FEDERAL MAGISTRATES COURT OF AUSTRALIA

IKIN v CROWN TRADING GROUP PTY LTD & ANOR [2009] FMCA 1187

INDUSTRIAL LAW – Admitted breaches of Award – Agreed Statement of Facts – matters relevant to penalty.

Workplace Relations Act 1996, ss.719, 728

Kelly v Fitzpatrick (2007) 166 IR 14
Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith [2008] 165 FCR 560
A & L Silvestri Pty Ltd v Construction, Forestry, Mining and Energy Union [2008] FCA 466
Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union (2008) 171 FCR 357

Applicant:	RICHARD IKIN
First Respondent:	CROWN TRADING GROUP PTY LTD (A.C.N. 115 219 004)
Second Respondent:	KURT BRAUNE
File Number:	LNG 14 of 2008
Judgment of:	BURCHARDT FM
Hearing date:	4 November 2009
Date of Last Submission:	4 November 2009
Delivered at:	Melbourne via video link to Hobart
Delivered on:	9 December 2009

REPRESENTATION

Counsel for the Applicant:	Mr S. Moore
Solicitors for the Applicant:	Hunt & Hunt
Counsel for the Respondents:	Mr J. Walshe
Solicitors for the Respondents:	Murdoch Clarke

THE COURT DECLARES THAT:

(1) The First Respondent breached clause 25.2 of the Motels, Accommodation and Resorts Award 1998 (Cth) (the Award) on various dates between 15 October 2004 and 3 August 2007 by failing to pay Kaye Leitch $15,983.75 being the total amount to which she was entitled to be paid under that clause but was not paid.

(2) The Second Respondent breached clause 25.2 of the Award by being a person involved in the First Respondent's breach of that clause referred to in paragraph 1 within the meaning of s.728(2) of *Workplace Relations Act 1996* (Cth) (the Act).

(3) The First Respondent breached clause 28 of the Award on 3 August 2007 by failing to pay Kaye Leitch $12,457.52 being the total amount to which she was entitled to be paid under that clause but was not paid.

(4) The Second Respondent breached clause 28 of the Award by being a person involved in the First Respondent's breach of that clause referred to in paragraph 3 within the meaning of s.728(2) of the Act.

THE COURT ORDERS THAT:

(5) Paragraphs 2 and 3 of the orders made by consent on 1 May 2009 be vacated.

(6) The First Respondent pay to Kaye Leitch $8,041.18 in respect of the underpayments the subject of the declarations in paragraphs 1 and 3 and such amount be paid within 21 days of the date of this Order.

(7) The First Respondent pay to Kaye Leitch interest in the amount of $5,846.88 in respect of the underpayments the subject of the declarations in paragraphs 1 and 3 and such amount be paid within 21 days of the date of this Order.

(8) A penalty of $52,800 be imposed on the First Respondent in respect of its breaches of the Award the subject of the declarations in paragraphs 1 and 3.

(9) A penalty of $10,560 be imposed on the Second Respondent in respect of his breaches of the Award the subject of the declarations in paragraphs 2 and 4.

(10) The penalties imposed on the First and Second Respondents be paid to the Consolidated Revenue Fund within 30 days of the date of this Order.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT HOBART

No. LNG 14 of 2008

RICHARD IKIN
Applicant

And

CROWN TRADING GROUP PTY LTD (A.C.N. 115 219 004)
First Respondent

And

KURT BRAUNE
Second Respondent

REASONS FOR JUDGMENT

1. In this matter, the applicant seeks declarations and the imposition of penalties upon the respondents for admitted breaches of an award. The only issues now to be determined by the Court are whether the Court should make declarations and impose penalties for that conduct, as the applicant submits, or whether, as the respondents submit, it is inappropriate to impose penalties. For the reasons that follow, I think I should make the declarations sought, and I further think that penalties should be imposed on both of the respondents at 80 per cent of the applicable maximum.

Formal Matters

2. There is no issue about the various formal matters about which the Court might otherwise be required to make decisions. The appointment of the applicant and his entitlement to bring the proceeding, incorporation of the first respondent, the respondency of the first respondent to the relevant award, and the applicability of the award to the employment of a Ms Leitch, are all agreed matters. It is also agreed that Crown Trading Group Pty Ltd (A.C.N. 115 219 004) ("Crown") was an employer within the meaning of the *Workplace Relations Act 1996* ("the Act") as it stood at the relevant time. It is also agreed that Mr Braune is, and was at all material times, the sole director, secretary and shareholder of Crown.

The Relevant Test

3. The authorities in relation to the approach the Court should take in matters such as these are now, in my respectful view, well established. The cases were considered by Tracey J in *Kelly v Fitzpatrick* (2007) 166 IR 14. Subject only to the caution expressed by Buchanan J in *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* [2008] 165 FCR 560 at [91] to the effect that the matters identified by Tracey J should not be treated as a rigid catalogue of matters for attention, it is now accepted that Tracey J's approach is correct in the sense that it indicates a number of relevant considerations. I also note the observations of Gyles J in *A & L Silvestri Pty Ltd v Construction, Forestry, Mining and Energy Union* [2008] FCA 466 at [6] where his Honour said:

> *"There are no mandatory statutory criteria and it is wrong to regard factors seen as relevant by one court as statutory criteria. Indeed, lists of factors can confuse an essentially straightforward task and lead to over-elaborate reasoning."*

Agreed Facts

4. I have already detailed a number of agreed facts. What follows under this heading is, necessarily, a paraphrase of the Statement of Agreed Facts filed with the Court. It was prepared as I understand it recently and it has been exhibited so that it could be identified and received as

evidence. Ms Kaye Leitch was employed by Crown at the Macquarie Motor Inn in Hobart commencing in December 2002 as a part-time employee. She remained part-time, or casual, until 14 October 2004 when she was converted to full-time. She remained a full-time employee until 3 August 2007.

5. It is an agreed fact that throughout the entirety of Ms Leitch's employment with Crown, Mr Braune visited the hotel every few weeks, during which visits he spoke with Ms Leitch. That is so, it is clear, because she was eventually placed into a managerial position. The parties also agree that Ms Leitch initially worked about 40 hours per week and was paid for 40 hours of work. Subsequently, her hours increased to between 65 and 70 hours per week, but she continued to be paid for only 40 hours per week. It is agreed that Ms Leitch was entitled to time in lieu for any time worked above the 40 hours per week. She recorded her hours of work on timesheets and for any part of a day that she attended which was a rostered day off or a public holiday, she was entitled to accrue a full day's wage as time in lieu.

6. On 15 October 2004, Ms Leitch was appointed Assistant Manager of the hotel on a full-time basis which, as I say, she continued in until she resigned and her termination of employment took effect, pursuant to that resignation, ultimately on 3 August 2007. As assistant manager of the hotel, Ms Leitch was paid for 40 hours work per week but in fact worked between 54 and 70 hours per week. Once again, she recorded her hours of work on timesheets, and her hours in excess of 40 per week were recorded by the paymaster and "banked". Due to her workload, Ms Leitch did not take days off in lieu in respect of the hours she worked in excess of 40 hours per week.

7. On 24 July 2006, Leisure Inn Hospitality Management Pty Ltd ("LIHM") and various companies wholly owned and controlled by Mr Braune entered into a management agreement which is annexed to the Statement of Agreed Facts.

8. On 29 March 2007, Ms Leitch was notified in writing by the manager of the hotel that as at 31 March 2007, her accrued annual leave entitlement was 60 days and her time off in lieu was 100 days.

9. On 21 July 2007 Ms Leitch tendered her resignation and at that time she requested payment of her outstanding entitlements including recreation leave, long service leave and time off in lieu. She sought payment to her of those amounts by 10 August 2007.

10. On 6 August 2007, the paymaster employed at the hotel, Lyndal Woodbury, provided Ms Leitch with copies of payroll records in relation to her employment, which recorded the amount of annual leave and time off in lieu to which she was entitled. On 11 August 2007, the Hotel Manager, John Wordworth, told Ms Leitch that the payment of a lump sum of the total amount of the entitlements was not possible, and offered to pay $800 per week until the outstanding amount had been paid. The $800 per week gross was, in fact, Ms Leitch's ordinary wage.

11. On 11 August 2007, Ms Leitch emailed Mr Braune requesting payment of her entitlements and he replied on the same day, suggesting that the amounts would be paid – but in weekly instalments of between $700 and $800. Further emails were exchanged, to which I shall return. They are part of Annexure 2 to the Statement of Agreed Facts. In essence Ms Leitch did not accept the alternative put forward for delayed payment by the respondents, and the matter proceeded, as had been foreshadowed, to the Workplace Ombudsman and ultimately these proceedings were started.

12. It should be noted that the application and statement of claim were lodged by the applicant on 8 July 2008. The respondents filed and served a response on 3 July 2008 and a defence on 31 July 2008 in which they opposed the orders sought by the applicant. The matter came on in February 2009 as a contested matter but could not proceed on that date because of the very late withdrawal by the then solicitors for

Mr Braune and the first respondent. It was only on 1 May 2009 that consent orders were made for payment of moneys to Ms Leitch in a total amount of $28,441.18. It was also ordered by consent that Ms Leitch be paid interest on the moneys she was owed.

13. It was agreed on that date that a penalty be imposed upon the first and second respondents for their breaches of the Award. It should also be noted that it is agreed, and I refer here to paragraphs 15 and 16 of the

Statement of Agreed Facts, that the first respondent admits to breaching the overtime clause in the Award and the annual leave clause in the Award. It is also admitted that Mr Braune was involved, within the meaning of s.728 of the Act, in those breaches of the Award. It is common cause that on 19 September 2007 Mr Braune sent an email to the applicant attaching revised calculations in respect of the amounts owing to her, which were worth well under half the sum that is now conceded to be payable.

14. On 24 October 2007, the applicant caused a Breach Notice to be forwarded to the respondents by ordinary post and it should be noted that it is agreed that as at 28 October 2009, and indeed as at today's date, the first respondent has paid Ms Leitch $20,400 in respect of the amounts payable. Plainly, the interest to which she was entitled and the balance of the $28-odd thousand dollars have not yet been paid. I note in passing that counsel for the respondents has undertaken that the amounts owing will be paid within the very near future and has not opposed the making of an order that those sums be paid within 21 days.

The applicant's submissions

15. The applicant laid particular stress upon three aspects of the matter. The applicant submitted that the operation of s.719 of the Act was such that the Court should contemplate treating the failures to apply the overtime clause, which were many, as a single course of conduct but submitted that the failure to pay the annual leave, which was a single breach, was different in nature and thus there ought not be considered one course of conduct alone.

16. The three matters to which the applicant drew particular attention were:

    a) the consequences of the breaches of the overtime clause, most particularly the fact that Ms Leitch was simply not paid at all for a very substantial number of hours that she worked;

    b) the quantum of the underpayments and the period of time to which they related; and

    c) the respondents' approach to the breaches and their failure to promptly remedy their effect.

17. In a sense, those submissions speak for themselves. The reality is that on the Agreed Statement of Facts, Ms Leitch was working for something up to 30 hours per week on a regular basis and not getting paid. There is some measure of controversy raised about this assertion, but I will deal with that when I come to the respondents' submissions. Similarly, the amount of money underpaid totalling $28,000 is a lot of money when your gross weekly wage is only $700 to $800, or $800 at a maximum. It is quite correct to say, as counsel for the applicant does, that the Court as presently constituted has described failure to pay employees for work that they have performed as utterly unacceptable and characterised it as conduct which calls for the most severe condemnation.

18. The quantum of payments in the period of the breach likewise requires little further elaboration. As I have already said, this is a lot of money and the time during which the breaches extended was a period of approximately two years and 10 months. In fact, it is agreed that the same conduct in fact obtained from 2002 to 2004, before Ms Leitch became a permanent employee.

19. The respondents' approach to the breaches is in a sense already indicated. An amount of over $8,000 remains unpaid despite the consent orders made in May. The respondents never corrected their contravening conduct by making rapid or effective payment to Ms Leitch. I accept the submission that the approach of the respondents does tend to indicate a somewhat indifferent attitude towards their legal obligations. I do not go so far as to accept the submission made by the applicant that Mr Braune's emails show a manipulative and unfair way of proceeding. They have about them an all-too-human measure of spontaneity. Nonetheless, the part of the submission I do accept is that it was most unfair of Mr Braune to, as it were, blame Ms Leitch for the respondents' failure to comply with the Award. I note that in response to his email to that effect, which was sent on 12 August 2007 at 11.41 am, Ms Leitch stated, amongst other things:

> *"Regarding the large amount of TOIL days I accumulated, I can assure you that it was not done deliberately. Rather, that I did not want to see the hotel work areas short on staff. As you know, I was able to work in all areas of the hotel and had to work over*

and above my normal hours on many occasions to cover staff shortages, sickness, etc. Hobart management and the accountant were aware of my accumulating TOIL hours and should have advised Sydney management. In March this year, Mike Hewitt did an audit on staff outstanding TOIL hours and this was sent to ADP payroll. Just before my resignation, I asked for time off and my request was refused. In the five or so years I was with the hotel, the longest break I had was when I had to have skin cancer surgery."

20. One might reasonably feel that was a very fair and responsible reply to the criticism earlier made by Mr Braune to Ms Leitch. The reality is that although the respondents have ultimately cooperated with the applicant and the Court process, it took from late 2007 when the process first started with known investigation by the Workplace Ombudsman until May 2009 before that cooperation took place. I will return to this matter when I come to my final conclusions.

21. The applicant referred to the seriousness of the breach, and most particularly to the involvement of senior management, the deliberate nature of the action, the lack of corrective action and the circumstances of the respondents. It should be noted that it emerged in the respondents' submissions that the hotel employs 100 people or thereabouts at any given time.

22. It is also clear from the management agreement to which I have referred, that the various entities wholly owned and controlled by Mr Braune appear to own some number of hotels, both in Tasmania and in New South Wales. With all these matters in mind, and not ignoring the totality principle, and bearing in mind the lack of prior contravention findings against the respondents, the applicant submitted that the appropriate range for penalty in both of these matters should be in the range of 75 to 85 per cent.

Respondents' submissions

23. The respondents had not filed any affidavit material. It was asserted by counsel for the applicant, in reply, that those acting for the respondents had been put on notice that any material that would be adduced relevant to the issue of penalty should be on affidavit, and that

assertion was not challenged by counsel for the respondents, although I gave him the opportunity for further address.

24. This raises a number of difficulties because of the matters asserted in submissions made by counsel for the respondents. Counsel submitted that the respondents did admit the breaches of the Award, but also submitted that it was a single breach arising out of a single course of conduct. It was submitted that the respondents had displayed genuine contrition, and in that regard the respondents made the offer in relation to payment to which I have referred.

25. Counsel then sought to explain how the Breach Notice had come to pass and started to make a number of factual assertions which, in my view faced two difficulties. The first difficulty was that there was no admissible evidence as to their accuracy. The second difficulty was that in part they seemed to me to be directly contrary to matters conceded in the Statement of Agreed Facts. Without perhaps traversing each and every one of these assertions, amongst them was a proposition that Ms Leitch was not entitled to overtime as she was a salaried staff member. There is no evidence of that before me, and as I say, it runs contrary to the admission that the Award has been breached.

26. It was put on a number of occasions, by way of inference perhaps rather than direct statement, that the very high total of days in lieu owing to Ms Leitch had arisen because she had manipulated the former arrangement whereby staff were paid for a whole day if they attended on a rostered day off or a public holiday. There is no material to support that assertion and once again it flies in the face of the admissions of breach. It was put that the amassing of such substantial annual leave and overtime was neither in the spirit of the Employee Handbook nor the Award.

27. The Employee Handbook, although there is reference to it in the Agreed Statement of Facts in a glancing way, is not in evidence. It was put that those matters, the Employee Handbook and the Award, were the reason why the revised substantially lower offer was made by Mr Braune. Reference was made to clause 28(4)(ii)(a) of the Award which provides that:

"An employee may elect, with the consent of the employer, to accrue and carry forward any amount of annual leave for a maximum of two years from the date the employee becomes entitled to the leave."

28. I should say straightaway that that clause in my view does not assist the respondents and it is in any event contrary to the admitted breaches of the Award. It was submitted that Mr Braune was not himself aware of the way in which things had happened. It was put that the management agreement with LIHM in fact devolved to LIHM responsibility for all the relevant personnel matters, and that this arrangement had since been renegotiated.

29. It was put that Ms Leitch had rejected the offers made to her by Mr Braune as they would put her in a high tax bracket with the obvious implication that Ms Leitch had brought this on herself. Indeed it was formally submitted that Ms Leitch's failure to accept the $800 per week on an ongoing basis meant that she had in fact now waited longer to be paid the total amounts that she will receive than would have otherwise have been the case.

30. It was submitted that corrective action has been taken by the imposition by the respondents of a program of reform to reduce the potential for larger financial liabilities arising out of the accrual of leave generally and overtime. There is no evidence to support that assertion, although I see no reason to doubt it as it is in the respondents' interests. It was put that there was a failure by LIHM properly to monitor time in lieu and once again, this is a matter about which there is no formal evidence.

31. It was submitted that the matters that are now relevant were simply not within Mr Braune's knowledge, and that accordingly it was not necessary to deter him simply because others might need deterrence. In other words it was put that specific deterrence for Mr Braune is not necessary nor is it necessary for the first respondent and that general deterrence need not be visited, so to speak, upon him alone.

32. It was submitted that there was no fraud on Ms Leitch and no inappropriate conduct to her, that this was an isolated incident such that, bearing in mind the generally good corporate citizenship of the

respondents, their participation in trade apprenticeships and the like, and their lack of prior contraventions, no penalties should be imposed.

Consideration

33. Mr Moore took objection to the receipt of the material not on affidavit and I indicated that I was minded to accept that proposition. Indeed I myself first indicated it.

34. In circumstances where the parties have produced an Agreed Statement of Facts it seems to me that the Court is stuck with that evidence unless there is an application properly made to expand the evidence before the Court. Although I asked counsel whether he wished to say anything following my discussion with Mr Moore, he simply referred me to the Statement of Agreed Facts. In the circumstances I do not propose to give any weight to matters not in evidence before me (I treat the Agreed Statement of Facts as evidence), of any of the matters asserted from the bar table that might be said to be in any way controversial. I will restrict myself to the Statement of Agreed Facts and the documents submitted to the Court by consent.

35. This brings me to the question of my own findings. Much of the material is not in any way controversial. The controversial aspects of the matter, as they now stand, are what one can make of the criticisms advanced of Ms Leitch by the respondents and the criticisms advanced of LIHM by the respondents. In my view both these issues can be dealt with shortly.

36. There is no evidence whatsoever that Ms Leitch artificially boosted her annual leave and more particularly her overtime, and therefore time in lieu, by any sort of impropriety. Any such assertion is not in evidence in any way before me and furthermore runs directly contradictory to the fact that the respondents propose to pay Ms Leitch for all the hours of work she has claimed. This assertion being made by way of a last-minute attack unsupported by affidavit evidence does the respondents no credit whatsoever, and certainly seriously undermines any assertion that they feel any contrition.

37. Likewise, an examination of the emails shows Ms Leitch doing no more than insisting upon what she was entitled to at law. Her refusal to

accept the respondents' offer was entirely open to her. I accept the submission of counsel for the applicant that these are not entitlements that she was required to trade. They are entitlements arising out of the proper operation of the industrial instrument binding her employment and the law generally.

38. When one comes to the criticisms made of LIHM, it is perhaps important to remember the terms of the agreement itself under which LIHM operated. By clause 4.4 of that agreement, LIHM was given authority to manage the various hotels, including the one with which we are concerned here, and the matters that LIHM was entitled to manage included supervision of all personnel matters. By clause 4.9, the owner – relevantly, Mr Braune, for all effects and purposes – was required:

> *"to not interfere in the day-to-day operation of the properties and acknowledges LIHM's right to control operational activities at the properties."*

39. By clause 10.3 of the agreement, it was prescribed that:

> *"LIHM would, on behalf of the owner, have the sole authority to select, train, direct and ... determine the compensation and other terms of employment in accordance with the local labour law provisions and policies of all personnel for the properties."*

40. By clause 13.5 of the agreement, the owner was to:

> *"indemnify and hold LIHM free and harmless from, ..., any claims arising out of or based on any law, regulation, requirement, contract or award relating to the hours of employment, working conditions, wages, etcetera."*

41. An exemption as to negligence in clause 13.6 would have entitled Mr Braune to indemnity in the event that any loss or liability was caused by the negligent act or omission of LIHM.

42. It is also important to note that the agreement plainly contemplated an agency and thus, as a matter of law, at all times Mr Braune and the first respondent remained responsible for the acts of their agents within the scope of their ostensible authority. In the ultimate, however, this aspect of the matter does not, in my view, turn upon an abstruse analysis of

the agreement itself. It is apparent from the agreed facts that Mr Braune continued to visit the hotel periodically throughout Ms Leitch's employment and to discuss things with her.

43. It is equally apparent that Ms Leitch made management fully aware of her increasing entitlements, which have been the subject of partial but not yet complete payment. It is equally obvious from the emails which are attached as Annexure 2 to the Statement of Agreed Facts that Mr Braune was heavily involved in the negotiations that followed Ms Leitch's indication of her resignation and indeed after her resignation itself. There is nothing in that exchange of emails that seeks to shirk responsibility in any way to LIHM. Rather, the tenor of the emails is very much that of Mr Braune as the continuing employer. Furthermore, in the ultimate all these considerations are irrelevant because Mr Braune expressly admits the breaches of the Award that have given rise to these proceedings.

Conclusion

44. I do not regard the conduct of the employer as amounting to one single course of conduct. The submission made that this was so appeared to suggest that the Court was being asked, as it were, to look at the failure by the respondents properly to administer their employee affairs as being one over-arching negligent act. I accept that they were of different character. The requirement to pay the annual leave occurred at the end of the employment. The requirement to allow time off arose periodically as it was not given.

45. Accordingly, I think that s.719 means that I am concerned, as the applicant submits, with two breaches by each of the respondents, of clauses 25 and 28 of the Award respectively. It is important, bearing in mind the remarks of Giles J not to get too bogged down in abstruse methodology. The reality is that the Court is required to consider both specific deterrence and general deterrence. In this case, the tenor of the submissions made by counsel for the respondents strongly suggests that there is no contrition whatsoever for the conduct that gave rise to these proceedings.

46. I am entitled to look, at least in part, with caution at any assertions that they will not re-offend in the future by committing further contraventions. The suggestion that various remedial steps have been taken was not supported by any evidence in admissible form and I am left to guess as to whether or not the assertions made were in fact correct or not. Moreover, this is a case which calls very strongly for general deterrence. I respectfully adopt the remarks made by Gray J in *Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union* (2008) 171 FCR 357 at [37]. This is an industry which is notoriously difficult and which has given rise to numerous cases including a number before me involving underpayments of the sort which are indicated here.

47. This was conduct of senior management, quite clearly. I do not accept that the conduct is to be attributed to a third party over whom Mr Braune had no control and for whom he bears no responsibility. To the contrary, putting the matter at its highest, LIHM was his agent and he remains responsible for its conduct. I think Mr Braune was more involved in the business than that. So much is clear from the admissions in the Statement of Agreed Facts.

48. I bear in mind that there have been no prior contraventions by the respondents.

49. I bear in mind also that the omissions may well have been inadvertent rather than deliberate, although it is difficult to reconcile that with the fact that Ms Leitch's times were all clearly recorded by her and were clearly known to the payroll officers of the first respondent. In all the circumstances of the case, in my view, it is appropriate to impose a penalty of 80 per cent in respect of each breach.

The totality principle

50. The totality principle requires the Court to take a step back at the end of the process to see if the amounts imposed for multiple breaches are indeed appropriate and not crushing. The net effect of these orders will be that the first respondent will be obliged to pay a figure of about $55,000 and Mr Braune will be obliged to pay a figure of approximately $11,000 in total. This is a man, Mr Braune, who owns, it would appear, a number of companies which themselves own a

number of different hotels. Whatever the turnover is, it is sufficient to fund a management agreement with LIHM whereby the entities he controls pay LIHM in excess of $200,000 per year by way of management fees only.

51. The hotel with which we are immediately concerned employs about 100 people at any given time. In my view, bearing in mind the seriousness of these contraventions, the fact that the employee was simply not paid for working for a very long period and in substantial amounts, in an industry where unfortunately such conduct appears to require further deterrence by the Court, a payment in those sums is entirely appropriate. I have requested and received from the parties minutes of the orders they seek and I will make those orders substantially in accordance with those submitted by the applicant.

I certify that the preceding fifty-one (51) paragraphs are a true copy of the reasons for judgment of Burchardt FM

Associate: Ms B. Evans

Date: 9 December 2009