecessary to so decide. Further, I do not think that it is appropriate to so decide having regard to the ramifications that such a decision would have in relation to the corresponding provisions in the *Supreme Court Act* and in the *County Court Act*. I do not think that the argument before me fully ventilated those ramifications or fully investigated the relationship between the modern provisions (or for that matter, their predecessors) and the *Constitution Act* 1975 and its predecessors.

Is the order bad on its face?

59. A meaningless order would clearly be unenforceable[10] and could not be the subject of a contempt proceeding. An order should be clear, precise and unambiguous,[11] although, in the case of an undertaking to the court, Barwick CJ did express some qualifications to this principle.[12]

60. However, in the present case, I do not accept the defendants' submission that the order is unclear, uncertain or ambiguous. It is true that "witness A" cannot be identified by reference to the order itself but I am satisfied, and the contrary was not suggested, that the reference to "witness A" was a reference to a particular person identified in the committal proceedings and known to the court and to the parties. Thus, the identity of "witness A" was readily capable of

ascertainment by any person having notice of the order and wishing to publish material concerning the proceedings, and that, in my view, is sufficient for the validity of the order.

61. As the DPP contended, it would defeat or frustrate the purpose of any order protecting a person's safety (such as a police informer) if the person's identity was disclosed in the order that had to be posted on the court door.[13]

Does s126 of the *Magistrates' Court Act* empower the court to make orders proscribing conduct outside Victoria or in the other States?

62. It was common ground that the Victorian Parliament had power to authorise a Court to make orders proscribing conduct by persons in other States of Australia and that the connections with Victoria comprehended by s126 of the *Magistrates' Court Act* were more than sufficient[14] to entitle Parliament to expressly so enact. The question was whether, in the absence of express language, Parliament should be taken to have authorised the Magistrates' Court to make orders proscribing conduct of persons outside Victoria or in another State of Australia.

63. There is a common law presumption that, in respect of a statute creating an offence, the legislature did not intend to proscribe acts done outside the territory of the legislature:

> "Under the common law as it was developed in England, the general rule is that the criminal law applies only in respect of acts committed or omissions made within England...
>
> This rule may be overridden by statute but, in the construction of an offence-creating statute, the presumption is that the legislature did not intend to proscribe acts done outside the territory of the legislature."[15]

64. That presumption was applied in *Grannall v C. Geo. Kellaway and Sons Pty Ltd.*[16] In that case, s23(1) of the *Farm Produce Agents' Act* (NSW) provided that no produce agent should charge commission exceeding a prescribed commission in respect of the sale of farm produce. The High Court considered whether the word "charge" referred only to charging in New South Wales. The Court[17] referred to the rule that all offences are local and territorial and to the fact that that rule was reinforced by s17 of the *Interpretation Act* 1897 (NSW) which provided that all references to localities jurisdictions and other matters and things shall, unless the contrary intention appears, be taken to relate to such locations jurisdictions and other matters and things in and of New South Wales. The Court said that it was not a question of jurisdiction or territorial power but of statutory interpretation. Having found that the charge was not made in New South Wales, the Court said that the essential element of the offence occurred outside New South Wales, and that the information should be dismissed.

65. The DPP referred to the case of *Brownlie v State Pollution Control Commission.*[18] That case was concerned with offences created by the *Clean Waters Act* 1970 (NSW) which provided that a person should not pollute any waters or place any matter into waters that was likely to pollute those waters. It was held that the statute applied to acts or omissions outside New South Wales provided they had or were likely to have consequences within New South Wales. It was common ground in that case that the reference to "waters" was to waters in New South Wales. Gleeson CJ said that offences sometimes related to conduct which might take place across territorial boundaries:[19]

> "... there is no doubt about the jurisdiction of the New South Wales court to try a person who is charged with a "result offence" where the result is one that occurs, or, is likely to occur, in New South Wales, even though the acts bringing about that result took place outside New South Wales ..."

66. *Brownlie* is quite a different case. The offence created by s126 of the *Magistrates' Court Act* is not a "result offence" in the sense referred to in that case. The offence created by s126 of the *Magistrates' Court Act* is concerned with conduct in contravention of an order irrespective of whether there were any "harmful consequences."[20]

67. In *Lipohar v R*,[21] the High Court held, in a case involving conviction of persons for conspiracy to defraud, involving various elements outside South Australia, that because the implementation of the conspiracy involved deceiving people in South Australia, the conspiracy was punishable according to the law of South Australia. Gleeson CJ discussed the common law presumption that an Act that created an offence by making certain acts punishable was intended to apply only

to acts performed within the territorial jurisdiction of the particular legislature. His discussion touched upon questions that arose when some elements of the crime occurred within the territorial jurisdiction and others outside it, and, in that context, the Chief Justice referred to the statutory departure from the common law rule in South Australia and in a number of Australian states (although, I note, not in Victoria). The relevant South Australian legislation provided in substance that it was sufficient if a territorial nexus existed between the State and at least one element of the offence but the Chief Justice noted that the parties had not relied upon that provision in the case before the Court.

68. Gleeson CJ went on to say, in relation to the legislative departure from the theory that crimes generally have a single *situs*, that:

> "The courts of England have declined to make such a substantial alteration to the common law, and *to do so in Australia would involve overturning established authority in this country* ..."[22]

(emphasis added)

69. The Chief Justice went on to decide that the crime of conspiracy, because of its nature, had not been subjected to a rigid rule of territoriality. I do not read the Chief Justice's judgment as containing any rejection of the general and continuing applicability of the common law rule. Nor do I read the joint judgment of Gaudron, Gummow and Hayne JJ as containing any such rejection and I did not understand the DPP to contend otherwise, although, as the DPP pointed out, Kirby J suggested that in the light of the Australia Acts there was probably no basis for a strict territorial reading of the general legislative mandate of the State.

70. I do not consider that the DPP has provided any support for his submission that the territorial presumption cases no longer accurately represent the law.

71. In my view, given the absence of express provision to the contrary, the local and territorial rule applies to the interpretation of s126 of the *Magistrates' Court Act*. That section creates an offence, namely contravention of any order made and posted thereunder. It should be presumed that Parliament intended the conduct constituting such contravention to have occurred in Victoria. It follows that the power to make an order proscribing conduct, including publication of material, must likewise relate to conduct occurring in Victoria. That conclusion is reinforced by the provision analogous to that referred to by the High Court in *Grannall*, and by a parity of reasoning, namely, s48(b) of the *Interpretation of Legislation Act* 1984 which provides:

> "In an Act or subordinate instrument, unless the contrary intention appears— ...
> (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Victoria."

72. As I have indicated, the DPP made an alternative submission based upon s79(1) of the *Judiciary Act* which provides:

> "The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution of the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases which they are applicable."

73. The submission was to the effect that, if s126 of the *Magistrates' Court Act* empowered the Court only to proscribe conduct within Victoria when the Court was exercising State jurisdiction, nevertheless, when the Court was exercising federal jurisdiction, the section should be taken to empower the Court to proscribe conduct throughout Australia.

74. I do not accept that submission. It is settled law[23] that s79 does not give a new and more extensive meaning to State laws which it renders binding on a Court exercising federal jurisdiction – it applies those laws with their meaning unchanged. Section 79 of the *Judiciary Act* does not therefore transform a State law empowering a Court to make an order proscribing conduct within the State and creating an offence in relation to a contravention within the State into a law empowering the same Court exercising federal jurisdiction to make an order proscribing conduct throughout Australia and creating an offence dealing with contravening conduct occurring anywhere in Australia.

75. For those reasons, I conclude that the DPP has failed to establish a breach of the Orders by either of the defendants.

76. Even if the above conclusions concerning the territorial operation of s126 were incorrect, there would be a further question as to whether the Orders should, in any event, be interpreted, simply as a matter of objective construction, as proscribing relevant publications only within Victoria, but it is unnecessary to decide that question.

Conclusions

77. I therefore consider that the DPP has failed to make out any case of contempt under Grounds 2 and 4 in the amended originating motion because those grounds are based upon an alleged breach of the Orders made by the Magistrates' Court. Grounds 1 and 3 in the amended originating motion are based not on breach of the Orders but rather upon circumstances where it is alleged that it was apparent to the defendants that their conduct would frustrate the evident purpose of the Orders. However, in my opinion, if the Orders are properly treated, for the reasons already given, as prohibiting publication only in Victoria, their purpose cannot be said to be frustrated by publication elsewhere. Further, if it be relevant, I am not satisfied, on the evidence adduced by the DPP, and also having regard to the publicity and available information about witness A throughout the world, that the publication of the said newspaper articles in New South Wales and Queensland had any tendency to interfere with or obstruct the due administration of justice.

78. For foregoing reasons, the application will be dismissed with costs.

SCHEDULE

1 Section 6 of the *Administration of Justice Act* 1885 ("the 1885 provision") empowered any judge of the Supreme Court or judge of a County Court or police magistrate or any justices sitting in petty sessions on the grounds of public decency and morality to make an order prohibiting the publication of a report of proceedings or any part thereof and provided for the posting of a copy of the order on the outer doors of the court house or other conspicuous place and created an offence for contravention of the order and provided as to penalties for such offence.

2 As regards the Supreme Court, the 1885 provision was re-enacted by s35 of the *Supreme Court Act* 1890 and subsequently re-enacted in s29 of the *Supreme Court Act* 1915, s29 of the *Supreme Court Act* 1928 and s29 of the *Supreme Court Act* 1958.

3 The 1885 provision was also reflected in s200 of the *Justices Act* 1890. Then, s209 of the *Justices Act* 1915 empowered any court of general sessions or any court of petty sessions on the grounds of public decency and morality to make an order prohibiting the publication of a report of proceedings or any part thereof and provided for the posting of a copy of the order on the outer doors of the court house or other conspicuous place and created an offence for contravention of the order and provided as to penalties for such offence and also provided a show cause procedure for dealing with any alleged offence. That provision was re-enacted in s209 of the *Justices Act* 1928 and then in s214 of the *Justices Act* 1957 and s214 of the *Justices Act* 1958 and again in s48 of the *Magistrates' Courts Act* 1971.

4 Section 80 of the *County Court Act* 1957 empowered a Judge to make an order prohibiting the publication of a report of any proceedings or any part thereof and provided for the posting of a copy of the order on the outer doors of the court house or other conspicuous place and created an offence for contravention of the order and provided as to penalties for such offence. That provision was re-enacted in s80 of the County Court Act 1958.

5 The modern provisions were first enacted in ss18 and 19 of the *Supreme Court Act* 1986 but they took from their predecessor provisions the concept of posting a copy of the order on the door of the court or other conspicuous place and the creation of an offence and penalty for contravening such order.

6 The modern provisions were then inserted in the *Magistrates' Court Act* 1989, s126 and, finally, they were inserted in the *County Court Act* 1958 in 1999 by s28 of Act No.10/1999.

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[1] The various orders sought are contained in an amended originating motion dated 16 July 2007.
[2] The Magistrate used the actual names of the witnesses but I will simply refer to them as witness A and witness B.
[3] As to when such an order is made, see generally *Bailey v Hinch* [1989] VicRp 9; [1989] VR 78.
[4] See transcript in the Magistrates' Court at p.1420.
[5] (1981) 28 SASR 313 (King CJ, Mitchell and Williams JJ).
[6] (1981) 28 SASR 313, 314-315.
[7] (1981) 28 SASR 313, 315.
[8] (1981) 28 SASR 313, 320.
[9] (1988) 14 NSWLR 342, 355; (1988) 36 A Crim R 345.
[10] *Australian Consolidated Press Ltd v Morgan* [1965] HCA 21; (1965) 112 CLR 483, 492; [1966] ALR 387; (1965) 39 ALJR 32 per Barwick CJ.

[11] See *Iberian Trust Ltd v Founders Trust and Investment Company Ltd* [1932] 2 KB 87; [1932] All ER 176; 48 TLR 292; *Australian Consolidated Press Ltd v Morgan* [1965] HCA 21; (1965) 112 CLR 483, 516; [1966] ALR 387; (1965) 39 ALJR 32 per Owen J; *Advan Investments Pty Ltd v Dean Gleeson Motor Sales Pty Ltd* [2003] VSC 201; *Scott v Evia* [2007] VSC 15; *R v Australian Broadcasting Association* [2007] VSC 498.
[12] *Australian Consolidated Press Ltd v Morgan* [1965] HCA 21; (1965) 112 CLR 483, 492; [1966] ALR 387; (1965) 39 ALJR 32 per Barwick CJ.
[13] It would no doubt be relevant to conviction or, at least, to penalty if a person contravening the order had no knowledge of the identity of "witness A" and the "contravention" was innocent and unintended.
[14] The requirement of a relevant connexion should be liberally applied and even a remote and general connexion between the subject matter of the legislation and the State is sufficient: see *Union Steamship Co. of Australia Pty Ltd v King* [1988] HCA 55; (1988) 166 CLR 1, 14; (1988) 82 ALR 43; (1988) 62 ALJR 645; *Mobil Oil Australia Pty Ltd v Victoria* [2002] HCA 27, 34; (2002) 211 CLR 1; (2002) 189 ALR 161; (2002) 76 ALJR 926; (2002) 23 Leg Rep 2.
[15] *Thompson v R* [1989] HCA 30; (1989) 169 CLR 1, 23-24; (1989) 86 ALR 1; (1989) 63 ALJR 447; 41 A Crim R 134 per Brennan J.
[16] [1955] HCA 5; (1955) 93 CLR 36; [1955] ALR 213 (Dixon CJ, Webb, Fullagar, Kitto and Taylor JJ)
[17] [1955] HCA 5; (1955) 93 CLR 36, 52-54; [1955] ALR 213.
[18] (1992) 27 NSWLR 78; (1992) 61 A Crim R 400; (1992) 76 LGRA 419; (Court of Criminal Appeal, New South Wales).
[19] (1992) 27 NSWLR 78, 83-84; (1992) 61 A Crim R 400; (1992) 76 LGRA 419;.
[20] See the discussion by Brennan J of the distinction between a "result-crime" and a "conduct-crime" in *Thompson v R* [1989] HCA 30; (1989) 169 CLR 1; (1989) 86 ALR 1.
[21] [1999] HCA 65; (1999) 200 CLR 485; (1999) 168 ALR 8; (1999) 109 A Crim R 207; (1999) 74 ALJR 282; (1999) 20 Leg Rep C1.
[22] [1999] HCA 65; (1999) 200 CLR 485, 499; (1999) 168 ALR 8; (1999) 109 A Crim R 207; (1999) 74 ALJR 282; (1999) 20 Leg Rep C1.
[23] *Pedersen v Young* [1964] HCA 28; (1964) 110 CLR 162, 165-166; [1964] ALR 798; 38 ALJR 58, per Kitto J; *Re: Young's Horsham Garage Pty Ltd (In liq)* [1969] VicRp 118; [1969] VR 977; *John Robertson & Co. Ltd (in liq) v Ferguson Transformers Pty Ltd* [1973] HCA 21; (1973) 129 CLR 65; 1 ALR 21; (1973) 47 ALJR 381; *Austral Pacific Group Ltd (in liq) v Airservices Australia* [2000] HCA 39; (2000) 203 CLR 136, 143; (2000) 173 ALR 619; (2000) 74 ALJR 1184; [2000] Aust Torts Reports 81-571 per Gleeson CJ, Gummow and Hayne JJ.

APPEARANCES: For the plaintiff DPP: Mr M Dean SC with Dr S Donaghue, counsel. Commonwealth DPP. For the defendant Nationwide News Pty Ltd: Mr W Houghton QC with Ms G Schoff, counsel. Corrs Chambers Westgarth, solicitors.
