SUPREME COURT OF QUEENSLAND

CITATION:	*R v Crump* [2004] QCA 176
PARTIES:	**R** v **CRUMP, Russell Stewart Henry** (appellant)
FILE NO/S:	CA No 281 of 2003 SC No 84 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	28 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	26 March 2004
JUDGES:	Davies and Jerrard JJA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against conviction dismissed**
CATCHWORDS:	APPEAL AND NEW TRIAL - NEW TRIAL - IN GENERAL AND PARTICULAR GROUNDS - PARTICULAR GROUNDS - IMPROPER ADMISSION OR REJECTION OF EVIDENCE - GENERAL PRINCIPLES AS TO GRANT OR REFUSAL OF NEW TRIAL - where the deceased was found floating in a lagoon and had received two severe blows to the head and multiple wounds to the abdomen - where the appellant was convicted of murdering his de facto wife - where the appellant was known to have been violent to the deceased for many years - where there was a strong circumstantial case - where the learned trial judge admitted a witness' evidence of previous violence by the appellant - where the evidence was admitted under s 93B *Evidence Act* 1977 (Qld) - whether the learned trial judge erred in admitting the witness' evidence - whether any wrongful admission of evidence had a prejudicial effect on the appellant APPEAL AND NEW TRIAL - NEW TRIAL - IN GENERAL AND PARTICULAR GROUNDS - PARTICULAR GROUNDS - IMPROPER ADMISSION OR REJECTION OF EVIDENCE - GENERAL PRINCIPLES

AS TO GRANT OR REFUSAL OF NEW TRIAL - where one witness gave two versions of events on the day of the murder - where there was substantial doubt about the witness' reliability but if believed the evidence was probative - where the appellant contends that the evidence should not have been admitted or alternatively if admitted that another witness should have been called by the prosecution - whether the learned trial judge erred in admitting the evidence - whether the learned trial judge misdirected the jury by saying that the defence was able to call another witness

APPEAL AND NEW TRIAL - NEW TRIAL - IN GENERAL AND PARTICULAR GROUNDS - PARTICULAR GROUNDS - MISDIRECTION OR NON-DIRECTION - DIRECTIONS AS TO PARTICULAR MATTERS - OTHER MATTERS - where it was submitted by the appellant that the learned trial judge should have directed the jury that it was open for them to reach a verdict of manslaughter - whether the learned trial judge erred in making no direction on manslaughter

Evidence Act 1977 (Qld), s 93B

Dyers v The Queen (2002) 210 CLR 285, cited
R v Stevens [2004] QCA 99; CA No 147 of 2003, 6 April 2004, cited

COUNSEL: M J Byrne QC for appellant
L J Clare for respondent

SOLICITORS: Legal Aid Queensland for appellant
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA:

The appeal

[1] The appellant was convicted of the murder of his de facto wife Erica Tomkinson, known as Ricki, on 31 July 2003 after a 13 day trial. He has appealed against that conviction on what are now five grounds. They are:

1. the learned trial judge erred in ruling that evidence of previous violence by the appellant upon the deceased was admissible;
2. the learned trial judge erred in ruling that evidence of statements by the deceased alleging previous violence upon her by the appellant was admissible;
3. the learned trial judge erred in ruling that evidence of statements made to the appellant alleging previous violence by him upon the deceased and which the appellant did not expressly adopt or accept were admissible;
4. the appellant was denied a fair trial by the Crown electing to call the person Anthony Duffy as a witness, failing to call the person Robert Beavan as a witness and by the ensuing directions of the trial judge that the defence could have called such a witness;

5. the learned trial judge failed adequately or at all to put the defence case to the jury in respect of whether the Crown could prove the killing was murder and not manslaughter.

[2] Before turning to those grounds of appeal it is necessary to say something about the circumstances in which the deceased's body was found and the circumstantial case against the appellant.

The evidence supporting a circumstantial case

[3] The deceased's body was recovered on 10 February 2002 from what was the first of three lagoons reached by a dirt track in Toolara State Forest. It had been sighted there on 9 February. It was found to be attached by baling twine to two besser blocks.

[4] Dr Naylor, a forensic pathologist who examined the deceased's body, found two head injuries caused by severe blows from an instrument with blunt and sharp edges such as the back of an axe. Either of these blows would have been sufficient to cause unconsciousness and death. There were also six vertical parallel knife wounds in her abdomen. They had probably been inflicted after she was unconscious or dead because, if she had been conscious, she would have moved involuntarily because of the severe pain, thereby causing the incisions to be other than straight, as they were. Part of her intestine had been removed. She also had a large wound on the inside of her left upper arm.

[5] The following are the main facts from which the jury were asked to infer that the appellant had murdered the deceased on the morning of 4 February 2002:

(1) the body of the deceased was found in a part of the lagoon which could be reached only by a boat. The appellant had an aluminium dinghy and motor which he commenced negotiating to sell on the afternoon of 4 February and which he sold on the following day.

(2) Twine of the kind used to tie the deceased's body to the besser blocks was found on the appellant's premises.

(3) More tellingly, one of the besser blocks tied to the deceased's body had a distinctive groove which was identical to the groove on a besser block found on the appellant's property; and generally, both besser blocks were of the same construction and composition as blocks found on the appellant's property.

(4) The appellant and the deceased were seen by Anthony Duffy at the third of the three lagoons, where he lived in his VW Kombi van, on the morning of 4 February. After talking to him there they left with the stated intention of going back to the first lagoon.

(5) Shirley Sigsworth made a phone call to the appellant's home at 11.08 am on 4 February. It was unanswered. However the appellant had claimed to police that he was at home at that time.

(6) The appellant arrived at the Gunalda Hotel between 12 noon and 1.00 pm on 4 February and stayed for about an hour and a half. When he later saw some of those who were also present in the hotel at that time, he appeared to try to persuade them that he was there for longer than in fact he was.

(7) Whilst at the Gunalda Hotel he said that the deceased had left him taking money, 11 or 12 tall bottles of home brew and a quantity of clothing. However she had no vehicle, had not made any telephone calls beforehand and had not made contact with any neighbours. Their residence was at a considerable distance from any public transport.

(8) The deceased was seen alive in the appellant's company by the witness Glenn Sheppard between 7.30 am and 8.00 am on 4 February 2002 when he collected them from their residence and drove them to the Gunalda Hotel to pick up the vehicle they had left at that hotel the night before. That was before she was reportedly seen by Mr Duffy; she was not in the appellant's company when he went to the Gunalda Hotel later that same day as described in (6) herein. On that occasion the appellant explained her absence by saying she had stayed at home. On the next day, 5 February, he gave the further account at the Gunalda Hotel described in (7) herein, and also told it at a private residence that day, namely that the deceased had left him the previous day, 4 February 2002, taking some things with her.

(9) On the morning of 5 February there was a withdrawal from the deceased's bank account at an ATM. Mr and Mrs Barr who, according to the bank's records, used the ATM immediately after the person who effected that withdrawal, were able to describe the person before them as a male generally of the appellant's description.

(10) On the afternoon of 4 February the appellant called at Anita Ditton's house. She was not home but when she got home she rang him and told him to "stop hassling us" meaning herself and her mother who was home when the appellant called. On the following night when she was home watching the cricket on the television with Mr Duffy she saw the appellant's car drive past. About half an hour later he phoned, asked about her relationship with Duffy and asked if he could come over. Ms Ditton refused. However on the following night the appellant visited Ms Ditton and tried to "grope" her. Ms Ditton rebuffed his advances and he left.

(11) On Friday 8 February 2002 the appellant told Christine Beileiter, the cook at the hotel, that the deceased "is no longer"; she overheard him telling other people that "the divorce papers were in the mail and things like that". One of those people may have been Karen Thomsen whose evidence was that on that Friday the appellant said to her at the hotel that the deceased had "fucked off". That witness later questioned him outside the hotel, and was told that the appellant had gotten a letter from the deceased on the Wednesday (ie 6 February). The appellant also told the witness John Robinson at the hotel that Friday that he had already heard from the deceased's solicitors, that the letter from them was stamped at Dalby, and that the deceased's parents came from that town. No suggestion was made at the trial that any correspondence from the deceased, or any instructions from her had actually been received by the appellant after 4 February 2002. The jury were entitled to treat evidence of the appellant's statement about such correspondence as evidence that he knew she was dead and was attempting to explain away what would be her permanent absence.

(12) After speaking to Sandra Bartkiw on 9 February he visited her on the same day. He told her that Ricki would not be returning. He then grabbed her and tried to hug and kiss her. On Monday 11 February he rang her suggesting that they should be more than friends. Ms Bartkiw rejected his advance.

(13) There was evidence from a large number of people that the appellant had been violent to the deceased over a substantial period of time. That evidence included admissions by the appellant to that effect.

(14) The appellant lied to police about the circumstances in which and the person to whom he sold his boat. In an interview on 11 February he told them he sold it about a fortnight beforehand or even longer. He said he had put an advertisement in the Gympie paper. He later said that he had not put an advertisement in the paper but had put a sign up in Coles, Gympie. He said he had a phone call the following day and sold it that day. He said that he was unable to

identify the person to whom he sold it and gave only a vague description of a man whom he said was the buyer. In fact he sold it to a second hand dealer on 5 February after ringing several such dealers on the afternoon of 4 February.

[6] The matters to which I have referred, when taken together, constituted a very strong circumstantial case that the appellant had murdered the deceased on the morning of 4 February. Except for the evidence of Anthony Duffy, the evidence with respect to all of the other matters was strong and credible. I shall say more about the evidence of Anthony Duffy when discussing ground 4. It is sufficient here to make two further points. The first is that all admissible facts likely to throw doubt on the evidence of Anthony Duffy were before the jury. And the second is that, even without the evidence of Anthony Duffy the circumstantial case against the appellant was a strong one. I turn now to the grounds of appeal.

Grounds 1 to 3

[7] In the end these grounds were restricted to a contention that the learned trial judge should not have admitted the evidence of Petria Kahlow. Ms Kahlow was one of a number of witnesses who gave evidence with respect to violence by the appellant against the deceased. The appellant contends that her evidence was not properly admissible under s 93B of the *Evidence Act* 1977.

[8] It was common ground in this appeal that Ms Kahlow's evidence would have been admissible if it had satisfied the requirements of either s 93B(2)(a) or s 93B(2)(b). Subsection (2) of s 93B is relevantly as follows:

> "(2) The hearsay rule does not apply to evidence of the representation given by a person who saw, heard or otherwise perceived the representation, if the representation was–
>
> (a) made when or shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication; or
>
> (b) made in circumstances making it highly probable the representation is reliable; or
>
> … "

[9] The learned trial judge's conclusion on this question and counsel for the appellant's written outline appeared to concentrate on the requirements of subsection (2)(b) but it seems to me that the relevant representation was made by the deceased to Ms Kahlow shortly after the asserted fact, an assault by the appellant on the deceased, happened. Consequently it would be sufficient for its admissibility that the representation was made in circumstances making it unlikely the representation was a fabrication, within the meaning of subsection (2)(a).

[10] Ms Kahlow's evidence was as follows. On a date which she did not specify the deceased came to her house in Gunalda one morning. She told Ms Kahlow that she had stayed up the road at some neighbour's place overnight and that the appellant had beaten her up. She said that he "just went off at her and started thumping into her and she run away". Ms Kahlow did not say that the deceased had any bruises or other marks on her on this occasion consistent with having been assaulted by the appellant. However she did depose to having seen her on other occasions on which she had bruising.

[11] As I indicated earlier, the fact that, according to the deceased, this conversation occurred on the morning immediately after the appellant had assaulted her, made what she said, a representation made shortly after the asserted fact happened, within the meaning of subsection (2)(a). The difficulty about the admissibility of this evidence is as to whether the representation was made in circumstances making it unlikely the representation was a fabrication.

[12] Had Ms Kahlow observed bruising or other signs of injury on the deceased on that morning I would accept that this may have been a circumstance making it unlikely that the representation was a fabrication. The question is whether, without that additional evidence, the fact that the deceased said that she came to Ms Kahlow in the circumstances which I have described meant that the representation was made in circumstances making it unlikely that it was a fabrication.

[13] I do not think that it was.

[14] There was, of course, evidence from a substantial number of other witnesses of violence by the appellant against the deceased. If the incident which Ms Kahlow related was proved to have occurred after previous proven acts of violence by the appellant against the deceased, this might arguably be sufficient to enable the Court to conclude that the representation was made in circumstances making it unlikely that it was a fabrication. The difficulty with such a contention is that there is no evidence as to when this incident occurred in relation to other acts of violence to the deceased which were proven against the appellant.

[15] In those circumstances I do not think that Ms Kahlow's evidence was admissible pursuant to s 93B(2)(a). And if it was not admissible under that provision it was not admissible under s 93B(2)(b) which required that it was made in circumstances making it highly improbable that it was unreliable. It therefore ought to have been excluded.

[16] However the wrongful admission of this evidence could not possibly have had any prejudicial effect. There was a great deal of other evidence of violence by the appellant against the deceased including by the appellant himself. Moreover it was uncontradicted and for the most part unchallenged. Nor, in the end, were any submissions made against either its admissibility or its weight in this Court. Particulars of some of this evidence are as follows.

[17] In his record of interview the appellant was asked "How many times have you taken your hand or whatever to your wife?" to which he replied "Probably twice … or three times". He was then asked about injuries to which he said "probably a black eye and stuff". He also volunteered that he had a Domestic Violence Order against him at one stage. Karen Thomsen said that between December 1997 and 2001 she saw the appellant and the deceased up to five times a week at the hotel. The deceased often had markings on her face, bruised arms, underarms and legs and lacerations. On one occasion Thomsen said to the appellant "She must be like a rag doll to you" to which the appellant replied "She shouldn't make me angry".

[18] About 18 months to two years before the deceased disappeared she travelled to Tin Can Bay looking distressed saying that she had left the appellant and needed somewhere to stay. She was injured. She told Mr Money that the appellant had threatened to shoot her and throw her in the pond. His evidence was corroborated by Ms Letts, a neighbour, with whom she stayed on this occasion. Ms Letts noticed

that she was hysterical, badly beaten, bruised all over with a cut lip. The deceased told Letts that the appellant had taken her into the forest, tied her up, belted her and held a gun in her mouth. After the deceased had returned home Mr Money rang to see how she was. He said to the appellant that the deceased had said that the appellant was going to shoot her and throw her in the dam. The appellant said "Did she really say that?".

[19] Diane Donker lived in the area for eight or nine years and saw the deceased three or four times a week prior to her disappearance. Over that period she saw marks and bruises on the deceased's arms and face on numerous occasions. The deceased said to her that she had been putting up with Russell bashing her for the last 20 years. Ms Donker confronted the appellant about this saying "You are really, really hurting this girl". The appellant shrugged and just looked blank. This was about two weeks before the deceased's disappearance. In respect of all this evidence the learned trial judge directed that it could not be used for propensity reasoning but was relevant only to motive and he cautioned the jury about the weight of hearsay statements. The point here, however, is that, in the light of this much more compelling evidence of serious and frequent violence by the appellant against the deceased the evidence of Ms Kahlow could have had no more than a minimal effect. It was clearly established by strong, uncontradicted and for the most part unchallenged evidence that the appellant had been seriously violent to the deceased over many years. This ground must therefore fail.

Ground 4

[20] In the first place it was submitted that Anthony Duffy's evidence should not have been admitted. Secondly it was submitted that, if he were called as a witness, as he was, then Robert Beavan should also have been called by the prosecution. And thirdly it was submitted that his Honour misdirected the jury by saying, in effect, that if Beavan's evidence was relevant, it could have been called by the defence.

(a) the admission of Duffy's evidence

[21] As to Duffy's evidence, it is true that there was reason to have substantial doubt about its reliability. I shall mention the main reasons for that shortly. However it was plainly relevant and, if believed, probative of the presence of the appellant and the deceased at the first lagoon on the morning of 4 February. No objection was taken to its admission at the trial.

[22] Detective Tipman first spoke to Duffy on 10 February. In that statement Duffy said that the last time he saw the appellant and the deceased was at the lagoons about a week beforehand and they told him that they had been fishing in the first lagoon. He said they were there about an hour and then left. It was put to him in cross-examination that he did not mention 4 February but his answer was that 4 February was about a week before 10 February. He said he was later able to fix the date as 4 February because that was the day on which he found a small black puppy which he later surrendered to its owner. He also said that he had seen the appellant and the deceased at the first lagoon with an aluminium dinghy on the Friday before.

[23] His second statement was given on 12 February. He reiterated that he had seen the appellant and the deceased at the lagoon with an aluminium dinghy but on that occasion thought that it was on the Tuesday before. He also said that the last time he saw them at the lagoons was on Monday 4 February. He was able, between the first and second statements to be more exact as to this date by retracing what he had

done on 4 February. He gave a third statement on 15 February but it is unclear from his evidence what that contained. It appears to have dealt more specifically with what he did on 4 February. None of his statements were in evidence.

[24] Duffy made a complaint, by statutory declaration to the Crime and Misconduct Commission in about August 2002 about the conduct of two police officers involved in the investigation of this offence, Detective Victor Tipman and Constable Lisa Fife. In that statement Duffy said that he was present when the deceased was killed. He said that the appellant and another witness in the case Carl Pflugrath came to his kombi van, the appellant sat on top of him and Pflugrath injected him in the leg. They then walked him to the lake where he saw the deceased stripped naked, Detective Tipman and Constable Fife. He said that Tipman wiped a serviette over the deceased's pubic area in order to place Duffy's sperm on her body. He then directed Duffy to have sex with the deceased but he ended up having sex with Constable Fife. Pflugrath then produced an axe handle from Duffy's vehicle and directed him to hit the deceased over the head with it. He did so and the appellant also did. He was then forced to plunge a knife into the deceased. He was then released and walked off in a daze.

[25] Understandably, in evidence he doubted the accuracy of this statement and was unable to explain how he came to make it. He thought it may have been "influenced by some sort of subliminal mind control by virtue of the fact that I lived in my combi". He was a marijuana user but it is pointless to speculate how he came to make such a bizarre statement.

[26] In his evidence in court he confirmed that he saw the appellant and the deceased at the third lagoon on the morning of 4 February. The appellant told him that they had put some fishing lines in the first lagoon. They then left him and, from the sound of the appellant's utility truck, they appeared to stop again at the first lagoon. He did not see them after that.

[27] He was cross-examined at length by defence counsel on all of his statements including the bizarre statement which I have set out. In the end the reliability of his evidence that he saw the appellant and the deceased at the third lagoon on the morning of 4 February was a matter for the jury. If it was accepted as reliable, notwithstanding what the jury may have thought of his other evidence, it was probative evidence in the circumstantial case. His evidence was therefore plainly admissible.

(b) the failure to call Beavan

[28] The reliability of Duffy's evidence did not, in any way, affect the question of whether, as the appellant contended, the prosecution was obliged to called Beavan. Beavan, it seems, was antagonistic towards Duffy. He had complained to the police when he had discovered that Duffy was living at the third lagoon on the basis, it seems, that if he was living there he was doing so for some improper purpose. He was also interviewed by police on 23 July because he had apparently been the source of a rumour that Duffy had been seen with the deceased.

[29] In the statement to police on 23 July 2003, Beavan said that, on a date which he was unable to particularize he and his wife were driving down a road in the vicinity of Gunalda when he saw Duffy's VW coming towards them. He did not look at the driver who waved at him. The passenger waved also. He said:

> "I thought straight away that it looked like Rikki. She had long brownish coloured hair, and she was sitting small in the seat, and that was my first thought about who it was. I cannot swear for sure that it was her, but that was my thought at the time."

[30] He had been spoken to by police in relation to this matter on at least 10 occasions between shortly after the deceased's body was discovered and 23 July. On none of these occasions did he mention the matter referred to in the preceding paragraph.

[31] His evidence therefore would have amounted to this. On a date which he was unable to particularize, he saw a woman who looked like the deceased, apparently because she had long brownish hair and was sitting small in the seat, travelling as a passenger in Duffy's VW, the driver of which he could not identify.

[32] Defence counsel put to Duffy that he had on one occasion travelled in his VW with the deceased as a passenger which Duffy denied. I find it difficult to see how Beavan's evidence could have been admissible in the trial. It was not relevant to any issue in the trial. It seems to me that it could have been relevant only to Duffy's credit. As such it would not have been admissible.

[33] The failure of Beavan to mention this matter on any of the 10 occasions before he did, and then apparently only because he had been responsible for a rumour to that effect, could no doubt have been relevant to an assessment of the reliability of his evidence if admissible. But that was a matter for the jury as was the reliability of Duffy's evidence. The real reason why his Honour was correct in excluding Beavan's evidence is that it was not admissible because it did not go to any issue in the trial.

(c) his Honour's direction

[34] The direction complained of was in the following terms:

> "One other matter I should perhaps mention is this: you may have thought in his address to you yesterday afternoon that Mr Lynch was in some way critical of the Crown for not calling some evidence. Whether you accept that criticism or not, it is the position that an accused can call evidence or give evidence himself if he wishes. If there were evidence available that Mr Lynch thought should have been called, he could have called it. I stress to you, though, that you must decide this case, you must bring in your verdict, in accordance with the evidence that has been put before you. You are not to speculate or wonder about what other evidence there may have been. You must bring in your verdict in accordance with the evidence that you have heard and seen.
>
> The Crown must establish guilt by proving each and every element of the offence charged beyond a reasonable doubt. It is your duty to acquit the accused if you are not satisfied beyond a reasonable doubt of the existence of any element or component of the charges brought against him."

[35] If the two sentences commencing "Whether you accept that criticism … " were taken in isolation it might be thought that his Honour was saying to the jury that the prosecutor was not bound to call all material witnesses although, even in that passage, his Honour did not go so far as to invite the jury to conclude that the

appellant could be expected to have called any relevant witnesses favourable to his case. If that were the proper inference to be drawn from those two sentences, it would have been a misdirection.[1] But I do not think that, read in context, that was the sense of those sentences. Whilst it would have been better, I think, for his Honour not to have said, though it is correct, that an accused can call evidence or give evidence himself if he wishes because such a statement could be misconstrued, in isolation, as implying that it was up to the appellant to call Mr Beavan if his evidence was relevant, his Honour's following statement that it was for the Crown to establish guilt made it clear that he was not saying that. Moreover, as already mentioned, Mr Beavan's evidence was inadmissible.

[36] For those reasons this ground of appeal must in my opinion fail.

Ground 5

[37] This was a complaint about the learned trial judge's direction with respect to manslaughter. His Honour said to the jury that if they were satisfied that it was the appellant who killed the deceased but they were not satisfied beyond a reasonable doubt that he did so intending to kill or to cause grievous bodily harm, he would be guilty of manslaughter. Counsel for the appellant sought a further direction from his Honour to the effect that the jury might be less ready to infer an intent to cause death or grievous bodily harm if they thought it open to conclude that the two blows were separated in time so that the second may have been delivered after death. His Honour refused to redirect.

[38] As mentioned earlier, there were two severe blows to the deceased's head with a blunt instrument, such as the back of an axe, either of which was of sufficient force to have killed her. She was then cut six times vertically in the abdomen and part of her intestines removed. It may be inferred that this was done because gases in the intestines can cause a body to come to the surface and float.

[39] The deceased's body was then weighed down with besser blocks attached to her body by baling twine and thrown into the lagoon.

[40] All of this conduct, in my opinion, plainly indicated an intention on the part of some person or persons to kill the deceased and dispose of her body. There was no basis for a conclusion that any person or persons engaged in this conduct was acting other than with the intention that the deceased would be killed. Nor was there any evidentiary basis for a contention that the appellant may have delivered the first blow not intending to kill the deceased or cause her grievous bodily harm but did not deliver the second one.

[41] In the absence of evidence from which manslaughter could be inferred there was therefore no basis, in my opinion, for a direction with respect to manslaughter and the learned trial judge would have been correct in not giving one.[2] The direction which his Honour did give was, in my opinion, unduly favourable to the appellant. This ground of appeal must therefore also fail.

[42] It follows that the appeal against conviction must be dismissed.

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1 *Dyers v The Queen* (2002) 210 CLR 285 at [11], [12].

2 See *R v Stevens* [2004] QCA 99 at [79], fn 21, [98], [99].

[43] **JERRARD JA:** I have read the reasons for judgment and order proposed by Davies JA, and respectfully agree with those.

[44] **PHILIPPIDES J:** I agree with the reasons for judgment of Davies JA and with the order proposed.