

CITATION: *Commissioner of Taxation –v- Forester* [2003] NTMC 056

PARTIES: COMMISSIONER OF TAXATION

v

BRIAN WAYNE FORESTER

TITLE OF COURT: COURT OF SUMMARY JURISDICTION

JURISDICTION: COURT OF SUMMARY JURISDICTION

FILE NO(s): 20304560

DELIVERED ON: 14 NOVEMBER 2003

DELIVERED AT: DARWIN

HEARING DATE(s): 15 September 2003

DECISION OF: D LOADMAN, SM

CATCHWORDS:

FAILURE TO FURNISH RETURNS FOR THE FINANCIAL YEAR BY SPECIFIED
DATE – REASONS FOR EXERCISE OF DISCRETION SET OUT IN SECTION 19(B)
CRIMES ACT 1914

Income Tax Assessment Act 1936

Crimes Act 1914

REPRESENTATION:

Counsel:

Complainant: Collette Dixon

Defendant: John Lawrence

Solicitors:

Complainant: Commonwealth Director of Public
Prosecutions

Defendant: Michael Chin

Judgment category classification: B

Judgment ID number: [2003] NTMC 056

Number of paragraphs: 46

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20304560

BETWEEN:

Commissioner of Taxation
Complainant

AND:

Brian Wayne Forester
Defendant

DECISION

(Delivered 14 November 2003)

Mr David LOADMAN SM:

Preliminary

1. Mr Forester was charged with failing to furnish taxation returns for the financial years ending 30 June 1997, 1998, 1999, 2000, 2001 on due date, pursuant to the *Taxation Administration Act* 1953. Simplistically, he also did not deliver tax returns when appropriate warnings and other communications in writing were made either to him, or to the firm or firms of accountants registered as “his” tax agent(s).
2. In summary, the relevant background to Mr Forester’s non compliance as explained to the Court by Mr Lawrence was as set out in ensuing paragraphs of this decision.
3. In 1997 a property in Queensland had been sold (“the Queensland property”). The paperwork in relation to this property had gone astray and the absence of that paperwork had constantly been a difficulty in compiling the appropriate taxation returns which had to be lodged, not only by Mr

Forester, but by companies with which he became subsequently, or is currently still associated.

4. At all relevant times, Mr Forester was, either alone or in association with other natural persons or corporate entities, involved in an engineering business, apparently dealing with various facets of engineering expertise.
5. When various mergers occurred, mainly in Alice Springs and subsequently to 1997, a series of events occurred, all of which played their part in the culmination, relatively speaking, of perceived insurmountable difficulties in obtaining relevant financial information, all of which were directly concerned with the lodgment of income tax returns. In part, problems were occasioned by paper work going astray or not being provided to accountants at two separate centres, namely Darwin and Alice Springs. Further two “key” men who were pivotal to the commercial success of the overall operation having “come on board”, as it were, resigned at short notice. There was then occasioned enormous difficulty in trying to replace them. Effective replacement took some years as the Court understands the position.
6. Intermittently, accountants were involved in efforts to try and resolve financial aspects related to the continuation of the businesses which were struggling financially as a consequence of the above matters and other matters not mentioned. Further, the taxation problems were made exponentially worse with every passing year and exacerbated by not having the required documentation relating to the Queensland property or not being able to locate it.
7. The prosecution, perhaps quite rightly, submit that Mr Forester is not shown ever to have personally made any effort to locate the paperwork relating to the Queensland property, the absence of which was said to be the genesis of most of the problems which as it were exponentially enlarged to something which in objective terms created even greater difficulties of resolution.

8. As the Court understands the position, at all material times the defendant's taxation affairs and those of the companies with which he was associated were in the hands of firms of accountants or chartered accountants tasked with doing what was required on his behalf or on behalf of those companies described. Certainly, at the beginning of 2003, Deloitte Touche Tohmatsu were retained as one of the accounting firms engaged in overall involvement of profitability and/or in relation to income tax returns for Mr Forester and various companies associated with his enterprise and/or his "partner's" enterprise.
9. Apparently, at no stage did the above said accountants or their predecessors lodge applications for extensions of time to file the relevant tax returns. Such dereliction of professional obligation is lamentable.
10. The Court expressed the view during submissions and abides by that view that the "ordinary person" would expect a firm of accountants engaged to prepare income tax returns, knowing they didn't have the information, knowing indeed by virtue of notices being served upon them that the tax department was in essence chasing tax returns, to apply for relevant extensions of time. There is no direct evidence that Mr Forester believed that they did, although that is Mr Lawrence's submission. The Court finds little difficulty in accepting that Mr Forester would have been under that impression.
11. Not only did they not apply for such extensions, but when matters had become as complex as Mr Lawrence described, the defendant was required to discharge a sum of money by way of fees in the order of \$50,000 to the relevant firms of accountants for their services to "unscramble the egg".
12. Some trouble has been taken to set out the salient facts, because they are relevant to the principal submission made by Mr Lawrence in relation to what ought be an appropriate disposition bearing in mind that Mr Forester

has pleaded guilty, relatively speaking at an early stage, if not, at the first possible opportunity.

13. Mr Forester and the associated companies have now paid all the tax that they liable to pay and all his returns, and the returns of the relevant associated companies, albeit belatedly, have been lodged.
14. This apparently creates a problem, firstly, it is argued that section 8ZE of the *Taxation Administration Act* precludes the Court imposing any fine on the defendant in any disposition it may wish to engage under section 19B of the *Crimes Act*. Secondly, unlike the dispensation advocated in section 7 of the Sentencing Act of the Northern Territory, there is apparently no capacity in the Court to embrace a disposition under section 19B of the *Crimes Act* and in conjunction with such a disposition effectively being a good behaviour bond, imposing a fine.

Legislation

15. There have been remissions of penalties previously imposed pursuant to section 8ZE of the Act. That section is in the following terms:

**TAXATION ADMINISTRATION ACT 1953
- SECT 8ZE
Civil penalty not payable if prosecution instituted**

If:

**(a) a person is liable to pay by way of penalty (other than for an offence) an amount under a taxation law because of an act or omission of the person; and
(b) a prosecution is instituted against the person for a taxation offence constituted by the act or omission;**

then (whether or not the prosecution is withdrawn):

**(c) the person is not liable to pay the amount; and
(d) any amount paid, or applied by the Commissioner, in total or partial discharge of that liability is to be refunded to the person, or applied by the Commissioner in total or partial discharge of another tax liability of the person.**

16. This remission of penalties pursuant to the provisions of section 8ZE of the *Taxation Administration Act 1953* in the submission of both counsel

precludes the Court, if it was disposed to invoke the disposition of the section 19B of the *Crimes Act*, in ordering compensation or restitution, payment of which is catered for in section 19B(1)(d)(ii). Section 19B of the *Crimes Act* is in the following terms:

**CRIMES ACT 1914
- SECT 19B
Discharge of offenders without proceeding to conviction**

(1)

Where:

(a) a person is charged before a court with a federal offence or federal offences; and
(b) the court is satisfied, in respect of that charge or more than one of those charges, that the charge is proved, but is of the opinion, having regard to:
(i) the character, antecedents, cultural background, age, health or mental condition of the person;
(ii) the extent (if any) to which the offence is of a trivial nature; or
(iii) the extent (if any) to which the offence was committed under extenuating circumstances;
that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation;

the court may, by order:

(c) dismiss the charge or charges in respect of which the court is so satisfied; or
(d) discharge the person, without proceeding to conviction in respect of any charge referred to in paragraph (c), upon his giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the court, that he will comply with the following conditions:
(i) that he will be of good behaviour for such period, not exceeding 3 years, as the court specifies in the order;
(ii) that he will make such reparation or restitution, or pay such compensation, in respect of the offence or offences concerned (if any), or pay such costs in respect of his prosecution for the offence or offences concerned (if any), as the court specifies in the order (being reparation, restitution, compensation or costs that the court is empowered to require the person to make or pay):
(A) on or before a date specified in the order; or
(B) in the case of reparation or restitution by way of money payment or in the case of the payment of compensation or an amount of costs—by specified instalments as provided in the order; and
(iii) that he will, during a period, not exceeding 2 years, that is specified in the order in accordance with subparagraph (i), comply with such other conditions (if any) as the court thinks fit to specify in the order, which conditions may include the condition that the person will, during the period so specified, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed.

(2)

Where a court proposes to discharge a person in pursuance of an order made under subsection (1), it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by him:

(a) the purpose and effect of the proposed order;
(b) the consequences that may follow if he fails, without reasonable cause or excuse, to comply with the conditions of the proposed order; and
(c) that any recognizance given in accordance with the order may be discharged or varied under section 20AA.

(2A)

A person is not to be imprisoned for a failure to pay an amount required to be paid under an order made under this section.

(3)

Where a charge or charges against a person is or are dismissed, or a person is discharged, in pursuance of an order made under subsection (1):

(a) the person shall have such rights of appeal on the ground that he was not guilty of the offence or offences concerned with which he was charged as he would have had if the court had convicted him of the offence or offences concerned; and

(b) there shall be such rights of appeal in respect of the manner in which the person is dealt with for the offence or offences concerned as there would have been if:

(i) the court had, immediately before so dealing with him, convicted him of the offence or offences concerned; and

(ii) the manner in which he is dealt with had been a sentence or sentences passed upon that conviction.

(4)

Where a person is discharged in pursuance of an order made under subsection (1), the court shall, as soon as practicable, cause the order to be reduced to writing and a copy of the order to be given to, or served on, the person.

17. The situation set out in paragraph 14 seems to the Court to be so. It is also in the submission of both counsel then a situation where there being no provision for a fine to be levied, no fine can be levied. Mr Lawrence contends that such a state of affairs can be circumvented as it has been in the state of Victoria where part of dispositions under section 19B of the *Crimes Act* have entailed as a condition of the “good behaviour bond” payment to, what used to be called, the “Court Poor Box”. This Court does not agree that such a course of action is open to it, the machinery in Victoria available to the Courts is simply not available to this Court. Further it seems dubious that such a disposition is within power.
18. Mr Lawrence contends that there is ample basis enabling the Court to embrace a disposition under section 19B of the *Crimes Act*. He does not contend that the offences are trivial. He does contend that this 44 year old

Defendant at no time prior to 1997 was in breach of any provision of the *Income Tax Assessment Act*. So far as his antecedents are concerned, he has never been convicted of any criminal offence. It is the case that on 12 November 1996 in the Darwin Court of Summary Jurisdiction he was found guilty of failing to quit licensed premises, but the Court did not move to convict him. Such an utterly trivial offence cannot objectively categorize the defendant as some heinous felon. Insofar as character is concerned Mr Lawrence contends by reference to the general thrust of his submissions to have demonstrated an exemplary character. Such submission is accepted by this Court.

19. The exemplary character attributed to the defendant by Mr Lawrence is supported by two character references, name those contained in Exhibit D1, from David King-Jones and Richard M Green. Each of those persons assert the defendant possesses an exemplary character.
20. Self-evidently it is necessary for the engagement of section 19B of the *Crimes Act* that the specified criteria set out in that section must have application prior to being able to engage application of the section. Those matters referred to above are of course two of the specified criteria. There are more.

Authorities

21. Suffice it to say, this Court finds that the power and method of exercise must be in accordance with those principles laid down by the High Court and expressed in [Cobiac v Liddy \[1969\] HCA 26; \(1969\) 119 CLR 257, \(11 June 1969\)](#) (“*Cobiac*”).
22. In [Commissioner of Taxation v Baffsky \[2001\] 122 A Crim R 568](#) (“*Baffsky*”) the Court of Criminal Appeal of New South Wales was concerned with issues relating, amongst others, to the appropriate application of section 19B of the *Crimes Act* and that case was concerned with failing to furnish income

tax returns. In relation to determining the issue of “expediency” (which of course is necessary to establish the application or non-application of one limb of section 19B of the *Crimes Act*, their Honours referred to the judgment of Windeyer J in *Cobiac* and they said:

“The breadth of the discretion is confirmed in the judgment of Windeyer J where his Honour said (at 276):

‘... that the magistrate must be of opinion that the exercise of the power is expedient because of the presence and effect of one or more of the stated conditions, namely character, antecedents, age, health or mental condition. One of these by itself, or several of them taken together, must provide a sufficient ground for a reasonable man to hold that it would be expedient to extend the leniency which the statute permits. The Act speaks of the court exercising the power it confers "having regard to" the matters it states. I read that as meaning more than merely noticing that one or more of them exists. Its, or their, existence must, it seems to me, reasonably support the exercise of the discretion the statute gives. They are not mere pegs on which to hang leniency dictated by some extraneous and idiosyncratic consideration. But they are wide words. None of the matters they connote is necessarily to be regarded in isolation from the others, or apart from the whole of the circumstances of the offender and the offence’. “

23. Their Honours focused upon the phrase “whole of the circumstances of the offender and the offence”. After discussing differences in approach by his Honour Windeyer J and other Judges in *Cobiac*, they concluded there is little difference between such approaches. Further, their Honours quote with approval the approach adopted by Windeyer J in *Cobiac* to “antecedents” which approach was adopted and extended by King CJ with his concurring fellow Judges, in *Jones v Morley* (1981) 29 SASR 57 (at 63-64) where it was said:

"The word 'antecedents' is 'as wide as can be conceived'; R v Vallett [1951] 1 All ER 231], per Lord Goddard CJ at p232. It is certainly wide enough to include all aspects, favourable and unfavourable, of an offenders background, past life, personal, family, social, employment and vocational circumstances, and of his current way of life and its inter-action with the lives and welfare of others."

24. *Cobiac* in part was concerned with circumstances of hardship which would be imposed upon the invalid sister of the defendant whose licence had been taken away in the Magistrates Court of South Australia. Hence the quotation is curtailed because such circumstances do not apply in the instant matter.
25. In *Baffsky* there was furthermore submission by counsel for the Commissioner of Taxation which seems to have been to the effect that disposition under section 19B of the *Crimes Act* was not an appropriate disposition in respect of a taxation offence. The Court pertinently said:

“Nevertheless, the scope of relevant considerations is the same as that which applies to the general sentencing discretion for Commonwealth offences.

When making the decision for which s19B calls a court must first identify a factor or factors which are within the respective subparagraphs of 19B(1)(b). Thereafter, a court must have regard to this factor or these factors. Finally a court must take into account the matters set out in s16A. “

26. It is interesting to note in passing that the Commissioner of Taxation in *Baffsky* did not seek to rely upon a dictum of Jacobs J in *Kelton v Uren and Harris* [1981] 52 FLR 232, (“*Kelton*”). The prosecution quoted and relied upon the decision also of Rogers J in *Barina Corporation Ltd v Commissioner of Taxation* [1985] 81 FLR, a decision of the Supreme Court of New South Wales. This case was not concerned with the failure to lodge tax returns but treatment of land as stock in an income tax return. Nevertheless the Magistrate had, in ventilation of the matter before him, invoked and applied a disposition in terms of 19B of the *Crimes Act*. In this Court’s perception there is no intrinsic use in any application of any dictum of the decision, nor can the Court ascertain any relevant useful principle, basically it being the case that the Magistrate had acted upon matters which were not put before him by way of submission or evidence. The decision is notable, perhaps, only for the fact that the dictum of Jacobs J referred to is

recited. Such recitation (although not indeed pursuant to *Baffsky*) is no doubt irresistible to any prosecutor. In this Court's perception though examining the decision in *Kelton*, it is notable that at page 234, what his Honour is saying is that section 19B should not be applied in the case of a first offender "*simply because he is a first offender*". It is this Court's perception that his Honour is not seeking to say that section 19B of the *Crimes Act* is a disposition which ought not be employed in matters where prosecutions such as the present are before the Court. In any event, this Court upholds the submission of Mr Lawrence that any such statement by his Honour is indeed not supported by the language of the legislation.

27. The last authority to which the Court was referred by the prosecution is [*Timothy Christopher Morris \(1992\) 61 A Crim R 233*](#) ("*Morris*"), a decision of the Court of Criminal Appeal, Victoria, relating to a barrister who had understated his taxable income by \$270,286.47 during a period of nine years. A suspended sentence of one year's imprisonment on condition that he enter a good behaviour bond and a fine was the subject of the appeal. The disposition was by way of engaging section 20(1)(b) of the *Crimes Act*. That section is in the following terms:-

**CRIMES ACT 1914
- SECT 20
Conditional release of offenders after conviction**

(1)

Where a person is convicted of a federal offence or federal offences, the court before which he is convicted may, if it thinks fit:

(a) by order, release the person, without passing sentence on him, upon his giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the court, that he will comply with the following conditions:

(i) that he will be of good behaviour for such period, not exceeding 5 years, as the court specifies in the order;

(ii) that he will make such reparation or restitution, or pay such compensation, in respect of the offence or offences (if any), or pay such costs in respect of his prosecution for the offence or offences (if any), as the court specifies in the order (being reparation, restitution, compensation or costs that the court is empowered to require the person to make or pay):

(A) on or before a date specified in the order; or

(B) in the case of reparation or restitution by way of money payment or in the case of the payment of compensation or an amount of costs—by specified instalments as provided in the order;

(iii) that he will pay to the Commonwealth such pecuniary penalty (if any) as the court specifies in the order (being a penalty not exceeding the maximum amount of the penalty that, in accordance with subsection (5), the court may specify in respect of the offence or offences) on or before a date specified in the order or by specified instalments as provided in the order; and
(iv) that he will, during a period, not exceeding 2 years, that is specified in the order, comply with such other conditions (if any) as the court thinks fit to specify in the order, which conditions may include the condition that the person will, during the period so specified, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed; or
(b) sentence the person to imprisonment in respect of the offence or each offence but direct, by order, that the person be released, upon giving security of the kind referred to in paragraph (a) either forthwith or after he or she has served a specified period of imprisonment in respect of that offence or those offences that is calculated in accordance with subsection 19AF(1).

28. The disposition in *Morris* seems to this Court not relevant for reason it is in relation to application of a section other section 19B of the *Crimes Act*. In *Morris*, the DPP sought on appeal a sentence of actual incarceration. The Judge's sentence was in any event erroneous by virtue of imposing imprisonment and a fine which was precluded. In *Morris* their Honours said (at page 238):

“In our opinion the critical consideration is that taxpayers cannot be permitted to defraud the revenue in the belief that detection can lead to no more than a requirement merely to make financial reparation and to pay a monetary penalty so as to enable the offender to ‘purchase’ immunity from prosecution under the criminal law”.

29. Although that may be so, of course their Honours were not examining the invocation of section 19B of the *Crimes Act* so that nothing ultimately of a revelatory nature or of particular assistance is to be derived in the Court's perception from that matter.
30. So much for the diversion into the law.

Findings

31. As is apparent on examination of the circumstances relevant for invoking or prospectively invoking section 19B of the *Crimes Act*, or at least the relevant criteria, the only other criterion which may pertain in these circumstances is section 19B(1)(b)(iii), previously set out in this decision.

32. This Court finds that the circumstances surrounding the problems experienced by the defendant in “his” business activities, the resignations of the directors, failure on part of qualified people to locate the necessary information relating to the Queensland property, the failure by accountants to apply for relevant extensions of time to file tax returns, comprise “extenuating circumstances” such that either alone or in conjunction with the defendant’s character and antecedents, there is a capacity to invoke the first limb of section 19B(1) of the *Crimes Act*.
33. Given the embracement of those criteria it is then incumbent on this Court to examine further criteria prior to invoking or applying the said section.
34. Given the existence of the criteria specified then, is it “inexpedient” to inflict any punishment, or to inflict any punishment other than a nominal punishment:.
35. Mr Lawrence, in terms of expediency, refers to the Chambers 20th Century dictionary. This Court refers to the Macquarie Dictionary (3rd edition):

Expedient ...*adjective* 1. tending to promote some proposed or desired object; fit or suitable for the purpose; proper in the circumstances: *it is expedient that you go*. 2. conducive to advantage or interest, as opposed to right. 3. acting in accordance with expediency. – *noun*. 4. a means to an end. * *we have resolved on an expedient whereby they may hand down the wisdom of our race to that, which, in the fullness of time, may follow us*. _ ERLE COX, 1925. 5. a means devised or employed in an exigency; a resource; a shift: **What I said next was said on the spur of the moment, to check him somehow, by any expedient, from rashly promising something he’d always regret*. – HAROLD LEWIS, 1973. [ME, from L *expediens*, ppr., dispatching] – expediently, adv.

36. Recourse it should be noted, has also been had by the Court to the Shorter Oxford English Dictionary, but nothing of any utility emerges from such a course of reference.
37. Of course as is apparent from the cited authorities in this decision and inevitably from the legislation itself, an exercise prospectively invoking the provisions of section 19B of the *Crimes Act* also entails the necessity of examining the provisions of section 16A of the *Crimes Act*. That section is in the following terms:-

CRIMES ACT 1914

- SECT 16A

**Matters to which court to have regard when passing sentence
etc.**

(1)

In determining the sentence to be passed, or the order to be made, in respect of any person for a federal offence, a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.

(2)

In addition to any other matters, the court must take into account such of the following matters as are relevant and known to the court:

- (a) the nature and circumstances of the offence;**
- (b) other offences (if any) that are required or permitted to be taken into account;**
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;**
- (d) the personal circumstances of any victim of the offence;**
- (e) any injury, loss or damage resulting from the offence;**
- (f) the degree to which the person has shown contrition for the offence:**
 - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence; or**
 - (ii) in any other manner;**
- (g) if the person has pleaded guilty to the charge in respect of the offence—that fact;**
- (h) the degree to which the person has co-operated with law enforcement agencies in the investigation of the offence or of other offences;**
- (j) the deterrent effect that any sentence or order under consideration may have on the person;**
- (k) the need to ensure that the person is adequately punished for the offence;**
- (m) the character, antecedents, cultural background, age, means and physical or mental condition of the person;**
- (n) the prospect of rehabilitation of the person;**
- (p) the probable effect that any sentence or order under consideration would have on any of the person's family or dependants.**

(3)

Without limiting the generality of subsections (1) and (2), in determining whether a sentence or order under subsection 19B(1), 20(1) or 20AB(1) is the appropriate sentence or order to be passed or made in respect of a federal offence, the court must have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the offender, under that sentence or order.

38. In the decision of this Court it is expressly recorded that the relevant provisions of section 16A of the *Crimes Act* have been contemplated and taken into account.
39. The Court accepts that the submission to the effect that the defendant is contrite, has cured his omissions, and has co-operated with the Commissioner. Further the Court takes into account the probable effect that

any other disposition than a disposition under section 19B of the *Crimes Act* would impose on the defendant, his family or dependants.

40. It is specifically recorded that both specific and general deterrence have been taken into account by this Court in reaching its decision. It is not perceived by this Court that there is need to serve general deterrence by making some extreme example of this defendant for reason that the circumstances pertaining to his criminality are peculiar.
41. Not having elicited any kind of enlightenment from either counsel in the matter, this Court confesses some mystification as to the meaning of section 16A(3). However insofar as the Court must serve that section, it records it has done so.
42. As has already been recounted, the Court finds the existence of circumstances sufficient to qualify the defendant for hurdling the first limb of section 19B of the *Crimes Act*.
43. It is then appropriate to examine whether it is in this case “inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment,”.
44. Whether embracing one or other of the definitions of “expediency” clearly it would be “disadvantageous in the circumstances” (Mr Lawrence’s preferred construction) to convict the defendant. It would, by virtue of the existence of the criteria referred to in this Court’s perception furthermore alternatively in any event be inappropriate to inflict any punishment other than a nominal punishment.
45. Given those findings of this Court, it is then empowered by order to dismiss the charge which it is not prepared to do. It is otherwise empowered to proceed in the manner which it intends to proceed.

Conclusion

46. Pursuant then to the provisions of section 19B(d) of the *Crimes Act*, the disposition of the matter is in the following terms.

1. The Court discharges the defendant without proceeding to conviction in respect of any of the charges set out in the complaints of Vincent Eugene Victory of the Australian Taxation Office, of 16 July 2003 and or 21 March 2003; on condition that the defendant will be of good behaviour for a period of three years. In passing the Court observes that the invocation of the maximum period of three years as prescribed by legislation is specifically intended to serve the philosophy of general deterrence.

2. The words “if any” which appear in section 19B(1)(d)(ii) convey to this Court necessarily that there need not be any order for reparation, restitution or the like. The defendant is however ordered to pay the costs of the prosecution.

3. For reason that the Court is not clear as to whether it can, as it were, “aggregate” the penalty in relation to both complaints, and because the Court is not clear in relation to the quantum of costs which it will require the defendant to pay, it demurs from formally pronouncing sentence until such time as there has been ventilation of these matters and resolution of them between the Court and counsel for the defence and prosecution.

Dated: 14 November 2003

DAVID LOADMAN
STIPENDIARY MAGISTRATE