

28/99; [1999] VSC 455

## SUPREME COURT OF VICTORIA

### ***DPP v MAGISTRATES' COURT of VICTORIA and GREENFIELDS of VICTORIA PTY LTD***

Beach J

9, 19 November 1999

**PRACTICE AND PROCEDURE – ALLEGED BREACH OF TRADE MEASUREMENT ACT 1995 – MAXIMUM MONETARY PENALTY FOR A COMPANY IS 1000 PENALTY UNITS – WHETHER OFFENCE IS INDICTABLE – WHETHER MAY BE HEARD AND DETERMINED BY A MAGISTRATES' COURT: TRADE MEASUREMENT ACT 1995, S24; SENTENCING ACT 1991, SS109(2), 110, 112(1); INTERPRETATION OF LEGISLATION ACT 1984, S52.**

1. Section 112(1) of the *Sentencing Act* 1991 specifically relates to levels of punishment. The penalty units which may be imposed in respect of a prosecution under s24 of the *Trade Measurement Act* 1995 ("Act") do not equate to any level specified in s112(1) and accordingly are not covered by the sub-section.
2. There is no provision in s24 of the Act for the form or mode of procedure for the hearing and determination of a prosecution under s24. In those circumstances, s52 of the *Interpretation of Legislation Act* is applicable and any prosecution under s24 of the Act is to be heard and determined by the Magistrates' Court.
3. Accordingly, a magistrate was in error in ruling that charges under ss24 and 69 of the Act were indictable offences and directing the defendant company to be tried in the County Court.

#### **BEACH J:**

1. On some unspecified date but prior to 9 December 1998 the second defendant Greenfields of Victoria Pty Ltd (Greenfields) was charged with two breaches of s24 of the *Trade Measurement Act* 1995 (the Act). That section reads:

**"24. Variation of quantity ordered** If the quantity of an article sold is less than the quantity stated in the offer to purchase, the seller is guilty of an offence unless the seller informs the purchaser of that fact before completion of the sale. Penalty: 200 penalty units."

2. The charges are similar in nature. I shall only refer to the first of them. It reads:

#### **"Details of the charge against you**

**What is the charge?** 1. On or about 30 April 1998 at Launching Place you sold a lesser quantity of firewood than that ordered and agreed to be supplied.

#### **Particulars**

- (a) Mr John Morgan of Healesville-Kooweerup Road, Launching Place, ordered 2 tonnes of redgum firewood at \$159 a tonne.
- (b) You purported to deliver 2 tonnes of redgum firewood to Mr Morgan's home as per your invoice number 6012.
- (c) The actual quantity of firewood delivered was 1400 kg. some 600 kg. less in weight than the amount agreed to be sold. **Under what law?** Section 24 and s69 of the *Trade Measurement Act* 1995. **Type of offence?** Indictable. **Are there more charges?** Yes - see 'Continuation of Charges' attached - page "

3. Section 69 of the Act provides:

**"69. Increased penalty for body corporate** The maximum penalty for an offence under a provision of this Act committed by a body corporate is a fine that is 5 times the fine provided for in the provision as the penalty."

4. The charges eventually came before the Melbourne Magistrates' Court on 7 May 1999.

5. After hearing argument in relation to the matter the Magistrate ruled that by virtue of the provisions of s112(1) of the *Sentencing Act* 1991 the charges were indictable offences and directed that Greenfields be tried in the County Court at Melbourne in respect of them.

6. On 25 June 1999 the Director of Public Prosecutions (the Director) filed an originating motion in the Court by which he seeks an order in the nature of certiorari bringing up and quashing the order on the ground that the Magistrate committed an error of law which appears on the face of the record.

7. Section 112(1) of the *Sentencing Act* provides that:

**"112. Classification of offences as indictable or summary** (1) An offence that is described in a provision of an Act (other than the *Crimes Act* 1958 or the *Wrongs Act* 1958), subordinate instrument or local law as being level 1, 2, 3, 4, 5 or 6 or as being punishable by level 1, 2, 3, 4, 5 or 6 imprisonment or fine or both is, unless the contrary intention appears, an indictable offence."

8. Section 109(2) of the *Sentencing Act* provides that:

**"109. Penalty scale** (2) An offence that is described in an Act, subordinate instrument or local law as being an offence of a level specified in column 1 of Table 2 or as being punishable by a fine of a level specified in that column is, unless the contrary intention appears, punishable by a fine not exceeding that specified opposite it in column 2 of the Table."

9. The table referred to in the sub-section reads:

"TABLE 2 Column 1 Column 2 Level Maximum Fine 1 -- 2 3000 penalty units 3 2400 penalty units 4 1800 penalty units 5 1200 penalty units 6 600 penalty units 7 240 penalty units 8 120 penalty units 9 60 penalty units 10 10 penalty units 11 5 penalty units 12 1 penalty unit "

10. The only other section of the *Sentencing Act* relevant for present purposes is s110 which reads:

**"110. Meaning of penalty units** If in an Act, subordinate instrument or local law there is a statement of a number (whether whole or fractional) of what are called 'penalty units', that statement must, unless the context otherwise requires, be construed as stating a number of dollars equal to the product obtained by multiplying \$100 by that number of penalty units."

11. It follows from the combined effect of ss24 and 69 of the *Trade Measurement Act* and s110 of the *Sentencing Act* that the maximum monetary penalty which can be imposed on a company in respect of a breach of s24 of the *Trade Measurement Act* is \$100,000 being 200 penalty units multiplied by 5 multiplied by \$100.

12. The argument advanced on behalf of the Director is that s112(1) has no application to the offence provided by s24 of the *Trade Measurement Act*. The following are the arguments advanced in support of the proposition:

(1) The offence provided by s24 of the Act is not described as being punishable by level 1, 2, 3, 4, 5 or 6 fine. It is described as being punishable by the imposition of 200 penalty units. A similar observation can be made concerning s109(2) of the *Sentencing Act*.

(2) Even if one was to apply to the penalty units to be imposed by ss24 and 69 of the *Trade Measurement Act* the meaning given to them by s110 of the *Sentencing Act* they would not equate to any level in column 1 of the table appearing in s109(2) of the *Sentencing Act*.

1000 penalty units would be between levels 5 and 6. In that situation the maximum fine to be imposed by a combination of ss24 and 69 of the *Trade Measurement Act* is not of a level specified in that column.

(3) The provisions of the *Sentencing Act* to which I have referred do not provide a form or mode of procedure for the hearing and determination of a proceeding taken under s24 of the *Trade Measurement Act*. In that situation s52 of the *Interpretation of Legislation Act* 1984 applies and prosecutions launched pursuant to s24 must be heard and determined by the Magistrates' Court.

Section 52 reads:

**"52. Summary proceedings** (1) If an Act or subordinate instrument—

(a) authorises or requires a proceeding or matter to be heard and determined—

(i) summarily; or

(ii) by or before the Magistrates' Court; or

(b) uses any other words that imply that a proceeding or matter is to be heard and determined by or before the Magistrates' Court; or

(c) does not provide a form or mode of procedure for the hearing and determination of a proceeding or matter—

then, unless the contrary intention appears, the proceeding or matter must be heard and determined only by or before the Magistrates' Court."

(4) Finally, it cannot have been the intention of the Legislature that there be trial by jury where the maximum penalty which can be imposed upon a corporation is \$100,000.

13. For the defendant it is argued that the real matter one takes account of in determining the applicability of s112(1) of the *Sentencing Act* is the totality of the monetary fine which can be imposed and not the penalty units as such.

14. As the maximum fine which can be imposed in the present case falls between levels 5 and 6 the offence can properly be categorised as one falling within the provisions of s112(1) of the *Sentencing Act* and therefore is an indictable offence.

15. In other words so long as it fits in somewhere along the range specified in s112(1) it is covered by the sub-section.

16. A second argument advanced on behalf of the defendant is that as the *Trade Measurement Act* came into operation after the *Sentencing Act*, and as the *Trade Measurement Act* does not provide a form or mode of procedure for the hearing of a prosecution under s24, the Legislature can be taken to have intended that s112(1) of the *Sentencing Act* apply.

17. In my opinion the Director's contentions in this matter are to be preferred to those of the defendant.

18. Section 112(1) of the *Sentencing Act* specifically relates to levels of punishment. In my opinion there is no warrant for giving it anything but its literal interpretation.

19. The penalty units which may be imposed in respect of a prosecution brought under s24 do not equate to any level specified in s112(1) and accordingly are not covered by the sub-section.

20. There is no provision in s24 for the form or mode of procedure for the hearing and determination of a prosecution under s24. In that situation I consider that s52 of the *Interpretation of Legislation Act* is applicable and that any prosecution under the section is to be heard and determined by the Magistrates' Court.

21. As a matter of policy it would be absurd in this day and age to require a corporation facing a maximum penalty of \$100,000 to stand trial by Judge and jury in the County Court. The costs of such a procedure would be totally out of proportion to the penalty involved.

22. The decision of the Melbourne Magistrates' Court made on 7 May 1999 whereby the Magistrate ruled that the charges laid against Greenfields are indictable offences and directed that Greenfields be tried in the County Court at Melbourne are quashed.

23. I order that the two charges brought against Greenfields pursuant to the provisions of s24 of the *Trade Measurement Act* 1995 be heard and determined in the Magistrates' Court of Victoria.

**APPEARANCES:** For the plaintiff DPP: Mr D Trapnell, counsel. Solicitor for Public Prosecutions. For the second defendant Greenfields: Ms P Riddell, counsel. Mills Oakley, solicitors.