

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hanna* [2019] QCA 274

PARTIES: **R**
v
HANNA, David Arthur
(appellant)

FILE NO/S: CA No 349 of 2018
DC No 1368 of 2018

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Brisbane – Date of Conviction:
17 December 2018 (Ryrie DCJ)

DELIVERED ON: 29 November 2019

DELIVERED AT: Brisbane

HEARING DATE: 29 July 2019

JUDGES: Gotterson and Philippides JJA and Bradley J

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL –
VERDICT UNREASONABLE OR INSUPPORTABLE
HAVING REGARD TO EVIDENCE – APPEAL DISMISSED
– where the appellant was convicted by a jury of one count of
doing acts that resulted in documents being destroyed, in
contravention of s 6K of the *Royal Commissions Act* 1902 (Cth) –
where the appellant was an office holder of a trade union and
had caused documents pertaining to that union to be
destroyed after the establishment of the Royal Commission
into Trade Union Governance and Corruption – where the
appellant contends that the verdict was unreasonable as the
appellant could not have been aware of a substantial risk that the
documents destroyed were or may be required in evidence by
the Royal Commission prior to Counsel Assisting deciding
what evidence would be required – whether the verdict was
unreasonable

Royal Commissions Act 1902 (Cth), s 6K

Hann v Director of Public Prosecutions (Cth) (2004) 88
SASR 99; (2004) 144 A Crim R 534; [2004] SASC 86, cited
R v Atkinson [2019] QCA 95, cited

COUNSEL: M J McCarthy for the appellant
A M Mitchelmore SC, with A C Freeman, for the respondent

SOLICITORS: Fisher Dore for the appellant
 Director of Public Prosecutions (Commonwealth) for the respondent

- [1] **GOTTERSON JA:** I agree with the order proposed by Bradley J and with the reasons given by his Honour.
- [2] **PHILIPPIDES JA:** I agree that the appeal should be dismissed for the reasons given by Bradley J.
- [3] **BRADLEY J:** On 17 December 2018, the appellant David Arthur Hanna was found guilty by a jury of doing acts that resulted in documents being destroyed, in contravention of s 6K(1) of the *Royal Commissions Act 1902* (Cth). Following the verdict, the appellant was sentenced to nine months imprisonment, but released forthwith upon entering a recognizance of \$500.00 to be of good behaviour for two years.

- [4] The offence was the only count on the indictment, which had been presented by the Commonwealth Director of Public Prosecutions on 18 June 2018. It was in these terms:

“Between the first day of April 2014 and the fourth day of April 2014 at Bowen Hills and elsewhere in the State of Queensland, David Arthur Hanna did act and the acts resulted in documents or other things being concealed, mutilated or destroyed and David Arthur Hanna knew or was reckless as to whether the documents or other things were or may be required in evidence before a Commission.”

- [5] The offence was created by section 6K(1) of the *Royal Commissions Act 1902* (Cth). Relevantly, it provides:

“6K Destroying documents or other things

- (1) A person commits an offence if:
- (a) the person acts or omits to act; and
 - (b) the act or omission results in a document or other thing being:
 - (i) concealed, mutilated or destroyed;
 - (ii) ...
 and
 - (c) the person knows, or is reckless as to whether, the document or thing is one that:
 - (i) is or may be required in evidence before a Commission; or
 - (ii) ...”

- [6] Section 5.4(1) of the *Criminal Code* (Cth) provides:

“(1) A person is reckless with respect to a circumstance if:

- (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
- (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.”

[7] On 21 December 2018, the appellant appealed against his conviction. The only ground of appeal is that the verdict is unreasonable and cannot be supported by the evidence, in that:

“the jury could not have been satisfied beyond reasonable doubt that the defendant was aware of a substantial risk that the documents or other things were or may be required in evidence before a Commission.”

Legal principles

[8] The legal principles applying to such a ground of appeal have been the subject of a series of decisions of the High Court.¹ They were recently summarised by this Court in *R v Atkinson*² as follows:

“[7] ... the question for the Court is whether the Court considers that, upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty. This Court must undertake its own independent assessment of the evidence, both as to its sufficiency and quality, allowing special respect and legitimacy for the jury’s verdict.

[8] But in answering that question, the Court must not disregard the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence and that the jury has had the benefit of having seen and heard the witnesses; on the contrary, the Court must pay full regard to those considerations. A court of criminal appeal is not to substitute trial by an appeal court for trial by jury.”³

[9] It follows that the court must determine whether the evidence adduced at the trial was sufficient to satisfy the jury beyond reasonable doubt that, at the time he engaged in the relevant conduct, the appellant was consciously aware of a substantial risk that some of the documents might be required in evidence by the Royal Commission and that it was unjustifiable in the circumstances for him to take that risk.

[10] It was common ground at the hearing of the appeal that a “substantial risk” was a real possibility, chance or likelihood.⁴

The evidence

¹ *R v Baden-Clay* (2016) 258 CLR 308 at 329-330 [65]-[66]; *Morris v The Queen* (1987) 163 CLR 454 at 473; *M v The Queen* (1994) 181 CLR 487 at 493-495; *MFA v The Queen* (2002) 213 CLR 606 at 621-622 [49]-[51], 623-624 [56]-[59]; and *SKA v The Queen* (2011) 243 CLR 400 at 408-409 [20]-[22].

² [2019] QCA 95 at [7]-[8] (Wilson J), Sofronoff P at [1] and McMurdo JA at [2] agreeing.

³ Internal citations omitted.

⁴ See *Hann v Director of Public Prosecutions (Cth)* (2004) 144 A Crim R 534 at 542.

- [11] At the trial, evidence was adduced from eleven witnesses and 18 documents were tendered as exhibits. The appellant did not give evidence.
- [12] The evidence adduced established the following matters.
- [13] On 10 February 2014, the Commonwealth announced an intention to establish a Royal Commission into Trade Union Governance and Corruption (the **Royal Commission**) and published the proposed terms of reference. The Construction, Forestry, Mining and Energy Union (**CFMEU**) was named as one of the trade unions of interest for the Royal Commission. On 13 March 2014, the Governor-General established the Royal Commission by Letters Patent.
- [14] The appellant was President of the Construction and General Division, a division of the CFMEU, and also President of the Queensland and Northern Territory Divisional Branch of the Division. He had been a senior office bearer of the Builders Labourers Federation (**BLF**), until the BLF merged with the Construction and General Division of the CFMEU on 31 March 2014.⁵
- [15] At 1.50 pm on 1 April 2014, the Royal Commission served a Notice to Produce directed to the proper officer of the CFMEU. The notice was served at the CFMEU's national office in Miller Street, West Melbourne. It required the production of certain categories of documents held by the CFMEU (including any Branch or Division of the CFMEU) relating to the period from 1 January 2007 to 31 March 2014.
- [16] The schedule to the notice listed eleven categories of documents required to be produced. These included:
1. all financial records for each reporting unit of the CFMEU;
 2. all documents disclosing to CFMEU members any payments made to a CFMEU officer (or a spouse or relative of an officer);
 3. all documents recording financial or other contributions made by the CFMEU to the campaign of a person seeking election or pre-selection for office in a registered union or a parliament; and
 4. all documents recording payments (other than salary) made to or benefits conferred on a CFMEU officer, spouse or relative, or an entity controlled by an officer, spouse or relative or an entity in respect of which an officer, spouse or relative was a promoter, a director or member or a beneficiary under a trust.
- [17] The CFMEU National Secretary, Michael O'Connor, sent an email marked "URGENT" to the Presidents and Secretaries of all CFMEU Divisions, Divisional Branches and District Branches, including the appellant, at 4.16 pm (Australian Eastern Daylight Saving Time) that day. This was 3.16 pm in Brisbane. Mr O'Connor attached the notice and a letter, from him, about the notice.
- [18] The letter read, in part:

⁵ A federal branch related to the BLF had merged with the CFMEU on 31 January 2014.

“The notice requires the production of the documents and other things described in Schedule A to the notice on or before 10:00 am on 11 April 2014.

I would request that you all give this matter your very urgent attention and that you take immediate steps to comply with the notice. All documents and other things captured by the Notice should be provided to Tom Roberts, the National Legal Officer of the Construction and General Division, as soon as possible.

It is to be noted that some of the categories of documents and things sought in Schedule A are very broad and the Union is currently seeking legal advice on this issue. Nevertheless, until such time as this issue can be clarified you should assume that the Notice must be complied with.

If you have any enquiries please do not hesitate to contact me or Tom Roberts.”

- [19] On 1 April 2014, the appellant was at the CFMEU’s offices at 14 and 16 Campbell Street, Bowen Hills (**CFMEU Office**) during the afternoon and evening. He was organising things around the office. He had asked a number of staff, including the then CFMEU training team leader, Robert Charles Cameron, to stay back because “we were going to clean everything up” that afternoon. Mr Cameron reported directly to the appellant. The appellant asked Mr Cameron where the training coordinators were and Mr Cameron told the appellant where they were.
- [20] The appellant telephoned CFMEU training coordinator Darren Brendan (Bob) Williams and told him, “We got paperwork here to get rid of. There are boxes to get rid of. Boxes of papers to get rid of.” He asked Mr Williams to drive to the appellant’s property at Cornubia and pick up a horse float stored there. He asked him to tow the float to the CFMEU Office, load it with the boxes of documents, drive it back to the appellant’s property and there destroy the documents by burning them. He asked if Mr Williams could get others, including Mr Williams’ son, to help.
- [21] The appellant also contacted another CFMEU training coordinator, Brian Lawrence Humphrey, and asked him to drive to the appellant’s Cornubia property and collect a cage trailer kept there. He asked Mr Humphrey to tow the trailer to the CFMEU Office, load it with documents, drive it back to the Cornubia property and there help Mr Williams to destroy the documents by burning them.
- [22] Mr Williams and Mr Humphrey followed the appellant’s respective directions and towed the float and the trailer to the CFMEU Office. Mr Williams enlisted his son to assist.
- [23] At the CFMEU Office, Mr Williams parked his union car with the float attached at the front of the office. He, his son and Mr Cameron loaded 40 or 50 boxes from the open office space in 14 Campbell Street onto the float. These documents included boxes of files that had been brought to the CFMEU Office from the BLF office in the days before 1 April 2014. They may also have included some documents from the CFMEU archive room, in the basement of 16 Campbell Street, which had been selected for disposal by the CFMEU Secretary Michael Ravbar and could not be accommodated in the document disposal bins.

- [24] When the float was fully loaded with all the boxes, Mr Williams towed it to the appellant's Cornubia property. It was dark by the time Mr Williams arrived at the property and he thought it was too late to burn the boxes of documents that day. He left the float there overnight.
- [25] Mr Humphrey drove the trailer to the rear of 16 Campbell Street. The appellant opened the rear garage door on the basement level and Mr Humphrey drove the trailer into the basement. He detached it from his car. In the basement, the appellant helped Mr Humphrey load into the trailer boxes from the archive room in the basement of the CFMEU Office. Mr Ravbar may have selected these documents for disposal. At some point in time, Mr Humphrey drove away, leaving the trailer.
- [26] There were CCTV cameras in the CFMEU Office that recorded if there was movement, so that if someone was in the office and in the line of sight of a camera, whatever they were doing would be recorded.
- [27] In the course of the process of removing the boxes of documents from the CFMEU Office, perhaps at about the mid-point of that process, the appellant asked the CFMEU administration manager, Paula Ellen Masters, for the locations of the CCTV cameras in the office. The appellant directed Mr Cameron to cover the CCTV cameras on the premises, suggesting he hang union banners in front of the cameras. Mr Cameron covered three of the four cameras: he hung union banners over the cameras inside 16 Campbell Street and at the front of 14 Campbell Street facing out to the street, and he hung a shirt in front of the camera in the car park at the rear of the office. He found the fourth camera, in the foyer of 14 Campbell Street, was already obscured.
- [28] The process of removing boxes of files from the CFMEU Office started around about 3.00 pm. It lasted until about 8.30 pm that night.
- [29] On 2 April 2014, the appellant called Mr Humphrey and asked him to make sure the documents in the boxes were destroyed. Mr Humphrey drove to the appellant's Cornubia property to do so. There he found the trailer he had towed to the CFMEU Office the previous afternoon, and the horse float that Mr Williams had driven to Cornubia the previous evening. Mr Williams also drove to the property, following the appellant's instruction to destroy the documents.
- [30] At the Cornubia property, Mr Williams and Mr Humphrey lit a fire and attempted to burn the documents in the boxes. To do this, they took documents out of some of the boxes on the float, spread them on the fire and put some fuel on them. In doing this, Mr Williams saw they were old BLF documents. The documents did not burn very well. Perhaps 10 per cent of the documents were burned in this way.
- [31] After about two hours, Mr Williams and Mr Humphrey telephoned the appellant. Mr Williams said to him, "If we're going to burn these, we're going to be here for a month, because it will take forever. We need to find some other way of getting rid of this stuff." Mr Humphrey said, "It's not a very efficient way of, you know, disposing of rubbish. You're better off to dump it." The appellant replied, "Leave it with me" or "Yeah, don't worry about it. We'll take care of it."
- [32] Mr Williams and Mr Humphrey then unloaded the rest of the boxes from the float and the trailer and stored them in a hay shed on the appellant's property.

- [33] At some time between 2 April and early on 4 April 2014, probably on 3 April 2014, the appellant contacted one of the principals of Harrington Bobcat & Excavator Hire Pty Ltd (**Harrington Hire**) and asked for the firm to supply a truck to take a load from the Cornubia property to a rubbish disposal centre. Harrington Hire offer general earthmoving and soil and rubbish removal services. Harrington Hire's handwritten job sheet for 4 April 2014 lists eleven numbered jobs. The job numbered "7" is for the appellant at his Cornubia property. It is described as "Truck ASAP" at 7.00 or 7.30.
- [34] On 4 April 2014, the appellant met with Mr Williams and Mr Humphrey at the appellant's Cornubia property.
- [35] Ben James Flanagan was a truck driver working for Harrington Hire. He arrived at the Cornubia property at 7.30 am on 4 April 2014. There, he found the appellant and Mr Williams and Mr Humphrey.
- [36] Initially, Mr Flanagan used a Bobcat, which he had brought to the property on the back of the truck, to level some ground at the bottom of a hill on the Cornubia property. While doing this, he observed Mr Williams and Mr Humphrey loading the boxes of documents from the hay shed into the bucket of a backhoe, which the appellant operated and used to tip the boxes into the tray of the truck Mr Flanagan had driven to the property. When Mr Flanagan finished his work levelling the ground, he used the Bobcat to load boxes into the truck. The four men loaded all of the remaining boxes into the truck.
- [37] When all the boxes and documents were in the truck, Mr Flanagan asked, "Should we put a bit of dirt on there to stop things from blowing out?" This was agreed and Mr Flanagan used the bobcat to place two or three bucket loads of dirt over the top of what he described as the "paperwork".
- [38] Mr Flanagan drove the truck away, taking the documents to a waste disposal site at 100 Chum Road, New Chum, near Ipswich. The appellant asked Mr Humphrey to go with the tip truck to make sure the "stuff" was taken to "a proper tip, rather than just dumped onto the side of the road." Mr Humphrey did as the appellant asked.
- [39] At New Chum, the site operator, Transpacific Industries Group, weighed the load and issued a delivery docket. It bears a date and time print of 4 April 2014, 10.36 am, a reference of "CORNUBIA" and records a net weight of 6.86 tonnes. Mr Flanagan wrote on the docket "Dave Cornubia".
- [40] Mr Flanagan also filled out a pro forma tax invoice for his work that day. He dated it 4 April 2014, recorded a start time as 7.30 and a finish time as 11.30, with 1.5 hours travel time.⁶ The total charge was \$770.00, including GST. This included 5.5 hours at \$100.00 per hour and \$150.00 for "Dump Fees".
- [41] Harrington Hire issued a tax invoice to the appellant dated 4 April 2014 for \$770.00, including GST.
- [42] The appellant was aware that the boxes contained old records of the CFMEU, including records of the BLF. The appellant may have seen something of the documents in the boxes in the course of loading them onto the trailer on 1 April 2014 and onto the Harrington Hire truck on 4 April 2014. There was no evidence that the appellant looked at or examined the documents in any of the boxes, at the

⁶ Harrington Hire was based at Kippa-Ring.

time of the process leading to their destruction or at any other time. So there was no evidence that he would know with any precision the documents that were in any of the boxes.

- [43] Between about 16 and 21 May 2014, the appellant obtained \$770.00 in petty cash from a CFMEU finance officer, Cherie Michelle Shaw. The appellant told Ms Shaw that the money was for “burying documents”. He completed a CFMEU petty cash voucher and signed it, declaring that “100% of the above expenses incurred by me was applicable for business purposes.” On 21 May 2014, the Secretary of the Construction and General Division, Michael Ravbar, approved the payment to the appellant.
- [44] At a later time, the appellant handed Ms Shaw an envelope and told her it contained the receipt or invoice for this expense. He requested that she dispose of it. Ms Shaw complied with that request, placing the envelope and its contents in a shredding bin.
- [45] The Harrington Hire customer ledger for the appellant recorded the \$770.00 balance as having been paid on 23 June 2014. The firm’s duplicate deposit record for 1 July 2014 records a cash deposit that included \$770.00 for the invoice issued to the appellant.
- [46] In March, April and May 2014, Cleanaway provided a regular weekly service to the CFMEU supplying and emptying a 1100 litre cart at the CFMEU Office. This cart could be used to dispose of anything other than hazardous materials (such as oil and paint). The cart could hold about 16 archive boxes. The union could request an additional service – the emptying of the cart between the regular weekly services – and this could be provided within 24 hours of a request. The cart was emptied on 26 March 2014 and on 2 April 2014, on each occasion as the regular weekly service. An additional service was supplied on 4 April 2014, to empty the cart that day, following a request. It was emptied again, on the regular weekly basis, on 10 April 2014.
- [47] Shred-X also supplied services to the union at the CFMEU Office. It provided two 240 litre bins for the secure disposal of documents. Each bin was padlocked shut with a slot opening for paper to be fed into the bin. Each bin could hold about 100 kg of paper. The service included emptying the bins at any time on request. On 2 April 2014, the union requested that these two bins be emptied. A Shred-X driver came to the office and emptied the two bins that day.
- [48] Shred-X could also provide a service of disposing of much larger quantities of paper. It could collect documents in archive boxes and take them away for disposal at a price per box. The CFMEU did not request Shred-X to provide such a service in April 2014.
- [49] The usual practice of the CFMEU was to send finance and membership records selected for disposal to document destruction or destroy them in the shredder in the CFMEU Office. The selection and destruction of CFMEU records, older than seven years, was usually undertaken in January each year. This had not occurred in January 2014; perhaps due to other administrative work associated with the mergers between CFMEU entities and the BLF entities.

Consideration of the submissions on appeal

Awareness of a substantial risk

[50] For the appellant it was submitted that, because Counsel Assisting the Commissioner would determine the documents to be tendered during public hearings of the Royal Commission,

“it is entirely speculative whether or not any given document would be required to be produced, and if produced whether it would be required in evidence.”

[51] Thus, it was submitted, there was no substantial risk of which the jury could be satisfied the appellant was aware, because the risk was “entirely speculative and not substantial”.

[52] The appellant’s central submission was also directed to the internal functioning of the Royal Commission. It was based on the contention that there was no evidence from which the jury could have concluded the appellant was aware of a substantial risk that:

“the power to determine what would be put into evidence at a Royal Commission had or would be exercised in relation to any of the documents that were destroyed”

or that:

“any of the destroyed documents had or would be the subject of decision that it be put into evidence.”

[53] Drawing on this contention, for the appellant it was submitted that:

“without evidence that the appellant was aware of both the content of the documents and the framework for deciding what documents were or may be required in evidence, it could not be concluded that he was aware of a substantial risk that the documents were or may be required in evidence.”

Conclusions on awareness of a substantial risk

[54] It may be accepted that it could not be known with certainty whether any CFMEU documents would be required in evidence until, subject to the control of the Commissioner, the Counsel Assisting reached a decision about that matter.⁷ Whether something may be known with certainty, however, is not the relevant enquiry. For this offence, a substantive risk is a risk that is a real possibility, chance or likelihood, in contrast to one that is fanciful or without substance.

[55] To have committed an offence in contravention of section 6K(1)(c)(i) of the Act, a person does not need to have knowledge of an actual decision by a Royal Commission to exercise its power to put a document into evidence. Nor does the person require actual knowledge that a particular document has or would be the subject of the Royal Commission’s decision. The relevant element of the offence is recklessness as to whether the document is one that “may be required in evidence”.

[56] The appellant was aware of the Royal Commission. He was aware of the notice, which was wide in scope, requiring the production of CFMEU documents dating back to 1 January 2007. He was aware that the documents he was directing be

⁷ Royal Commission into Trade Union Governance and Corruption, *Practice Direction 1* at [43].

destroyed were documents of the CFMEU and its divisions and branches, including documents in boxes brought from the BLF office. This knowledge was sufficient to satisfy the jury, beyond reasonable doubt, that he was aware of a real possibility, chance or likelihood that some of the documents may be required in evidence by the Royal Commission.

[57] In addition to those circumstances, the jury was entitled to draw an inference that the appellant was aware of a substantial risk that some of the documents may be required in evidence by the Royal Commission from other parts of the evidence:

1. The timing of the appellant's instructions to destroy the documents. The process began at about the time the notice was sent to the appellant (and others) by the National Secretary, Mr O'Connor.
2. The appellant's direction to Mr Cameron to cover up the CCTV cameras while the process for destruction of the documents was underway.
3. The unusual method of destruction initially directed by the appellant. This involved the transporting of the documents from the CFMEU Office to his acreage property at Cornubia about 40 km away and burning them in that location, rather than disposal using the CFMEU's existing service suppliers, Cleanaway and Shred-X.
4. The apparent urgency of the process directed by the appellant. The process involved staff working from around 3.00 pm until 8.30 pm on 1 April 2014, and two CFMEU training coordinators returning to the appellant's Cornubia property the next day to burn the documents. When that was not effective to destroy the documents, the appellant asked Harrington Hire to provide a truck to dump the documents "ASAP" and the two coordinators to return to the property before 7.30 am on 4 April 2014 to load the documents onto the truck for disposal.
5. These efforts were directed by the appellant to the task of destroying the documents in the immediate aftermath of a written request from the National Secretary to give compliance with the Royal Commission's notice "your very urgent attention" and to "take immediate steps to comply with the notice."
6. The instruction for Mr Humphrey to accompany the Harrington Hire truck to ensure the documents were disposed of at a proper tip.
7. The appellant arranging the services of Harrington Hire, with an invoice directed to him personally, and then seeking cash from Ms Shaw to pay the invoice.
8. The appellant directing Ms Shaw to dispose of the invoice/receipt documents issued by Harrington Hire.

Unjustifiable to take the risk

[58] The second relevant element of the offence arises from the fact that the indictment alleged recklessness. The appellant did not address any separate submissions to whether the evidence was sufficient to satisfy the jury beyond reasonable doubt that it was unjustifiable for the appellant to have taken the risk that the documents may be required in evidence at the Royal Commission. However, it is convenient to consider briefly the evidence adduced in this respect.

Conclusions on unjustifiable risk

- [59] Mr O'Connor, the National Secretary, had informed the appellant of the notice issued by the Royal Commission. He had indicated the breadth of some of the categories in the notice, and told the appellant not to hesitate to contact him or Mr Roberts, the National Legal Officer, if he had any enquiries. The appellant had the means of determining what the documents were in the boxes he was directing be destroyed. He could have done so by examining them or a sample of them.
- [60] On 1 and 2 April 2014, the appellant directed the destruction of the documents, without seeking any guidance or advice from Mr O'Connor or Mr Roberts and without any examination of the documents. It was open to the jury to be satisfied beyond reasonable doubt that, in doing so, he took a risk that was not justifiable in the circumstances.
- [61] From the morning of 2 April 2014 until the morning of 4 April 2014, when destruction of the documents proved impractical, there was an unexpected delay in disposing of them. During this further period, the appellant directed the destruction of the documents at a rubbish disposal site. He did so without making any enquiry of Mr O'Connor or Mr Roberts and without undertaking or directing any examination of the documents in that enlarged intervening period.
- [62] It was open to the jury to be satisfied beyond reasonable doubt that, in doing so, the appellant again took a risk that was not justifiable in the circumstances.
- [63] A person in the position of the appellant does not render their conduct other than reckless by failing to take steps readily available to them and failing to take advantage of advice offered to them, which would allow them to know with greater certainty the nature of the risk they are considering taking.

Disposition

- [64] It follows that, on the whole of the evidence, it was open for the jury to be satisfied beyond reasonable doubt that the appellant was guilty of the offence on the indictment with which he was charged.
- [65] The appeal should be dismissed.