

which the respondent claimed was exempt under s.30(1).

In considering the first limb of s.30, the Tribunal was satisfied that disclosure of the report would disclose matter in the nature of opinion, advice or recommendation prepared by the panel in the course of or for the purpose of its deliberative processes. The report, according to the Tribunal, was an essential part of the process which enabled the Director to make a decision concerning a policy matter, namely what option he should implement concerning the applicant. The report included allegations against the applicant, questions asked in interviews by the panel, findings of the panel in respect of those allegations and the panel's recommendations.

The Tribunal was also satisfied that it would be contrary to the public interest to release the report under s.30(1)(b). Some of the public interest factors against disclosure were:

1. the inclusion within the Agreement, which regulated the process of disciplinary proceedings of a provision requiring the persons who conducted the enquiry to treat all evidence and the report itself as strictly confidential. (Evidence before the Tribunal indicated that the sensitive area of disciplining teachers was operating effectively under the Agreement and it was in these circumstances loathe to ignore the confidentiality provision in the Agreement in the absence of any convincing reasons to justify release), and
2. the likelihood that teachers, parents and students would be less likely to participate in an enquiry if their evidence and the report did not remain confidential. Such a

result would in the Tribunal's view have reduced the effectiveness of the enquiry and impaired the ability of the Director to reach a decision. Accordingly, the Tribunal ruled that the document was exempt pursuant to s.30(1) and affirmed the decision of the respondent.

#### TRAYNOR and MELBOURNE AND METROPOLITAN BOARD OF WORKS

(No. 870285)

**Decided:** 23 September 1987 by J. Galvin (Member).

*Application to amend personal records — whether application vexatious or frivolous.*

Following the termination of the applicant's employment with the respondent ('The Board') he had sought and been granted access to a number of documents concerning him. He had then provided a notation which the Board's FoI officer attached to his file in accordance with s.42. The applicant had then sought review of the Board's decision in an attempt to make substantial amendments to the various reports on his file.

Before proceeding with the substantive issue, the Tribunal rejected an application by the Board under s.48(1)(b) of the *Administrative Appeals Tribunal Act 1984* to dismiss the application on the grounds that it was vexatious and frivolous. The Tribunal was not prepared to impute bad faith to the applicant in seeking to review the decision of the Board, nor was it prepared to interpret a combination of suggested doubtful sincerity of motive and a certain confusion and disorder in the presentation of the applicant's case as together being tantamount to vexatiousness or frivolity.

Turning to the substantive issue, the Tribunal noted that the purpose of s.39 was to provide a means of avoiding the communication of false or misleading information about one person to another. In its view, the amendments sought by the applicant would have had the effect of substantially changing statements of fact and opinion contained in the documents, thereby communicating to the reader findings which were almost entirely opposite to those reached by the authors of the documents. Many of the amendments consisted of substantial deletions whilst other changes added nothing to the substance of existing statements or to the meanings conveyed by them.

The Tribunal commented that it was 'not a purpose of s.39 to rewrite a document in words other than the author's, save to effect avoidance of inaccuracy or inadequacy to the extent contemplated by the latter part of the section'. It concluded that there was insufficient evidence before it to show that the facts or opinions recorded were inaccurate or incomplete or likely to give a misleading impression. Moreover, the amendments proposed by the applicant would, in its view, have been 'illogical, disjointed, ungrammatical and confusing to the reader'. The Tribunal was satisfied that the course adopted by the Board, namely referring the reader of any of the documents to the comments made by the applicant and attaching those comments in coloured paper to the documents themselves, was the most appropriate course in the circumstances.

Apart from two minor amendments, the Tribunal ordered that the decision of the respondent be affirmed.

## SUPREME COURT OF VICTORIA

#### DEPARTMENT OF AGRICULTURE AND RURAL AFFAIRS v. BINNIE

(No. M266/1987)  
D cid d: 23 September 1987 by Nathan J.

*Where the disclosure of documents would be reasonably likely to endanger persons — degree of likelihood required to satisfy claim for exemption under s.31(1)(e).*

The appellant department sought to review a decision of the Tribunal to grant limited access to documents provided to it by institutions which conducted research using live animals. Central to the Department's appeal was the submission that, once the Tribunal had found as a matter of fact that disclosure could possibly endanger the lives or physical safety of experimenters, it had to conclude

as a matter of law that it was reasonably likely that such harm would follow thereby rendering the documents exempt under s.31(1)(e).

The Court first considered the meaning of the phrase 'reasonably likely'. It was of the opinion that the word 'reasonably' amplified the verb 'to endanger' by requiring that danger should be something which the reasonable man assumed would occur, rather than it being some fanciful or abstract notion of likelihood or probability. Furthermore, in its view, that which was 'reasonably likely' to occur had to be something which a thinking person, exercising his/her reason, assumed or presumed would occur, and not some event which was improbable or outside the ken of his/her understanding.

Turning to the criteria necessary to satisfy a claim for exemption under s.31(1)(e), the Court ruled that to fall within the protection of the section 'its release must, as a matter of real and distinct chance, such as a reasonable person would assume or presume it, lead to endangering the life or physical safety of the author legally bound to produce the document'.

The Court considered that the Tribunal, in interpreting the phrase 'reasonably likely to endanger the lives or physical safety of persons' and then applying the definition objectively to the facts before it had adopted the correct legal approach. It therefore held the decision of the Tribunal should be affirmed and the appeal dismissed.