



THE RULES OF EVIDENCE

Presenter : Jack Pappas

Barrister-at-Law

Empire Chambers

ASIC AND THE CORPORATIONS ACT...

HOW CAN WE POSSIBLY
USE THIS ?!

DROPPED ACCURATELY AND
FROM THE RIGHT
HEIGHT...

CLEMENT



“I was present and heard Mr Kransky say to Mr Bowler “I have no intention of paying for your last shipment of widgets as I have just found out you have been having an affair with my wife’””

Can that evidence be given and if so in what circumstances and for what purpose?



HOW COULD THE TESTIMONY BE USED IN A
NON-HEARSAY WAY?



- i. To explain Mr Bowler's state of mind and why he refused to deliver any further widgets to Mr Kransky.
- ii. To explain, and perhaps to justify, Mr Bowler's invocation of a Romalpa clause in his contract of supply with Mr Kransky.
- iii. As relationship evidence in the event that Mr Bowler murdered Mr Kransky or Mr Kransky murdered Mr Bowler.
- ii. As evidence of repudiation of the contract for the supply of widgets.



95 ADMISSIBILITY OF STATEMENTS PRODUCED BY COMPUTERS

1. In any proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document produced by a computer and tending to establish that fact shall, subject to this part, be admissible as evidence of that fact, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.



2. The said conditions are—
 - a. that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person; and
 - b. that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived; and
 - c. that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
 - d. that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.



(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of 1 or more computers and 1 or more combinations of computers;

all the computers used for that purpose during that period shall be treated for the purposes of this part as constituting a single computer and references in this part to a computer shall be construed accordingly.



- (4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing all or any of the following things, that is to say—
- a. identifying the document containing the statement and describing the manner in which it was produced;
 - b. giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
 - a. dealing with any of the matters to which the conditions mentioned in subsection -(2) relate;

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of the matters stated in the certificate and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.



(5) Any person who in a certificate tendered in evidence by virtue of subsection (4) wilfully makes a statement material in that proceeding

which the person knows to be false or does not believe to be true is guilty of an offence.

Maximum penalty--20 penalty units or 1 year's imprisonment.



(6) For the purposes of this part—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.



(7) Subject to subsection (3), in this section—

“computer” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.



EVIDENCE ACT 1977 - SECT 93B

93B Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable

- 1) This section applies in a prescribed criminal proceeding if a person with personal knowledge of an asserted fact--
 - a) made a representation about the asserted fact; and
 - b) is unavailable to give evidence about the asserted fact because the person is dead or mentally or physically incapable of giving the evidence.



- 2) The hearsay rule does not apply to evidence of the representation given by a person who saw, heard or otherwise perceived the representation, if the representation was—
- a) made when or shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication; or
 - b) made in circumstances making it highly probable the representation is reliable; or
 - c) at the time it was made, against the interests of the person who made it.



- 3) If evidence given by a person of a representation about a matter has been adduced by a party and has been admitted under subsection (2), the hearsay rule does not apply to the following evidence adduced by another party to the proceeding—
 - a) evidence of the representation given by another person who saw, heard or otherwise perceived the representation;
 - b) evidence of another representation about the matter given by a person who saw, heard or otherwise perceived the other representation.
- 4) To avoid any doubt, it is declared that subsections (2) and (3) only provide exceptions to the hearsay rule for particular evidence and do not otherwise affect the admissibility of the evidence.



4) In this section—

prescribed criminal proceeding means a criminal proceeding against a person for an offence defined in the Criminal Code, chapters 28 to 32.

representation includes—

- a) an express or implied representation, whether oral or written; and
- b) a representation to be inferred from conduct; and
- c) a representation not intended by the person making it to be communicated to or seen by another person; and
- d) a representation that for any reason is not communicated.

