07/93

SUPREME COURT OF VICTORIA

DPP v MORRISON

Ashley J

4, 18 December 1992 — [1993] VicRp 41; [1993] 1 VR 573

PROCEDURE – FINGERPRINTS FROM SUSPECT – SUSPECT NOT INFORMED OF CERTAIN STATUTORY PROVISIONS – REFUSAL COMMUNICATED – FINGERPRINTS ORDERED BY COURT – WHETHER APPROPRIATE – FINGERPRINT EVIDENCE OBTAINED PURSUANT TO COURT ORDER – EVIDENCE OBTAINED IN BREACH OF STATUTORY REQUIREMENT – WHETHER SUCH EVIDENCE ADMISSIBLE: *CRIMES ACT* 1958, SS464K, L, M, O, P.

(1) The essential pre-requisites of the right to apply to a court for an order for non-consensual taking of fingerprints are: (a) refusal by a suspect to give fingerprints upon request; or (b) inability by a suspect to give informed or real consent.

(2) Before a court may order non-consensual taking of fingerprints, the suspect must be first informed of certain matters set out in s464L of the *Crimes Act* 1958. If the suspect is not informed of these matters, a police officer is not authorized to make an application to the Court.

(3) Where there was no evidence that a police officer conveyed to a suspect the relevant information under s464L of the Act prior to a court's ordering non-consensual fingerprinting, a Magistrate was not in error in ruling that the fingerprint evidence obtained as a result of the Court's order was inadmissible.

ASHLEY J: [1] William Morrison, the respondent to these two appeals, was charged with offences against ss81(1) and 88(1) of the *Crimes Act* 1958 (the Act). The charges arose out of the alleged abstraction of a Mastercard before it reached its intended recipient, and use of that card to dishonestly obtain property by deception. The two charges the subject of the present appeals were heard by Mr West, Magistrate, on 4 August 1992. Proof depended in part upon fingerprint evidence. The Magistrate ruled that this evidence was inadmissible. The charges were dismissed. The ruling as to admissibility of fingerprint evidence is the subject matter of these appeals.

On 18 January 1991 the respondent was in custody in connection with unrelated offences. The informant, Scott Cutler, a Detective Senior Constable of Police, attended at the Melbourne Remand Centre in order to interview the respondent concerning the present matters. An interview was conducted between 12.13 and 12.19 p.m. It was tape-recorded. Mr Cutler, by oversight, did not during the interview request the respondent for his fingerprints; see ss464K(a) and 464L(1) of the Act. On 21 January Mr Cutler again attended the Melbourne Remand Centre. He did not speak to the respondent at all. Contact was made through a Corrective Services OfficeR In this indirect way the respondent was requested to answer questions and to provide his fingerprints A refusal was communicated to Mr Cutler via this Corrective Services Officer. The request and **(2)** refusal were not tape recorded or recorded in writing and signed by the Respondent; see s464L(2). Later on 21 January a Magistrate signed an order requiring the respondent to give his fingerprints to a member of the police force; see s464M(3) of the Act. Application for an order had been made in purported pursuance of s464M(1). The order was executed on 22 January at the Remand Centre, the respondent protesting.

Section 464K of the Act authorizes a member of the police force to take or cause to be taken the fingerprints of a suspect in either of two circumstances The first of these is that the suspect gives informed consent; see s464K(a). The term "informed consent" is given a meaning by s464L(1) of the Act, which reads:

> "464L. **Informed consent**
> (1) A suspect gives informed consent to a request for his or her fingerprints if he or she consents to the request after a member of the police force informs the suspect in language likely to be understood

by the suspect—
(a) of the purpose for which the fingerprints are required: and
(b) of the offence of which the suspect is suspected; and
(c) that the fingerprints may be used in evidence in court; and
(d) that the suspect may refuse to give his or her fingerprints".

Sub-Section (2) of that Section is in these terms:

"(2) Subject to sub-section (3), the member of the police force who informs a suspect of the matters in sub-section (1) must—
[3] (a) tape-record; or
(b) record in writing signed by the suspect—
the giving of that information and the suspect's responses, if any."

Sub-section (3) reads as follows:

"(3) If a suspect is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of information under sub-section (1) and the suspect's responses, if any, must be tape-recorded."

The word "must" should be considered to import no lesser requirement than the word "shall"; see s45(2) *Interpretation of Legislation Act* 1984. On 18 January the informant did not inform the respondent of the matters set out in s464L(1). The issue of fingerprinting never arose. Even if the respondent's circumstances did not fall within s464L(3), there must at least have been compliance with s464(2)(b) had requisite information been supplied. But no information was supplied. On 21 January there was no direct contact by Mr Cutler with the respondent at all. There is no evidence to indicate that, through the intermediary, anything more than a general request for consent to fingerprinting was made. Certainly paragraph 16(h) of Mr Cutler's affidavit sworn 28 August 1992 in matter 9312 of 1992 and the circumstances as described do not suggest that a request in terms of s464L(1) was made, even indirectly.

Section 464M(1) is in these terms:

[4] "**464M. Court may order fingerprinting.**
(1) If a suspect refuses to give his or her fingerprints after being requested to so or is incapable of giving informed consent by reason of mental impairment a member of the police force may apply without notice to any other person to the Magistrates' Court for an order directing the suspect to give his or her fingerprints".

The existence of one or other of the two situations envisaged by that sub-section is an essential pre-requisite of the right to make application for an order. The Magistrates' Court is not required by s464M(3)(4) or (5) to make any finding that a request has been refused or that there was incapacity which would prevent the giving of informed consent before it proceeds to make an order. Those provisions may be compared with s464U(1),(3)(e), a section forming part of a legislative framework relating to consensual and non-consensual taking of blood samples. That framework is in some respects similar to that erected in relation to fingerprinting. It is at least clear that s464M(1) does not authorize an application to the Magistrates' Court except if one or other of the two circumstances there referred to exists.

Whether, notwithstanding s464M(3)(4)(5), the Court must determine that one or other of the circumstances authorizing application is present is uncertain. The wording of sub-sections (3), (4) and (5) suggest to the contrary. So also the distinction between s464M and 464U in this respect is stark. The multiple pre-conditions for making an application imposed by s464U(1) are each substantially reproduced in s464U(3), which latter sub-section sets out each of the matters **[5]** which the Magistrates' Court must determine before making an order. *Walsh v Loughnan* [1991] VicRp 75; [1991] 2 VR 351 appears to have assumed that, in the context of a hearing under s464U, the Magistrate should deal as a threshold test with the belief of the applicant referred to in s464U(1)(c). I do not understand the decision of Vincent J to have determined that issue after argument. In the present case, as I have said, an order was made.

Mr Just, for the appellant, contended that, an order having been made, s464K(b) authorized fingerprints to be taken. That being so, no question of inadmissibility of the evidence in respect of

fingerprints (see s464P(1)(a)) arose. He submitted that, if an order was made, it could be challenged by proceedings in this Court; see *Czarnecki v McInnis* (Teague J, unreported, judgment 2 October 1990). Absent such challenge, he submitted, evidence obtained in consequence of an order was admissible. In the hearing of the charge or charges laid against the Defendant no recourse could be sought to s464P(1) in the event, for example, that the application resulting in the order had been itself unauthorized. He made however this concession (T46/47):

> "It is submitted that once an order under section 464M(3) has been made, it cannot be gone behind; but that is submitted in a limited sense. It may well be that the order can be examined for the purposes of the discretion to exclude evidence illegally or improperly obtained; in fact, very probably can be examined for that purpose."

[6] Mr Just further submitted that the first situation contemplated by s464(M)(1) had been literally satisfied, in that a request that the respondent give his fingerprints had been made on 21 January and had been refused. He contended that it was unnecessary that any such request comply with the requirements of s464L(2). That sub-section, he argued, related to a separate issue of informed consent.

It follows from the submission referred to in the preceding paragraph that the obligation to inform a suspect of the matters set out in s464L(1) with a view of obtaining informed consent and the correlative obligation to comply with s464L(2) could be completely avoided by the operation of s464M(1)(3). A police officer could, on this analysis, fail to provide any information in accordance with s464L(1). Then he would be under no obligation to comply with s464L(2). He need, for the purposes of meeting the requirements of s464M(1), do no more than ask a suspect to give his fingerprints and obtain a refusal. That request and refusal, being unrelated to s464L(1), would not require compliance with s464L(2). Furthermore, the suspect would not have been provided with information considered necessary by s464L(1) to enable the giving of informed consent or, in substance, "informed refusal". In my opinion that construction should be rejected.

Teague J pointed out in *Czarnecki* (*supra*):

> **[7]** "Until (1990) police could not, either at common law, or pursuant to any statute, compel a suspect to provide his fingerprints for the purposes of assisting them to assess the suspect's liability for criminal conduct".

There had, however, been a practice long established at common law whereby fingerprints were obtained in many cases with the consent of a suspect. The legislative framework set up in 1988, as amended in 1989 and 1991, has two elements. First, that fingerprints may be taken where there is informed, or real, consent. Safeguards are imposed to ensure that no consent is asserted where there is none in fact; thus s464L(2)(3). Further, the consent will be informed because relevant information has been supplied – see s464L(1). Second, where there is refusal upon request, or where the circumstances do not permit opportunity of real consent, an order may be made. It appears to me that this framework envisages that the request referred to in s464M(1) will have been a request in terms contemplated by s464L(1). It would seem to introduce a concept of request and refusal extraneous to the scheme of the provisions if s464M(1) were read as relating to a request wholly outside the terms of s464L(1) and with the safeguards of s464L(2). I would therefore read s464M(1) where it uses the verb "requested" as referring to a request contemplated by s464L(1) but not otherwise.

There seems to me to be another reason for reaching such a conclusion. There are, as I have said, two situations contemplated by s464M(1), viz:

- refusal upon request;

- incapacity of giving informed consent by reason of mental impairment (as to which see the definition in s464(2)).

Each may comfortably be read as interrelating with the concept of informed consent. Thus, in the first case, as referring to refusal to give informed consent; and in the second, as referring to incapacity which prevents the giving of such consent. The fact that the second of these concepts was introduced by the amending Act No. 23 of 1991 does not detract from this conclusion. The

alternative reading of s464M(1), urged upon me by Mr Just, is that s464L related to the right to take fingerprints given by s464K(a); whereas s464M relates to the right given by s464K(b). It followed, he contended, that s464M(1) is concerned not with refusal to give informed consent, but with refusal at large. It is true that s464K deals with two distinct situations; but that is not to say that the situations are not themselves interrelated.

Mr Just's submission is literally correct; but it does not resolve the issue favourably to the appellant. Mr Just referred me to the Second Reading Speech of the then Attorney-General when the Bill introducing the fingerprinting provisions (in their original form) was before the Assembly. He submitted that reading the Speech would aid me in giving a purposive interpretation of the legislation, as s35(a) of the *Interpretation of Legislation Act* 1984 enjoins me to do. **[9]** I need not consider whether, in respect of s35(a), there is any tension between what I said in *Accident Compensation Commission v Zurich Australian Insurance Ltd* [1992] VicRp 52; [1992] 2 VR 1 at p12 (Crockett and Southwell JJ agreeing in my judgment) and what was said by their Honours in *Humphries v Poljak* [1992] VicRp 58; [1992] 2 VR 129 at pp136-7; (1991) 14 MVR 1. Mr Just referred me to extrinsic material. Mr Holdenson for the respondent did not object to my considering it. The matter seems to me to be one where such a course may be useful.

It is plain from the Attorney's speech that the Government claimed to be implementing in the Bill the thrust of recommendations made by the Consultative Committee on Police Powers of Investigation in a report tabled on 6 October 1987. The Committee recommended a modification of the common law position. The Attorney said this (*Hansard*, 14 April 1988, p1473):

> "In the committee's view, there is a need for the police to be able to obtain fingerprints without consent, so that they can be compared with those found at the crime scene or on an article which would tend to exculpate or inculpate the suspect, such as a weapon used in the commission of the offence. For this purpose the committee proposes that the police be able to obtain a court order requiring the suspect to provide the print. The order would be obtainable from a Magistrates' Court or, if the suspect is a child, the Children's Court. If the suspect still refuses to provide the print, reasonable force could be used to enforce the court's order".

He also said this (at p1474):

> "The central feature of the Bill and of the committee's proposals is that non-consensual fingerprinting of suspects will be available to police in criminal investigations. The key safeguard balancing this power is the **[10]** requirement of a court order. This control corresponds with the scrutiny of courts over other intrusive investigative procedures like the use of listening devices and the search of one's house. Judicial supervision ensures a degree of independence in the assessment of whether fingerprinting is justified in the particular case and greatly reduces the likelihood of later disputes."

The fact that the central feature of the Bill was that it provided for non-consensual fingerprinting does not, however, mean that the circumstances in which consent was not given were thereby made irrelevant. As the Bill itself revealed, a substantial framework relating to the giving of fingerprints with consent was developed. The Consultative Committee's report, which I was asked to consider, made the point that it was necessary to deal both with consensual and non-consensual fingerprinting; see para. 6.9.

It should, I think, be borne in mind that provision for non-consensual fingerprinting was a radical departure from the then-existing situation. Particularly where application for a Court order was to be made without notice to the suspect (except in the case of a young person – compare ss464M(1) and 464N(9)(10)(11)) it appears to me that it would be wrong to construe the circumstances authorizing application for a Court order for non-consensual fingerprinting any more widely than the words require.

The report of the consultative Committee, to which counsel for the appellant referred me, does not aid the appellant's case as to the nature of the request which must have been refused in order to found a Magistrate's **[11]** jurisdiction under s464M. It appears to me that the Committee treated that request as having been such as would generate informed consent or, for that matter, "informed refusal"; see paras 6.10, 6.11, 6.29, 6.47, 6.49 and the reference in para. 2(a)(ii) of the Summary of Recommendations to "the request" which is to be read in conjunction with paras 1(a)(iii) and 1(b)(ii)(iii). Whilst it would be unwise to set too much store by it, consideration of the blood sample provisions, also part of sub-division (30A) of the Act, tends in favour of the construction

I place upon the request that s464M(1) contemplates has been made. Those provisions have considerable similarities (though considerable differences also) with the fingerprinting provisions. In particular there are equivalents of ss464L(1) and 464M(1); thus ss464T(1) and 464U(1)(a). The fact that by s464U(3)(e) the Magistrates' Court must be satisfied either that there was a refusal of a request made under s464S(1) or incapacity by mental impairment of the ability to give informed consent does not impact upon the analogy. Section 464S(1) in fact leads on to an association between a request and the concept of informed concept (see s464S(2)(a)) and thus to s464T(1).

The issue was put to the Magistrate who heard the charges and initially before me as involving a question whether the request and refusal contemplated by s464M(1) was required to be taped or otherwise recorded. In my opinion, however, that issue is superfluous to resolution of the matter. What is at least clear is that **[12]** the request in s464M(1) must be a request conveying the information required by s464L(1). The scheme developed in relation to fingerprinting, both consensual and non-consensual, requires that a suspect be informed of the matters set out in sub-paras (a) - (d) of s464(L)(1). In the present case, as I have said, relevant information concerning fingerprinting was not conveyed to the respondent either on 18 or 21 January. The fact that no face to face meeting took place on 21 January between Mr Cutler and the respondent raises the further question whether the request and refusal must be the subject of direct communication.

It may be that in some circumstances a member of the police force will indeed find it difficult to meet with a suspect, convey relevant information, and obtain a refusal to permit fingerprinting. It may also be the case that in some instances tape-recording the request and answer or obtaining a suspect's signature upon a written record will be impracticable or impossible. Whether in every such case the making of an application under s464M(1) would be unauthorized need not be here determined. What can be said is that in the present case Mr Cutler made no more than a cursory attempt to see the respondent on 21 January. There is no evidence that any attempt was made to convey the relevant s464L(1) information on that day; nor of any application to obtain an order, if the circumstances required such an application to be made, under s464B. So far as the **[13]** interview on 18 January is concerned there was simply no conversation about fingerprinting.

In the event, in my opinion, the informant was not authorized by s464M(1) to make the application which culminated in the order made under s464M(3); which order enabled the respondent's fingerprints to be taken. What is the consequence? Section 464P(1)(a) is in these terms:

> "**464P. Evidence of fingerprints**
> (1) Evidence in respect of fingerprints taken from a person is inadmissible as part of the prosecution case in proceedings against that person for an offence—
> (a) unless the requirements of sections 464K to 464O (as the case requires) or section 464Q have been met; and ..."

It is a provision which has equivalents elsewhere in sub-division (30A) of the Act; thus see s464H(1) and 464ZC(1). Within sub-division (30A) are specifically retained the discretions of the Court to exclude unfairly, illegally or improperly obtained evidence; see s464J(c)(d). The argument before me, having regard to the concession made by Mr Just to which I have referred, was whether the Magistrate who heard the charges, an order having been made, was bound to deal with the matter on the basis of the discretion to exclude evidence rather than by reference to admissibility. The intent of the legislation is plain. The consequence of non-compliance with such of the provisions **[14]** of s464K-464O as are relevant in the particular case in that evidence is to be inadmissible. That is subject to a right to admit the evidence with consent of the accused or if (see s464P(2)(a)):

> "the prosecutor satisfied the Court on the balance of probabilities that the circumstances are exceptional and justify the reception of evidence".

The intent evidently reflects the conclusion of the Consultative Committee, which said this (at paras 6.51 to 6.53 of its report):

> "Failure to Comply with Legal Procedures
> 6.51 In making its recommendations the Committee has sought to create a self-contained code providing the Police with a reasonable opportunity of obtaining fingerprint evidence. As has been

pointed out elsewhere the regime proposed may involve self incrimination. This being so it is the view of the Committee that the legislative provisions should be strictly observed.

6.52 The Committee recommends that non-compliance with the procedures prescribed for the exercise of the power to fingerprint should result in evidence pertaining to the fingerprints so obtained being inadmissible (as against a defendant or accused person) in any criminal proceedings unless the prosecution is able to establish exceptional circumstances for the failure to observe the legislative requirements. The fact that the fingerprints may match a print or prints found on an object or at a scene connected with the offence the subject of the criminal proceedings is not regarded as constituting an exceptional circumstance.

6.53 The test proposed by the Committee is more onerous than that currently applied by the Courts in exercising a discretion to admit or reject illegally or unfairly obtained evidence. It is, however, a test couched in the same terms as that which the Committee recommended be applicable to the **[15]** tape recording of confessions and admissions."

In the present case an order for fingerprinting was made and executed. But the order was founded upon an application which s464M(1) did not authorize. There was no refusal of a request made in the terms required by s464L(1). The issue is whether the making of the order rendered s464P(1)(a) incapable of denying admissibility of fingerprint evidence where there was non-compliance with a provision whose satisfaction was a condition of the right to apply for the order. The appellant's case is that fingerprints taken in consequence of the order literally satisfied the requirements of s464K(b); and that the order itself stands.

In my opinion, s464P(1)(a) can have application to the situation described. Neither the fact that an order was made nor the fact that it could have been the subject of appeal leads me to conclude that the ambit of operation of s464P(1)(a) should be confined. In my opinion, the following matters are relevant. First, s464P(1)(a) refers to "the requirements of ss464K to 464O (as the case requires)". Those requirements, where a matter involves an order for fingerprints relating to an adult, do not begin and end with ss464K(b) and 464M(3). Matters occurring subsequent to the making of an order, at least, may render evidence obtained in consequence thereof inadmissible; thus, for example, non-compliance with s464O(1A),(2),(4). It may be truly said that these matters build upon the making of **[16]** the order; they do not deny it. It may also be said that "the case requires" the operation of s464O despite an order being made.

It may be claimed, by contrast, that s464M(1) becomes irrelevant – save perhaps for appeal purposes – where an order has been made; that the case does not require, for the purposes of s464P(1)(a), that s464M(1) has been complied with. I do not agree that such a contrast is made out. It is inescapable, if I am correct in what I have said about s464M(1), that an order may be made as here, *ex parte*, where authority to apply for the order is absent. The only basis for saying that such a case does not require compliance with s464M(1) is that the breach becomes irrelevant by the fact of the order. Section 464P(1)(a) does not, in terms, require such an outcome. Were it so construed a different position would be established between, on the one hand, evidence of fingerprints taken following informed consent in circumstances where breach of s464L(2)(3) occurred; and, on the other hand, evidence of fingerprints taken in consequence of the making of an order where the application for the order was made in breach of s464M(1).

Second, it may be said that such a distinction should properly be drawn because there is significant difference between action taken pursuant to court order and action taken with assumed consent. Such a distinction may be highlighted by the fact that appeal is available against order; whereas disputed consent (or asserted non-compliance with s464L(2)(3)) could only be agitated at trial. On the other hand, s464M(1) is concerned with **[17]** facilitating non-consensual fingerprinting. An order permits what would otherwise be a battery. Application for an order is to be made *ex parte* and a suspect may very well not know of non-compliance with s464M(1) before fingerprints have actually been taken in pursuance of an order. The situation is very different to that obtaining under s464U, which relates to applications for orders for taking blood samples. There the suspect is required to be present at the hearing of the application; see s464U(4)(7). The opportunity for appeal would be more real than in the case of an order made under s464M.

Third, the government in implementing the general thrust of the Consultative Committee's report must be taken to have intended to create "a self contained code" relating to the taking of fingerprints; see para. 6.51 of the Committee's report. One aspect of that code is the harsh penalty

imposed by s464P(1)(a) for transgressions. It would run counter to the purpose of the legislation – as revealed both by its terms and by reference to relevant extraneous material – to except from the purview of s464P(1)(a) breach of s464M(1).

Fourth, because sub-division (30A) is by intent a code, imposing its own penalties for breach of its provisions, it is not helpful to consider its operation by reference to general principles relating to admissibility of unlawfully obtained evidence (eg: *Bunning v Cross* [1978] HCA 22; (1978) 141 CLR 54; 19 ALR 641; 52 ALJR 561 or to principles applicable in the case of warrants issued by courts (eg: *Murphy v R* **[18]** [1989] HCA 28; (1989) 167 CLR 94; 86 ALR 35; (1989) 63 ALJR 422 at pp427-8; 40 A Crim R 361 per Mason CJ and Toohey J).

Fifth, assuming that the Magistrates' Court is not required to be satisfied that one or other of the conditions referred to in s464M(1) is present before an order is made. An attack upon admissibility which addresses an alleged breach of that sub-section is in a sense external to the order made. In the terms of s464P(1)(a) it fastens upon breach of a requirement other than one embodied in the order itself.

Sixth, s464P(1)(a) is expressed in very broad terms. They are appropriate to the situation, *inter alia*, where any order (relating to an adult) will be obtained *ex parte*. They should not, in view of legislative intent revealed, be given a confined meaning. Mr Just submitted that, in any event, the Magistrate had a discretion to admit the evidence; see s464P(1)(a). He submitted that in the present case the possible operation of this discretion had not been considered at all. He noted that the existence of the discretion had been put to the Magistrate by the prosecutor. He asked me to infer from the fact that the Magistrate did not refer to it in his reasons that he had not considered it. He conceded that the matters should not be remitted for re-hearing (if s464P(2)(a) became relevant) if it had not been reasonably open to the Magistrate to exercise his discretion favourably to the prosecution.

[19] I do not doubt that s464P(1)(a) confers a discretion such as Mr Just contended for Mr Holdenson did not contend to the contrary. He rather argued that the discretion could not have been resolved favourably to the informant in the present case. The fact that the Magistrate did not refer to the discretion in his reasons by no means indicates that he did not consider its possible operation. In the light of the submission made to him by the prosecutor shortly before he delivered his ruling I infer to the contrary. An exercise of discretion in a manner unfavourable to the Prosecution was not by any means surprising upon the facts disclosed to the Magistrate. The Magistrate's reference in his reasons to ss464L and 464G being mandatory does not deny that he recognised the existence of and considered the possible application of the discretion available under s464P(2)(a).

The questions of law on the appeal which are relevant to the discretion point are questions (b) and (c). Neither of them seeks to challenge an exercise of discretion if made. The answer to question (b) is "yes" and to question (c) is "no". In the result, the appellant's position is not advanced. Mr Holdenson for the respondent sought to support the Magistrate's orders dismissing the two charges on the basis that there had been other instances of non-compliance with the requirements of ss464K to 464O. He relied upon alleged breaches of s464O(1A), (2) and (10). He contended also that the Magistrate had lacked **[20]** jurisdiction to make an order because s464M(3)(a), relied upon in the application, was inapplicable to the respondent's circumstances at the relevant time. Mr Just did not submit that it was not open to the respondent to thus support the Magistrate's orders But he submitted that defects on the face of the order were "mere irregularities or immaterialities for the purposes of s464P(1)(a)". Alternatively, they were relevant to the operation of that sub-section, but would call into play the question of exercise of discretion under s464P(2)(a).

In my opinion, the appeals should fail because the critical questions of law framed by the appellant and reflected in the Master's orders must be resolved adversely to the appellant. In that event I do not intend to embark upon considerations of the further matters raised by Mr Holdenson. I note that the submissions were made and Mr Just's general response only for sake of completeness. The appeals must be dismissed with costs.

Solicitor for the appellant: JM Buckley, solicitor to the Director of Public Prosecutions.
Solicitor for the respondent: PW Dwyer.