CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

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OPERATION IMPALA
HEARING NO: 19/0006

DAY 7 - TUESDAY 19 NOVEMBER 2019
(DURATION: 1HR 00MINS)

LEGEND

PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – JULIE FOTHERINGHAM
HRO Hearing Room Orderly – FALLON SMITH
W Witness – SARALA FITZGERALD
LR Legal Representative – TROY SCHMIDT, for Queensland Police Union

HRO All rise. This hearing is now resumed.

PO Good morning.

CA Good morning, Chair. Just before the first witness for the day gives evidence, I'd like to tender an exhibit which was referred to in the evidence of the Commissioner yesterday. It's the Carter's Criminal Law in Queensland commentary on section 408E of the Criminal Code.

PO I'll mark that Exhibit 125.

ADMITTED AND MARKED EXHIBIT 125

CA I call Sarala FITZGERALD.

PO Good morning.

W Good morning, Sarala FITZGERALD.

PO Yes. Would you prefer to take an oath or affirmation?

W Affirmation.

PO Thank you.

HRO If you can just repeat after me, please. I solemnly affirm and declare.

W I solemnly affirm and declare.

HRO That the evidence given by me.

W That the evidence given by me.

HRO In these proceedings.

W In these proceedings.

HRO Shall be the truth.

W Shall be the truth.

HRO The whole truth.

W The whole truth.

HRO And nothing but the truth.

W And nothing but the truth.

PO Just have a seat, thanks.

W Thank you.

CA Good morning, Ms FITZGERALD. You were provided with an attendance notice for today?

W I was.

CA Yes. May Ms FITZGERALD be provided with a copy of the notice. Is that the notice.

W That is the notice.

CA I tender that document.

PO Exhibit 126.

ADMITTED AND MARKED EXHIBIT 126

CA Ms FITZGERALD, you are a barrister at law in the State of Victoria?

W I am.

CA Yes. And you hold a Master of Laws degree in Public and International Law?

W I do.

CA And until recently you were the Human Rights Adviser to the Victorian Scrutiny of Acts and Regulation Committee?

W Yes. Earlier this year I resigned, it got too busy.

CA Yes. And you appear and advise in Commercial Regulatory Administrative Employment Law in human rights matters?

W That's right.

CA And your previous occupation was as Senior Adviser to the Human Rights at the – Senior Adviser for Human Rights at the Victorian Equal Opportunity and Human Rights Commission?

W That's right.

CA Where you undertook on a regular basis interventions within the courts for the Commission?

W That's right.

CA Could you please explain how your experience in Victoria under the Charter, if you could explain what that is as well, is of use for us here in Queensland regarding the new Human Rights Act which has passed this year in Queensland?

W My understanding is that the Queensland Human Rights Act was enacted after a very close consideration of Victoria's Charter of Human Rights, and also to a lesser extent the Human Rights Act in the Australian Capital Territory. The ACT's Human Rights Act did come first, but because of the size of the population Victoria's Charter has had a lot more use, and there has been a much greater jurisprudence developed in Victoria under the Charter. My understanding is that there was very, very close consultation during the development of the Human Rights Act with Victorian Government agencies and human rights agencies. And just an uneducated reading of those documents makes it quite obvious that there has been a lot borrowed from the Victorian Charter.

So with some small and quite good improvements, it's my evidence that the Human Rights Act is, in many respects, exactly the same as the Charter. The rights in particular, the content, the drafting of the rights are in exactly the same terms. And particularly with respect to the Commission's inquiry, the words in the privacy right are in exactly the same terms. And so I think to the extent that I can give any evidence about the Charter, that would most probably be directly relevant to the Queensland Human Rights Act.

CA Thank you. And you've had regard to the Queensland Human Rights Act. You've had a look at it?

W I have. I was asked a few months ago to come and speak for the Queensland Bar Association in relation to the Queensland Human Rights Act. So I, at that time, and more recently have refreshed myself for the purpose of these proceedings, but I closely looked at the legislation at that time for the purposes of that.

CA Are you able to provide a summary of the main aspects, particularly pertinent to public sector agencies and misuse of information on their databases?

W Yes. So I will do it from memory to the extent that the Charter and the Human Rights Act are exactly the same. And then I've made some notes for myself, Commissioner, if it's acceptable that I look at those?

PO Certainly.

W Thank you. So the main ways that the Human Rights Act affect public sector agencies is, or the main way, is through imposing an obligation on public authorities, which always includes core government agencies, but can actually be a bit broader. It can include non-government agencies that are performing

public functions. And it imposes an obligation on those public agencies to give proper consideration to human rights, and in this case the right to privacy, and to act compatibility with human rights when they're making decisions that engage or affect those rights.

And what proper consideration requires and what acting compatibility requires is that you consider the nature and scope of the right; you consider the likely impact of the act or decision you're going to make on that right; you consider why you might want to limit the right; the importance, the public importance of what you're doing, and you weigh those things up in making an assessment on whether the public importance of what you're doing outweighs the importance of preserving that right in its entirety. You think about whether there are ways you can limit the right a bit less and you make a decision having thought about all those things. And you do that assessment. In Victoria you do it under section 7 (2) which is the reasonable limits provision. And in Queensland you do it under section 13 which provides your proportionality test.

And so that is the primary mechanism for public authorities, is that duty. Now, that duty can be enforced, if you like, in courts, in both Queensland and Victoria. So it's not toothless by any means. Both bits of legislation require a pre-existing cause of action before you can get your human rights claim heard in a court. And so both require, for example, in the privacy context in Victoria and in Queensland you might bring a privacy claim under your Information Privacy legislation and saying one of these IPPs has been breached and then you would tack onto it your human rights claim saying, doing what this public authority did, before they did it they didn't give proper consideration to my human rights to privacy under the Human Rights Act.

Now, unlike under the privacy legislation in Victoria, which allows for damages up to $100,000, the Charter and the Queensland Human Rights Act do not allow for damages. In fact, they expressly state that damages are not payable for a breach of human rights. So the remedy under the Charter is generally a declaration that a right has been breached. But even though that sounds like not an amazing remedy, that remedy in Victoria has brought about some really remarkable changes of fact.

So, for example, in judicial review proceedings, a claim was brought in Victoria about the gazettal of a new justice centre. It had been gazetted, a small area of an adult prison was and degazetted as an adult prison and regazetted as a youth justice centre. Judicial review proceedings were brought on ordinary judicial review principles and then a Charter claim was tacked on to that claim and the Charter claim was that it was a breach of the children's right to protection as is in their best interest as a child and various other rights, human treatment while deprived of liberty.

In that case the judicial review proceedings failed and the only aspect of the case that was successful was the Charter aspect. And there was a declaration that gazetting that part of an adult prison as a youth justice centre breached those

children rights to humane treatment while deprived of liberty, and as a result all of those children were removed from that place. So sometimes a bare declaration of a breach of human rights can have quite, you know, powerful impact. So even though no damages, that's been the sort of way in which that requirement to give proper consideration to human rights in Victoria has had an impact.

CA Thank you. And your main area of work is the Charter?

W Look, I'd say it would be the main – it's definitely not more than 50% of my work. But in terms of the larger subject matter area, yes, it would be about 30% of my practice.

CA And the preferred manner in respect to privacy matters is not the Charter, it's under the Data Protection Act 2014 of Victoria?

W Yes. In terms of information protection, the Charter is not used nearly as much as information privacy legislation, and that is because the privacy legislation provides for damages and the Charter does not. The privacy right in the Charter is actually much broader than information privacy. It's quite a sophisticated right which covers your right to a private life, to personal identity, a whole lot of things that are not captured by the information privacy legislation. But when people are dealing with pure privacy data breach problems they do tend to prefer that legislation and its remedies.

CA And have you got an example of a privacy matter that you can explain how it works?

W And the Charter, the way in which the right to? Some of the Charter privacy cases have been - there's one in particular where both the privacy legislation and the Charter right to privacy were both litigated in the one matter, and that, I think, shows, in effect, the usefulness of the Charter because it does look at a broader range of rights than just "Did you tell someone something about me?" It sort of shows the broader scope of the right in the Charter. And that was a case that was run in the VCAT, which is our administrative tribunal.

CA Yes.

W And it involved two women who were partners who had three children together, and they sued the Registrar of Births Deaths and Marriages over the requirement by the Registrar – had imposed a requirement – so Victoria allows two women to be registered on a birth certificate as connected in some way to a child. But the way the Registrar was dealing with the issue of same sex couples was the Registrar was requiring that one of the female parents list themselves as mother and the other female parent lists themselves as parent. And the one that got listed as mother would be the birth-mother and the one that got listed as parent would be the non-birth mother.

And these two women sued the Registrar on the basis that that invaded their right to privacy, because on its face from the birth certificate, each of their three children would be able to - well, firstly, on its face on the birth certificate it would be clear which of those two women who considered themselves mothers of these children were the birth mother and which wasn't. And they felt that it was their right to have the information of which of them was the birth mother kept private. Not least because I think in the fact of that case as the three children, two were born to one birth mother and one the other and they simply didn't want any accusations of favouritism within their own group of children. But also they felt that it unfair to require them to disclose that quite personnel information about themselves just to anybody who looked at the birth certificate. And that case was successful.

And so in that case the two women did not have a preference whether they both were listed as parent parent or they both were listed as mother mother, but they didn't want there to be a differential listing which disclosed who the birth mother was and that was successful.

CA Thank you. Now, are you able to explain Victoria's legislative history of reform in relation to information privacy after enactment of the Charter?

W Yes. So when the Charter was first -- when the bill for the Charter was first introduced in 2006, the explanatory memorandum noted that it was the intention, the Parliamentary intention that the right to privacy contained in the Charter be interpreted consistently with the existing information privacy and health records framework in Victoria, to the extent that they were already protected against arbitrary interference with privacy. And so the scope of the rights, it was accepted at the time the Charter came in that the current regime for protecting information was sufficient to protect that part of the right. It was effectively the government said we know we have this new right, but it ought be assumed that Parliament is content with the current privacy regime.

CA You had the Information Privacy Act 2000 in Victoria.

W Yes.

CA And then that was amended to the Privacy and Data Protection Act 2014 in Victoria. Was that a compatibility issue or was there another reason for those amendments?

W Well in fact, one might have thought it was the Charter, and perhaps it was the Charter to the extent that it's all very well to have legislation that protects rights notionally, but if that legislation is not being implemented, followed up, checked upon, audited, then the right isn't being protected. So, in fact, where the 2014 amendments came from is they arose out of concerns raised by the Victorian Auditor-General's Office back in a report it tabled in 2009. And interestingly, I've looked at that report and that report did not have a Charter focus. So it actually VAGO, the Auditor-General examined how personal

information was stored processed and communicated by the Victorian public sector and found some really concerning gaps in that regime.

CA I just have an audit summary of Maintaining the Integrity and Confidentiality of Personal Information which was tabled in Parliament in Victoria on the 25th of November 2009.

W This is the one that I've looked at?

CA Yes.

W Yes.

CA And that's the summary. I tender that document.

PO 127.

ADMITTED AND MARKED EXHIBIT 127

CA So the amending legislation introduced a more vigorous regime for management of data.

W Yes, absolutely.

CA So if we might just go through some of this summary to show how there was a requirement placed upon public agencies to manage their data in a better manner.

W Yes.

CA So if you just want to talk to the background section.

W So VAGO, the background to the report was a recognition by VAGO that in its daily activity the public sector collects an immense amount of personal information about citizens, and does have to share that information to get its jobs done. And the report looked at how personal information was stored, processed and communicated by the public sector. And then undertook an evaluation of whether the confidentiality and integrity had been maintained. And this is going to what I said before, it wasn't saying that the legislation itself was a problem, but there were not the enforcement or compliance mechanisms required to really protect the right to privacy.

They, VAGO, looked at the fact that personal information, that the consequences for misuse of personal information were potentially very serious. They considered the financial loss or damage to a person's credit rating that could arise, the fact that people's medical records could be compromised or that they can suffer from personal threats or harassment if their identity is stolen. And they looked at the fact that effective information security controls were

needed and they undertook an assessment of whether governance and risk management practices in three particular departments was sufficient, and whether central policy direction and guidance had effectively driven the public sector to achieve that aim. So they looked very closely at three departments.

CA And they found that there was widespread lack of effective oversight?

W Yes. Yes, they did. And one of the comments they made was they accepted that they'd only examined three departments, but they said in those departments the ability to penetrate into databases, the consistency of their findings about - they had consistent findings about lack of effective oversight and coordination of information security practices. The fact that the three departments had incredibly similar problems led them to believe that the phenomenon was much more widespread than just those three departments. And in particular they were critical of the oversight role of the Department of Treasury and Finance and the Department of Premier and Cabinet in fulfilling their responsibility to maintain security standards. So I think they extrapolated that if those peak bodies, the Department of Treasury and Finance and DPC weren't doing their job for those three departments, safe to say they that was an issue across Government.

CA So just turning to the next page where it is Main Findings, governance was one of the issues?

W Yes. And as I just touched upon, there was a particular criticism of the DPC and the Department of Treasury and Finance as having peak responsibility. They took the view that the approach to managing information security had simply not met the challenges that were being posed by the increasing complexity of the way government does business now. And as I said before, they indicated that those two peak departments had not fulfilled their responsibility to develop and maintain a whole of government information security standards and guidance. And they had been tasked but had not properly done the job of improving the coordination of identity and information management systems at a State level or the job of providing policy advice on emerging trends and issues in those areas.

CA And then with the area of Culture, Practice and Technology on the next page, looking at risk management, I note the third to last paragraph there was found to be a problem with the lack of auditing on a review on a timely basis.

W Yes. There were flaws found in the way the existing risk management framework in this area was being applied. And they indicated that they discovered threats to and vulnerabilities of the systems and networks. And they noted that in some of the departments individual business units were aware of the risks but they were generally not well - the risks weren't generally well-known or managed. And the particular issues they found were that databases that stored personal information could be accessed by unauthorised people quickly and easily because the information hadn't been appropriately

classified and controls were missing. Either missing wholly or not operating as they meant to.

They also, as you mentioned, audit. They found the departments couldn't tell whether there'd been historical breaches to their systems because logs of access weren't properly maintained and reviewed, so they couldn't tell how badly things had been going. They also picked up that there was widespread transmission of data from each of those departments by emails in formats that were easily read, and that personal information was being carried around on CDs, DVDs, portable devices, exchange through private email accounts, extracts were saved in drives that were unsecured. So whilst the original of the information might be held in an appropriately secure database, there were bits of it and copies of it on a whole lot of other drives. And that was found across the departments. The final issue that they raised, an issue of culture practice and technology, is that the way in which departments were working with third parties, that all three of the departments looked at provide sensitive personal information to third parties.

CA So data sharing.

W That's shared data with often non-government agencies for the purposes of information technology support and the like. And/or agencies that hosted their information systems. And none of them required independent certification. None of them carried out their own assessment of the security that those third parties had in place and whether it met the public sector security standards. So an obvious gap where they've got their own standards but when they outsource they don't check that they're being applied.

CA And just looking at a the recommendations, one of them was a comprehensive integrated suite of standards and guidance that address all aspects of all information security.

W Yes. That's right. They wanted that to be expedited.

CA And another one was staff training on the importance of information security.

W Yes. Particularly because one of their issues was that there were requirements in place that just weren't being complied with. The importance of staff training was highlighted, yes.

CA And regular monitoring of the logs; so, audits.

W Yes.

CA Yes.

W Yes, given that that was a big issue.

CA Okay. All right. Now I'll just show you the Information Privacy Principles, Schedule 3 of the Queensland Act. I'll just provide you with a copy of them. And also the equivalent Schedule 1 of the Victorian Act. And then if you could point to any gaps, if any, you see in our current legislation from 2009 having regard to your amended 2014 legislation?

W Thank you.

CA With respect to providing adequate protection for data?

W Yes. Now, in terms of the two, I have looked at the two in the past, and the main-

CA -Oh I tender those documents.

PO Exhibit 128.

ADMITTED AND MARKED EXHIBIT 128

W The main gaps, as I see them, in terms of data protection, and insofar as it also relates to the protection of the right to privacy is firstly Victoria has a principle, and in ours it is principle 8, relating to anonymity. And our principle is that whenever it is lawful and practicable individuals must have the option of not identifying themselves when entering into transactions with an organisation.

Now, that principle protects the right to not disclose who you are, and obviously that protects the right to privacy, but it also protects the right to equality in some instances. And it also allows particular kinds of people to access services that they might otherwise not be minded to access. So one can imagine there are circumstances in which a person would very much like to access a service, but does not wish to self-disclose or so – or for whatever reason one can imagine. There might be an HIV Aids service and a person may not want to, maybe, in the closet, and so, if accessing that service, outed themselves to the wife and family; one can imagine they might just decide to not access the service. So there are a lot of – drugs are another one; abortions are another one. So there are many services in sort of controversial areas where one might want a person to be able to still access the service. If naming themselves might otherwise mean they don't access it, then anonymity protects their right to access those services.

CA So it's an identification on a need-to-know basis?

W Yes. If there is a compelling reason, for example, like Medicare, if something is going to be – you want to make sure a person is a citizen before you fund it, it might be one reason. It might not be good enough. But there are reasons why State agencies do want to know people's names. But often we just collect – we just ask a person's name out of habit. And so there ought be an assessment of whether we really do need to know a person's name. Because, at least in Victoria, it has been held that requesting a person's – merely requesting a

person's name is an invasion of their privacy, often warranted, often reasonable, but sometimes not. And so only if you actually need it, yes.

CA And that's – so the idea of the right to be forgotten is also practised in Europe?

W Yes. So the right in your Human Rights Act and our Charter is in very similar terms and has the same contents I would say as the right in Article 17 of the International Covenant on Civil and Political Rights and also on the equivalent right in the European Convention on Human Rights. Europe, the EU, is a really remarkable example of privacy protection and very sophisticated laws in Europe. And so I would commend them to the Commission in terms of incredibly rigorous human rights protection.

They have there a new, in effect, in 2018, a general data protection regulation. And that includes this idea of the right to be forgotten, which requires any group that collects data on individuals to delete the data related to an individual upon that individual's request. And one can imagine how that might be useful particularly for things like Facebook and where there has been a history created by one's teenage self that one would like to not exist anymore. And the regulation was influenced by the right to privacy in the European Convention. And it also addresses – it's aimed to give control – the regulation aims to give control to individuals over their personal data. And in a lot of instances it requires the use of pseudonymisation or full anonymisation, where appropriate, of data. It requires agencies to use the highest possible privacy settings by default so that their data sets are not publicly available without explicit informed consent and can't be used to identify a subject without additional information that has to be stored separately. So the identity information is not stored with the data sets. And it requires public authorities and businesses whose core activities consist of regular or systemic processing of personal data to employ a data protection officer. It's remarkable legislation. Violators of it may be fined up to 20 million Euro or up to 4% of the annual worldwide turnover. So this is not just to public agencies. It is private agencies, as that suggests. So it is pretty remarkable. But it does, as I said, contain this idea of the right to be forgotten.

CA Thank you. Now just did you want to go through the other areas of the Victorian privacy principles where you see gaps in-

W Yes, that was one of them-

CA -UI. Yes.

W -There were two others. The second one relates to sensitive information and it's principle 10. And I note your Information Privacy Principles don't touch upon this. They do in relation to health records to the extent the National Privacy Principles do contain this idea.

CA We might just tender those as well-

W Yes.

CA -for completeness, if that's okay.

PO That's Exhibit 129.

ADMITTED AND MARKED EXHIBIT 129

W Yes, thank you.

CA Thank you. Yes, please continue.

W So the sensitive information is dealt with in principle 10 of our principles. And it's also affected by the definition of sensitive information which is up the front of those principles. So sensitive information is an information about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a trade union, membership of a professional or trade association, sexual preferences or practices, or criminal record. That is also personal information.

So one can see that phrase sensitive information has been actually chosen. That's all information that is collected and shared – if collected for no good reason, for no necessary reason, may well – could well be the cause of discrimination in some way. So it is all information about which people may well have unconscious biases or prejudices that they may or may not be aware of. So the idea is that if you don't actually need to collect information about a person's sexual practices, then just noting it down on the file for thoroughness is probably unwise because there may be some unconscious bias that results in that person then being discriminated against.

So what principle 10 says is an organisation must not collect sensitive information about an individual unless the individual has consented or the collection is required under law, or the collection is necessary to prevent or lessen a serious and imminent threat. So for safety reasons. Or the collection is necessary for the establishment, exercise or defence of a legal or equitable claim. So in running a case. So one can see that those are very confined and that the idea is that data about those things just shouldn't be collected because of one's natural tendency to have biases.

CA Thank you. And the third?

W And the third one is principle 9, which for some reason I skipped over 9. It is one that I understand less – oh, sorry, it's not 9. It relates to unique identifiers; principle 7. And it requires – and I think this probably stems from Australia has a long-standing suspicion of the idea of a single identification identifier or information being collected about us and shared using an identifier so that you might anonymise a name but they're still your unique identifier.

So principle 7 requires that an organisation must not assign unique identifiers unless that is necessary to enable the organisation to carry out any of its functions efficiently. So it is a lower standard than some; it's not a requirement of necessity. But it requires that it is needed before it's done. So and I understand Queensland's principles don't contain that requirement.

CA So a couple of categories of the public that I'd like to run past you whether or not from a human rights perspective having regard to the Charter and now our new legislation, whether those particular categories of the public should be afforded additional protection. So the first one are domestic violence victims.

W Yes. So the right to privacy in both the Victorian and Queensland human rights legislation – well, the rights in those Acts may require additional protections for particular groups to safeguard their other rights, such as the right to equality, liberty and security.

So one of the things that you need to be careful about when you're giving some people's rights more protection than others is that you don't violate the right to equality. So but the right to equality also recognises that where people are particularly vulnerable, they may need more protection in order to experience equality. So within the Charter and both the Human Rights Acts they both recognise the concept of substantive equality and affirmative action in that they both recognise that sometimes you might need to act differentially to ensure equal outcomes.

So, for example, with domestic violence victims, it is arguably not a breach of the right to equality to give them more privacy protections because they need more privacy protections so as to enjoy their right to safety, liberty and those rights than those of us who don't suffer from domestic violence.

So, generally, human rights legislation does recognise that differential treatment to give greater assistance and protection to the vulnerable, the poor and disempowered in society. That is accepted. And so Victoria does also give some of its family violence protection order legislation does specifically impose greater requirements on the police to keep certain information private because of those violence concerns.

CA Thank you. And the second category identified through the evidence of Mackay Hospital and Health Service, is there's some greater protection being afforded to high profile members of the public. What are your views on the need for that, if any?

W So unless those high profile members of the public are in some way, I suppose, disadvantaged in the way – in a similar way to the domestic violence situation, the idea of giving high profile people more protection than ordinary citizens, I would say, is probably a contentious one. One, I don't think one could use the Human Rights Act to justify that; in the sense that human rights legislation, as a general rule, aims to protect the vulnerable. That's what human – because the

empowered, the wealthy, the educated, those people who are quite good at sticking up for themselves, as a general rule, haven't been seen to be needing of the greater protection that human rights legislation provides to these specific groups.

I suppose the idea is that generally the rich and famous can use the mechanisms that are ordinary law, not human rights law, but are defamation law and those laws, they have the resources to use those mechanisms. So you wouldn't use human rights law as a justification for giving high profile individuals more protection.

Some of the case law in the UK has looked at this issue of whether celebrities should have – the protection of celebrities' privacy. And in fact it has almost gone the opposite way in the sense that the media, who obviously like to invade everybody's privacy, they have argued in a number of cases that celebrities in fact ought have less privacy protections; not more, but less than the ordinary citizen. The idea being you make your living by your lack of privacy. By being famous you make your living about people wanting to know about you. So just when it doesn't suit you, now you would like to assert it.

Now, the courts haven't necessarily gone that far. But they have accepted that, to the extent that a celebrity does not have a reasonable expectation of privacy in certain circumstances, that the media have been successful in giving celebrities a little bit less. And the things that the courts have looked at is whether there's a public interest in the publication of a particular story. The courts have held that there is no public interest, despite the amount of magazines sold about it, in kiss-and-tell stories. And you know that's not the kind of public interest that's protected.

And they've said that it's really a matter of balancing the two rights; the right to freedom of expression, which is one very dear to the media, and right to privacy. And they have said that those two rights are equal in principle and they do just need to be balanced. But most certainly they've never given more human rights protections to special people. Under the human rights, all human rights instruments as a general rule you give more human rights protections to those who are more vulnerable.

CA Thank you. Now, just a matter came up yesterday in the evidence from the police union. And I'll just show you Exhibit 123. It is a statement by Ian LEAVERS. At paragraph 33, the document isn't page numbered, so it is a few pages in, example 2 talked about the information held with the Queensland Police Service. I'll just let you read that example first of all.

W And this is preparing court briefs?

CA Yes.

W Yes. Yes.

CA So having regard to Queensland's Information Privacy Principles and, in particular, 9 and 10(1)(f), what, in your view – is that acceptable to use court briefs for training?

W And just what – the other one was?

CA Nine. And then 10(1)(f).

W 10 (1) (f), sorry. 10(1)(f), there we go. In my opinion, and which I'll give an example of where a very similar issue arose in some Victorian case law. But, in my opinion, this kind of use, which is effectively use of past real life examples in training, basically, would satisfy the provisions of 10 (1) (f) that the use is necessary in the public interest doesn't involve – as long as – as long as the name is redacted and any unique identification, you know, a famous tattoo or a Comanchero tattoo or you know if – as long as anything that would identify the accused in that matter is removed, within reason, it would most certainly satisfy the public interest. And one can well imagine it's not practicable to obtain the agreement of each individual well after the fact. There is a very, very strong public interest in policing – policing training and in the training of police prosecutors using real life information, just because those kind of real life examples are always a much more accurate training tool than the sort of cardboard examples that can be thought up by examiners.

There was a case in Victoria that was run under our information privacy provisions and a Charter claim was tacked on to it. And it involved a protester suing Victorian police. Her image had been retained by Vic Pol, and I assume that it was data-cam footage of a protest, or body-cam. Sorry, body-cam footage. And her image had been captured of her activities during a protest. There was no names involved but she was readily identifiable in the sense that if you knew her you'd know that it was her. And she claims that that was an invasion of her right to privacy under the Charter and also that there was a breach of the Information Privacy Principle because obviously at the time the body-cam footage was recorded the primary purpose of it is in active policing, not in training.

But it was held not to breach the Victorian privacy legislation or the Charter because although it was an invasion of the right to privacy under the Charter it was also a reasonable limit. So that's your section 13 proportionality test that, yes, it invades your privacy to an extent, but there is a very strong public interest in the police performing their functions well and properly. And, as a result, that was a proportionate limit on her right to privacy. Because she wasn't named. There wasn't a sort of visual sticker saying this is Cheryl, look out for Cheryl. It was just her image. So that was held to be consistent with the right – or compatible in Victoria.

CA Thank you very much. I don't have any further questions for Ms FITZGERALD.

PO Ms FITZGERALD, just in relation to that matter about using previous examples for training purposes, with the necessary redactions of names and identifying particulars, the problem with that is that accessing the database you don't have the redacted version readily available. So, for training purposes, would it be your suggestion to use hard copies as opposed to electronic access?

W Yes. Look, it would be just – because I think particularly with policing the danger is that – well, because a person's criminal record is classified within our legislation as sensitive information and because some people do – like, myself, I'm the only Sarala FITZGERALD in the entire world. There are some of us who, having someone know that we shoplifted three Mars bars – I'm not saying that I ever did that – but if you looked me up it might be there. Having someone know that and if you have a unique name, one can readily see it is quite sensitive information.

So accessing a database and just innocently picking out one good example then could mean that that information about you is revealed. So I would for prior – particularly where you've been convicted, but even when you haven't been convicted, for prior examples, I would say a hard copy would be really preferable. And not least because you go into that person, you notice something interesting, there are just a lot of risks with using that sensitive information for other things.

PO And if it is legitimately to be used for a training purpose there's no reason why you won't have time to prepare the copy with the redactions?

W Yes, yes, precisely. So there are some cases where because of the urgency – a bomb is about to go off – you're allowed to breach people's privacy, you are. But if, as you say, if it's for training presumably you booked the venue, you did the catering, you can probably take the time to take that extra step. So I mean this is all the proportionality balance that goes on. And as you say there's really no urgency.

So the fact that things take a bit more effort or are a bit inconvenient, in the proportionality analysis don't weigh heavily. So even though it is a pain that doesn't necessarily hold much weight. If it will prevent you doing effective training that would be a reason. But you don't generally need to know people's names.

PO Mr SCHMIDT?

LR Just one point there if I could have leave? It's in relation to section 29 of the Queensland Information Privacy Act that may have some bearing. I don't know if it could be brought up for Ms FITZGERALD? I don't know if there's an equivalent provision in the Victorian legislation? It may have a bearing on the evidence she's just given.

PO I'll give you leave to pursue that.

LR Thank you. So, Ms FITZGERALD, if you're able to find that? 29(1) provides a specific exemption for law enforcement agencies, including the Queensland Police from IPP, for a number of them, but 9 and 10 which Counsel Assisting took you to.

W Yes. And that's sounding very similar to one we have. I'll just read it.

LR Certainly. 29(1) (a) is the relevant provision for us.

W 29(1)(a). A law enforcement agency is not subject to those IPPs but only if the agency is satisfied on reasonable grounds that noncompliance is necessary for the performance of its activities. Yes. It sounds very similar to – and I've relied on this exemption in a court case that I was doing for Corrections.

LR Yes.

W So I have used this equivalent in Victoria. Now, as a general rule, it wouldn't necessarily change my evidence I don't think because my understanding of these provisions is that non-compliance with the principles needs to be necessary for the activities. And, yes, if it's necessary not to redact or not to anonymous, then I would accept that that exception would apply. The standard of necessity, I mean it's not that it's absolutely impossible to do it without that, but it does – it needs to be a sort of – not just for mere convenience. It does need to be necessary.

LR I suppose, what you just answered with the Chair, if it was an organised training session.

W Yes.

LR Then obviously there would be no necessity in not de-identifying.

W Absolutely.

LR But if it's a single officer whose preparing an objection to bail because a person's in custody, they're about to go to court, looking up another objection to bail to see the high points on what they should cover that would be something which may fall within necessity-

W -It may. It may. And, look, the – yes, the standard of necessity is not that there's absolutely no other way of doing it. But it does impose a relatively high threshold.

LR Yes, thank you.

W Yes.

LR Thank you, Chair.

PO Thank you. Anything arising, Ms FOTHERINGHAM?

CA No, thank you. May Ms FITZGERALD be excused?

PO Yes, thank you for coming, Ms FITZGERALD. You're excused.

CA Is it possible to have a short break in between witnesses?

HRO All rise. This hearing has now adjourned.

END OF SESSION