

23/94

## SUPREME COURT OF VICTORIA

***R v FLYNN and PATTEN***

Byrne J

21 October 1994

**BAIL – SUMMARY OFFENCE – OBSTRUCTING FOREST OPERATIONS – UNDERTAKING WITH SPECIAL CONDITION NOT TO ATTEND LOGGING OPERATION – WHETHER CONDITION APPROPRIATE: *BAIL ACT 1977*, S18.**

**1. Where a person is accused of a summary offence such as obstruction of the lawful carrying out of forest operations, it is not appropriate to use the *Bail Act* to achieve a collateral purpose such as an injunction that the person not commit other offences.**

**2. Accordingly, it was inappropriate for a Magistrate to fix bail for a person charged with obstructing logging operations by imposing a special condition that the accused not attend at or interfere with the logging operations.**

**BYRNE J: [1]** This is an application pursuant to s18 of the *Bail Act* for an order varying a condition imposed upon a grant of bail to each of the applicants. Each of the applicants is charged with an offence of obstructing the lawful carrying out of forest operations. On 14 October 1994 each was admitted to bail at the Orbost Magistrates' Court on his own undertaking but subject to a condition as follows:

“The defendant not attend at or interfere with any logging operation as defined by the *Conservation Forests and Lands Act 1987* or logging equipment in East Gippsland by act or deed”.

For the reasons which I have endeavoured to explain in the course of argument, it seems to me that in a case of a summary offence such as the present I should allow the law to take its ordinary course and that it is not appropriate to seek to achieve, by the application of the law relating to bail, a collateral purpose, namely an injunction against the accused men that they not commit other offences.

I leave to one side the question as to whether or not that part of the undertaking which would prohibit the accused men from carrying on lawful activities in the forest is appropriate. I do not wish to be understood by either of the applicants to be condoning breaches of the law and I have no doubt that in the event that further breaches of the law are committed they will be dealt with the appropriate rigor.

However, in the present application which concerns bail, I am satisfied that there is no appreciable risk that each of these men will not attend the court when required to answer the charges before the court and in those circumstances it would be inappropriate for me to do other than admit them to bail on their own undertaking without the condition which the Magistrate imposed.

Accordingly, I shall admit each applicant to bail on his own undertaking.