SUPREME COURT OF QUEENSLAND

CITATION:	*Feez Ruthning v Commissioner of Pay-Roll Tax* [2001] QSC 303
PARTIES:	**FEEZ RUTHNING (A FIRM)** (appellant/applicant) **v** **COMMISSIONER OF PAY-ROLL TAX** (respondent/respondent)
FILE NO/S:	SC No 2104 of 1998 SC No 2124 of 1998
DIVISION:	Trial Division
DELIVERED ON:	20 August 2001
DELIVERED AT:	Brisbane
HEARING DATE:	14 August 2001
JUDGE:	Chief Justice
ORDER:	**Orders as per drafts**
CATCHWORDS:	TAXES AND DUTIES – PAY-ROLL TAX – OBJECTIONS AND APPEALS – application for directions as to conduct of appeals against disallowance of objections to reassessments of payroll tax – whether proceedings may be properly characterised as by way of 'rehearing' where material not before the commissioner might be considered by the court – consideration of *Pay-roll Tax Act* provisions – where reassessments to be made according to objectively stated statutory criteria rather than the commissioner's satisfaction or discretion exercise *Pay-roll Tax Act* 1971 (Qld), Pt VI, s 18, s 32(1), s 32(6), s 33, s 33(2), s 33(3)(a), s 33(3)(b) *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353, distinguished *Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 CLR 616, referred to *Cannan & Peterson v Commissioner of Pay-roll Tax* [1975] QdR 177, distinguished *Clerk, Walker & Stops and Clerestory Pty Ltd v Commissioner of Pay-roll Tax (Tas)* (1983) 14 ATR 662, considered *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) 74 ALJR 1348, referred to *Commissioner of Taxation v Brian Hatch Timber Co (Sales)*

Pty Ltd (1971) 128 CLR 28, distinguished
Commissioner of Taxation v Finn (1960) 103 CLR 165, considered
Crusher Holdings Pty Ltd v Commissioner of Taxes (NT) (1994) 117 FLR 485, distinguished
Insomnia (No 2) Pty Ltd and Insomnia (No 3) Pty Ltd v Federal Commissioner of Taxation (1986) 17 ATR 386, considered
John French Pty Ltd v Commissioner of Pay-roll Tax [1984] 1 QdR 125, distinguished
Kolotex Hosiery (Australia) Pty Ltd v Commissioner of Taxation (1975) 132 CLR 535, distinguished
Re Coldham; ex parte Brideson (No 2) (1990) 170 CLR 267, referred to

COUNSEL: EM O'Reilly SC, with D Marks for the applicant
GJ Gibson QC, with FW Redmond, for the respondent

SOLICITORS: Allens Arthur Robinson for the applicant
Crown Law for the respondent

[1] The appellant appeals against the disallowance, by the respondent, of the appellant's objections to reassessments of payroll tax, in respect of the years 1987-1993. The apparently critical issue will be whether the appellant's salaried partners were properly considered as employees.

[2] Through this present application, the appellant seeks directions as to the future conduct of the appeals. The directions it seeks, as to the delivery of pleadings and disclosure of documents especially, assume that the proceedings may properly be characterised as appeals by way of "rehearing", in the sense that the court's consideration should not be confined to the materials which were before the Commissioner: the appellant should have the right to adduce additional relevant evidence. Opposing the making of the directions which the appellant seeks, the respondent contends that the appeals must be determined strictly upon the basis of only the material which was before the Commissioner. In light of those competing intentions, I must therefore determine the ambit of the appeal.

[3] Part VI of the *Pay-roll Tax Act* 1971 provides the relevant statutory framework. A person dissatisfied with the Commissioner's assessment may lodge an objection in writing, "stating fully and in detail the grounds on which the person relies" (s 32(1)). The Commissioner must then serve the objector with written notice of his decision (s 32(6)). (See Exhibits 1 and 2). A person dissatisfied with the Commissioner's decision upon the objection may appeal to the Supreme Court (s 33).

[4] Section 33 provides:

> "**Appeal**
> **33.(1)** A person who is dissatisfied with a decision of the commissioner on an objection made by that person may, within 30 days after service on the person of notice of that decision or within such further time as the commissioner may allow, by a request in

writing accompanied by a fee of $5 request the commission to treat the person's objection as an appeal and to forward it to the Supreme Court, and the commissioner shall, as soon as practicable, forward it accordingly.

(2) Any appeal made in accordance with subsection (1) shall be forwarded to, and shall be heard and determined by, the Supreme Court in accordance with rules of court.

(3) On appeal –

(a) the objector shall be limited to the grounds stated in the objector's objection; and

(b) the burden of proving that any assessment objected to is excessive lies on the objector.

(4) If the person's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against."

[5] In relation to s 33(2), it is the fact that the rules of court do not illuminate the nature of the appeal. The nature of such an appeal would ordinarily fall to be determined by reference to the terms by which the right of appeal is conferred: *Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 CLR 616, 621-2; *Re Coldham; ex parte Brideson (No 2)* (1990) 170 CLR 267, 273-4; *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) 74 ALJR 1348, 1353. Unfortunately however, these provisions do not provide any positive assistance. They do not, for example, provide even that the appeal is to be "by way of rehearing"; or indeed go on to advert to any of the other range of indicia mentioned in *Sperway* (p 621).

[6] Mr Gibson QC, who appeared for the respondent, sought to draw strength from that absence of definition. He submitted that in those circumstances, the ambit of an appeal under s 33 should be drawn narrowly rather than broadly. He particularly relied on the following considerations, for a contention that the provisions set up an appeal in the strict sense, with the court's consideration confined to the materials before the Commissioner. This listing is taken from counsel's submissions:

"(a) first, s 33 does not in terms describe the appeal as an appeal by way of hearing de novo;

(b) second, it confers no power on the Supreme Court to make such decision or order as it thinks fit on the hearing of the appeal;

(c) third, it confers no power on the Supreme Court to receive further evidence;

(d) fourth, the express statement (in subs.(3)(b)), that on the appeal the objector bears the burden of proving that any assessment objected to is excessive is not consistent with an appeal by way of hearing de novo as, upon such a hearing, it would be the Commissioner – the party seeking to impose the payroll tax – not the objector, who would bear the onus

of proof;

(e) finally, in the absence of any sufficient indication of a contrary intention in the relevant provision, the reference simply to "an appeal" is consistent with an appeal in the strict sense of that term."

[7] I do not for my own part find any of those negative indications especially helpful in determining the scope of such an appeal. I regard the language of the statutory provision as neutral.

[8] There are three court decisions which, in relation to broadly comparable legislation, do however lend substantial support to the appellant's contention that the court hearing such an appeal is not to be limited to the materials which were before the Commissioner. The extracts which I am about to reproduce discuss the relevant issue. As a "chamber judge" I regret having to reproduce such lengthy extracts, but they are I believe instructive as to the competing considerations.

[9] The first, *Clerk, Walker & Stops and Clerestory Pty Ltd v Commissioner of Pay-roll Tax (Tas)* (1983) 14 ATR 662, is a decision of the Supreme Court of Tasmania, in respect of similar legislation, the *Tasmanian Payroll Tax Act* 1971. Cosgrove J dealt with the nature of the appeal in this way (p 663):

> "By notice of motion dated 13 May 1980, the appellants appealed to this Court against the decision of the Commissioner disallowing the objection. The right of appeal to this Court is given by s 33 of the statute which provides that the notice of appeal should be in the prescribed form. By statutory rule No 140 of 1976, it was provided that an appeal should be in the form of a motion to the Supreme Court. Section 33 confines the appellant to the ground stated in his objection, and also provides that on the hearing of an appeal, the Supreme Court shall proceed in accordance with the Rules of Court, and shall make such order on the appeal as it thinks fit, with respect to any determination of the Commissioner that is the subject of the appeal. It appears that no Rules of Court have been made governing appeals of this nature.
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> Mr Norris, for the respondent, submitted that the appeal was an appeal *sensu stricto*, and relied upon the decision of the Full Court of the Supreme Court of Queensland in *Comr of Pay-roll Tax (Qld) v John French Pty Ltd* (1983) 14 ATR 228; 83 ATC 4283; the decision of Mr Justice Gray of the Supreme Court of Victoria in *Ballarat Brewing Co Ltd v Comr of Pay-roll Tax (Vic)* (1979) 10 ATR 228; 79 ATC 4452; and Mitchell J's decision in *Comr of Stamps (SA) v Rivington Farms Pty Ltd* (1981) 12 ATR 296; 81 ATC 4449. Mr Southee for the appellants made no submission on this aspect of the case. Despite the authorities referred to by Mr Norris, I am not satisfied that it is in fact an appeal *sensu stricto*, and I refer to the *FCT v Finn* (1961) 8 AITR 145 at 146; 103 CLR 165 at 167 per Fullagar J. It seems to me that this is clearly an application to the Supreme Court in its original jurisdiction, which would tend to

> favour a re-hearing, and although one aspect of the case deals with the question of the "satisfaction" of the Commissioner, other aspects deal with pure questions of fact. However that may be, it is probably of no importance in the instant appeal because the parties placed before me an agreed bundle of documents, an agreed statement of facts, and made joint concessions during the course of the hearing. No attempt was made to call fresh evidence, and no objection was taken to the statement of facts made to me by Mr Southee on behalf of the appellants."

That analysis is helpful, and supports the appellant, even though, as Mr Gibson pointed out, it was not necessary for that judge to make a final determination upon the issue.

[10] The second decision is *Insomnia (No 2) Pty Ltd and Insomnia (No 3) Pty Ltd v Federal Commissioner of Taxation* (1986) 17 ATR 386, which concerned appeals to the Supreme Court of Victoria against assessments by the Commissioner of Taxation under the *Income Tax Assessment Act*. Murphy J said (pp 395-6):

> "Where an appeal against an assessment concerns an issue depending for its determination on the state of mind of the Commissioner at the time that he made the assessment in question, it does appear that material coming into existence after the assessment is made may not be material that will be considered on the appeal, cf *Kolotex Hosiery (Aust) Pty Ltd v FCT* (1975) 5 ATR 206 at 212-13, 240-41; 132 CLR 535 at 543, 578-79.
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> But an appeal to this Court from the Commissioner's assessment (s 187) is an appeal by way of rehearing, a "proceeding de novo", *FCT v Finn* (1960) 8 AITR 145 at 146; 103 CLR 165 at 167; *FCT v Student World (Aust) Pty Ltd* (1978) 8 ATR 356 at 368; 138 CLR 251 at 271.
>
> In the present case it is, in my opinion, open to this Court to take into account material which was not available to be put before the Commissioner [or before a Board of Review] whether it be evidence led by the taxpayer or by the Commissioner, provided that it is relevant to the issue. The Commissioner's state of mind is not here determinative of the issue."

[11] The third decision, *Commissioner of Taxation v Finn* (1960) 103 CLR 165, involved an appeal to the High Court from a decision of the Taxation Board of Review. Fullager J said (pp 167-8):

> "The distinction between an appeal in the strict sense and an appeal by way of rehearing is explained in the judgment of *Dixon J.* in *Victorian Stevedoring and General Contracting Co. Pty. Ltd. and Meaks v. Dignan (1).* Appeals to this Court under s. 73 of the Constitution are sometimes described as appeals by way of rehearing, because on such appeals questions of fact, as well as questions of law, are open. But such appeals are really appeals in the

> strict sense: they must be decided on the materials which were before the court from which the appeal comes, and no fresh evidence can be admitted. On the other hand, the so-called appeal from a board of review to this Court is clearly an appeal by way of rehearing. The jurisdiction exercised is in truth original jurisdiction, and not appellate jurisdiction. The general position with regard to such "appeals" may be fully explained by quoting passages from two judgments. In *Federal Commissioner of Taxation v. Lewis Berger & Sons (Australia) Ltd (2)*, *Starke J.* said: "The appeal may be brought from any decision of the Board which, in the opinion of this Court, involves a question of law. The Board, in its proceedings, did not exercise the judicial power of the Commonwealth, but an administrative function, namely, that of reviewing the Commissioner's assessments for the purpose of ascertaining the taxable income upon which tax should be levied. The appeal to this Court submits the ascertainment of the taxpayer's liability to judicial review and ascertainment, but the so-called appeal is a proceeding in the original, and not within the appellate, jurisdiction of the Court. It follows, I think, that the parties on this appeal are not limited to the material that was before the Board of Review, but are entitled to adduce before this Court such evidence in support of, or in answer to, the appeal as is relevant to the matter. The material before the Board and its decision and reasons should be brought before this Court, and the parties may use this material of they so desire, but further or additional evidence may be adduced, or the appeal may be conducted as an original cause brought in this Court." (3) In *Federal Commissioner of Taxation v. Sagar (4)*, *Williams J.* said: "It is only competent for the Court to entertain an appeal under s. 25(7) if the decision of the Board involves a question of law. Unless the statute provides that some portion of the Board's decision is to be unappealable, the whole decision and not merely the question of law is then open to review and the Court must rehear the whole case although it rejects the point of law … The appeal is a proceeding in the original jurisdiction of the Court so that, unless the parties agree that the evidence given before the Board shall be used on the appeal, the evidence must be tendered again, and, as the appeal is a rehearing, further evidence can be called." (1)"

[12] Those three decisions strongly support the conclusion that in the case of an appeal to the court from the determination of an administrative officer such as the respondent, absent contrary indications, it should be assumed that the legislature has given the court full power to consider the merits of the decision which is challenged, and accordingly, to admit all relevant evidence, and in order to facilitate that, to allow reasonable disclosure of documents.

[13] On the other hand, Mr Gibson relied substantially on the decision of Martin CJ in *Crusher Holdings Pty Ltd v Commissioner of Taxes (NT)* (1994) 117 FLR 485, an appeal against that Commissioner's determination of an objection. After reviewing the relevant authorities, the learned Chief Justice held (p 494) that:

> "It is upon the basis of the material before the Commissioner alone

> that the Court is to determine whether or not the Commissioner erred in such a manner as to enable the Court to set his decision aside and determine the question for itself. There is no warrant for receiving evidence beyond that."

[14] The issue in that case was the Commissioner's failure to order the de-grouping of associated businesses, for the purposes of assessing payroll tax. The important consideration for the present, was that the Commissioner's decision was his own. It was not one which the legislature apparently considered might be reviewed by the court. It was a matter dependent upon the Commissioner's satisfaction. That being established, on an apparently sustainable basis, the court had no further role in the matter. Martin CJ described the process through which the Commissioner was statutorily required to pass, in these terms (pp 486-7):

> "… if the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that he considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Commissioner may … exclude him from that group (s17H(1))."

[15] The Chief Justice reached that conclusion after reviewing a number of cases, including, importantly, the decisions of the High Court in *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353, *Commissioner of Taxation v Brian Hatch Timber Co (Sales) Pty Ltd* (1971) 128 CLR 28 and *Kolotex Hosiery (Australia) Pty Ltd v Commissioner of Taxation* (1975) 132 CLR 535. Those cases particularly concerned the function of an appeal court under s 190 of the 1936 *Income Tax Assessment Act*, where the relevant taxing provisions depended – as in *Crusher Holdings* – on the Commissioner's being satisfied as to the existence of particular circumstances.

[16] For example, in *Avon Downs*, Dixon J, as he then was, said (p 360):

> "But it is for the commissioner, not for me, to be satisfied of the state of the voting power at the end of the year of income. His decision, it is true, is not unexaminable. If he does not address himself to the question which the sub-section formulates, if his conclusion is affected by some mistake of law, if he takes some extraneous reason into consideration or excludes from consideration some factor which should affect his determination, on any of these grounds his conclusion is liable to review. Moreover, the fact that he has not made known the reasons why he was not satisfied will not prevent the review of his decision. The conclusion he has reached may, on a full consideration of the material that was before him, be found to be capable of explanation only on the ground of some such misconception. If the result appears to be unreasonable on the supposition that he addressed himself to the right question, correctly applied the rules of law and took into account all the relevant considerations and no irrelevant considerations, then it may be a

> proper inference that it is a false supposition. It is not necessary that you should be sure of the precise particular in which he has gone wrong. It is enough that you can see that in some way he must have failed in the discharge of his exact function according to law."

[17] Following upon that, in *Kolotex Hosiery*, Gibbs CJ said (pp 567-8):

> "The questions that then arise are whether the conclusion of the Commissioner is open to review and, if so, whether it should be held that he should reach the requisite satisfaction. The grounds on which the conclusion by the Commissioner that he is not satisfied may be examined by a court of appeal are those stated in *Avon Downs Pty. Ltd. v. Federal Commissioner of Taxation* … It seems that a court in deciding whether some ground has appeared to justify a review of the Commissioner's conclusion that he is not satisfied should consider the question on the basis of the material which was before the Commissioner even though further material is before the court … However, it would appear to me that once it is decided that the conclusion of the Commissioner should be disturbed, for example, on the ground that it was based on error, it is right for the court to reach its final conclusion as to whether or not the Commissioner ought to be satisfied by reference to all the material before the Court, because if the matter were referred back to the Commissioner to reconsider the question he would obviously be entitled and bound to consider all the information then available. Both parties in the present case put their submissions on the footing that once this Court decided that the Commissioner had been in error the appeal should be decided by reference to all the material before the Court."

[18] In my opinion, the approach discussed in *Crusher*, *Avon Downs*, *Brian Hatch* and *Kolotex Hosiery* does not apply in the present case, because the presently relevant taxing provision did not vest in the Commissioner, as if persona designata, an obligation to reach some particular degree of satisfaction, or to exercise some particular discretion.

[19] The provision basing these appeals is s 18, which at the applicable time provided:

> "**Assessments**
> **18.(1)** Where the commissioner finds in any case that pay-roll tax or further tax is payable by an employer, the commissioner may –
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> (a) assess the amount of taxable wages or, where relevant, interstate wages paid or payable by the employer; and
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> (b) calculate the pay-roll tax or further tax payable by the employer.
>
> **(2)** Where –
>
> (a) any employer fails or neglects duly to furnish any return as and when required by this Act or by the

commissioner; or

(b) the commissioner is not satisfied with the return made by any employer; or

(c) the commissioner has reason to believe or suspect that any employer (though the employer may not have furnished any return) is liable to pay pay-roll tax;

the commissioner may cause an assessment to be made of the amount upon which, in the commissioner's judgment, pay-roll tax or further tax ought to be levied and that person shall be liable to pay pay-roll tax or further tax thereon, except in so far as the person establishes, on objection or appeal, that the assessment is excessive.

…

(6) As soon as conveniently may be after an assessment is made under this section, the commissioner shall cause notice in writing of the assessment and of the pay-roll tax, further tax or additional tax to be served on the employer liable to pay it.

(7) The amount of pay-roll tax, further tax or additional tax specified in the notice shall be payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act."

[20] The assessments subject to these appeals were reassessments under s 18. Some of the words and phrases included in s 18 which might perhaps be suggested as obliging the Commissioner to reach a particular level of satisfaction, although Mr Gibson did not actively urge this view, are "fines", "is not satisfied", and "in his judgment". I do not however consider those words and phrases to carry that connotation. They go more towards identifying a stage in the process of assessment. They are not used in the sense in the Commissioner's relevantly forming a belief or opinion or reaching a particular state of satisfaction, and Mr Gibson acknowledged as much. The word "may", furthermore, is used in the sense of "is authorised to".

[21] The natural interpretation of s 18 is to my mind clear. If payroll tax "is payable", then actual payment will so far as possible be secured through the implementation of the prescribed administrative arrangements. Whether the tax "is payable" depends upon the applicability of other statutory criteria, criteria which are not dependent on any individual satisfaction or exercise of discretion on the part of the Commissioner. The law upon such fundamental issues of course desirably should not depend on any individual officer's point of view: so far as possible, the liability should be fixed, certain, independently ascertainable. The relevant criteria being so established, the Commissioner proceeds to assess the consequent liability to tax.

[22] In this case, the question whether the appellants were liable to payroll tax was to be determined by applying, to the facts of the case, the objectively stated statutory criteria. This important determination was, as a matter of convenience, reserved to

the Commissioner, as an appropriate administrative agency, but nevertheless with a right of appeal to the Supreme Court, exercising what Fullager J in *Finn* styled as "original jurisdiction".

[23] I adopt this concluding submission presented by Ms O'Reilly QC for the appellants:

> "The proceeding might be described as an appeal by way of rehearing. On an appeal by way of rehearing, further evidence relevant to the issues on the appeal is admissible.
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> The most common restriction on adducing further evidence, in pay-roll tax appeals, is that evidence not before the Commissioner at the time the Commissioner achieved some necessary state of mind, is not admissible. The question there is whether the Commissioner ought to have achieved some state of satisfaction, or should have exercised some discretion.
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> Where that restriction applies, it is because the Court does not immediately step into the Commissioner's shoes to re-exercise the discretion, or to determine whether the state of satisfaction ought to have been achieved. Instead, the Court examines whether there was error on the part of the Commissioner in relation to the attainment of satisfaction or exercise of discretion. Matters not before the Commissioner at the time that the state of mind is achieved are therefore irrelevant to the question of whether the Commissioner fell into error in reaching the decision.
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> …
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> There being no state of mind or discretion of the Commissioner under attack in these appeals, the evidence led is that relevant to determine the issues of fact related to whether the fixed draw partners were employees. That evidence may include matters not before the Commissioner when the assessments were raised and the objections determined."

[24] There are two, previously reported, decisions of this court in relation to this avenue of appeal, to which I should finally refer.

[25] The first in time is *Cannan & Peterson v Commissioner of Pay-roll Tax* [1975] QdR 177, where Andrews J, as he then was, concluded that in relation to such appeals the Commissioner should not be permitted to require the discovery of documents. But it is not clear that the scope of the appeal was the subject of any comprehensive submissions or consideration.

[26] The other is *John French Pty Ltd v Commissioner of Pay-roll Tax* [1984] 1 QdR 125, where evidence had apparently without objection been led before the court at first instance. Upon the matter coming before the Full Court, Matthews J considered that to have been wrong, because it was an appeal in the strict sense (p 128), although McPherson J, as he then was, with whom Campbell CJ agreed, considered (p 139) that evidence was admissible should it be determined that the

Commissioner had erred. But for present purposes the ultimately relevant point is that the issue critical upon this hearing did not then clearly arise.

[27] Neither of those decisions should therefore be influential or determinative in relation to the outcome of this case.

[28] For the reasons I have expressed, I consider that upon the hearing of an appeal under s 33 of the *Payroll Tax* 1971, an appellant should not be confined to the materials before the Commissioner for Payroll Tax, but may adduce evidence of any circumstances relevant to the issue arising under the Act, subject to the appellant's being limited by the grounds of objection (s 33(3)(a)). Acknowledging that to be the nature of such an appeal, the court should lend its interlocutory support, through a preparedness to make orders as to pleadings and disclosure which may facilitate the elucidation of the issues and their proper presentation.

[29] As to pleadings, Mr Gibson submitted that they were unnecessary in view of the objections and statements of reasons for their disallowance, Exhibits 1 and 2. I am conscious of s 32(1), which requires that the objection state "fully and in detail" the grounds on which the objector relies, and that, by force of s 33(3)(a), the appellant is limited to those grounds. A statement of claim could therefore involve no embellishment of those grounds, although some could be abandoned. Further, a statement of claim may include some useful particularisation presently not included in the objections. It is because of those circumstances, notwithstanding those provisions of the Act, that I believe there may be utility in directing that pleadings be filed and served.

[30] As to disclosure of documents, Mr Gibson urged that the normal disclosure obligations under the Uniform Civil Procedure Rules should apply. Ms O'Reilly expressed concern that that might expand the process, as it may turn out unnecessarily, and she provided instances of documents which would then be subject to disclosure, while probably of little moment overall. I adverted during the hearing to the possibility that the schedule of categories of documents to be disclosed may, albeit understandably, have been drawn somewhat favourably to the interests of the appellant. That would however be sufficiently accommodated by reserving to the respondent the right to require the disclosure of other relevant material, as has been done by paragraph 7.

[31] There will therefore be orders in terms of the drafts.