IN THE HIGH COURT OF AUSTRALIA
DARWIN REGISTRY

No. D16 of 2019

BETWEEN:

HAROLD JAMES SINGH
Appellant

AND

THE QUEEN
Respondent

RESPONDENT'S SUBMISSIONS

Part 1: Certification as to publication

1. These submissions are in a form suitable for publication on the internet.

Part II: Statement of Issues

2. Section 59 of the *Evidence (National Uniform Legislation) Act* 2011 (NT) ("ENULA") excludes the admission of hearsay statements subject to certain exceptions specified in ENULA. Hearsay statements made by an accused may be admissible if they constitute admissions or related statements consistent with s81 of ENULA.

3. The common law rule that the prosecution is obliged to call all witnesses who can give relevant and admissible evidence does not extend to an obligation upon the prosecution

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to adduce evidence of hearsay statements made by the accused notwithstanding some such statements may be admissible as an exception to the hearsay rule because they constitute admissions. The prosecution retains a discretion not to adduce evidence of hearsay statements made by an accused but, if the prosecution elects to adduce any such statements because they constitute admissions, it will be bound to adduce both inculpatory and exculpatory material consistent with the rule at common law as stated in the decision of *R v Soma.*[1]

Part III: Certification with respect to s78B *Judiciary Act* 1903

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4. No constitutional issue is raised in this appeal therefore no notices are required.

Part IV: Appellant's Narrative and Chronology

5. The Respondent does not contest any of the material facts set out in the appellant's narrative statement or chronology and does not seek to supplement that material.

Part V: Respondent's Argument

20 6. The appellant does not assert that out of court representations made by an accused which are exculpatory in nature are admissible in evidence but rather, where such representations are mixed with representations that are against interest, the obligation falls upon the prosecution to adduce all such representations.[2]

7. That previous representations which are largely exculpatory are inadmissible is consistent with the position established at common law. In *Flowers v The Queen,*[3] Riley J relied upon a number of decisions from other jurisdictions to conclude that there was no basis for the admission of representations which amounted to an exculpatory explanation of relevant matters.[4] The introduction of s59 of ENULA does not alter the common law
30 position.

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[1] (2003) 212 CLR 299 at [31].
[2] Appellant's submissions paragraph 10
[3] (2005) 189 FLR 423
[4] *Ibid* at [36] and with reference to *R v Callaghan* [1994] 2 Qd R 300 per Pincus JA and Thomas J, *S v The Queen* (2002) 132 A Crim R 326 per Parker J at 330, *R v Higgins* (1829) 172 ER 565 per Parke J and *Assafiri v Horne* [2004] WASCA 40 per Roberts-Smith J at [59] and [60].

8. Section 81(1) of ENULA relevantly provides that the hearsay rule does not apply to evidence of an admission. The term 'admission' is defined in part 1 of the Dictionary as:
"..a previous representation that is –
(a) made by a person who is or becomes a party to a proceeding (including a defendant in a criminal proceeding); and
(b) adverse to the person's interest in the outcome of the proceeding."

9. The interview by police of the appellant **[AFB 169 – 208]** contains numerous individual representations only some of which constitute admissions. Representations which could be construed as adverse to interest include:

- That the appellant was present during the offending **[AFB 175.1];**
- That the appellant was in the company of males that he saw commit the offending **[AFB 201 – 203];**
- That the appellant travelled from Litchfield Court to Sabine Road in the taxi in which the offence was committed **[AFB 180 – 182];**
- That the appellant was wearing clothing consistent with that of the older male depicted in the CCTV footage taken from the taxi **[AFB 193 - 194];**
- That the appellant was drunk when he got in the taxi **[AFB 175, 202 – 203]**.

10. The possible admissions need to be assessed in light of the admission of fact made by the appellant in a document dated 30 January 2018 and made pursuant to s191 of ENULA that it was the appellant, his nephew and two others who boarded the taxi at Litchfield Court prior to the offending **[AFB 56 – 57]**. Further, the appellant relied upon the representation that he was drunk in support of a contention that he had no prior knowledge of the intentions of the other persons in the taxi until the offending commenced. In these circumstances the representation is consistent with innocence rather than being inculpatory.

11. The representations contained in the interview with police are for all intents and purposes exculpatory. It is consistent with the classification that B.R. Martin CJ applied to the representations the subject of adjudication in *Flowers v The Queen* when he commented that,

"Speaking generally, the interview was entirely exculpatory."[5]

[5] (2005) 153 A Crim R 110 at [3]

Kelly J came to a similar view upon her analysis of the interview in *R v Helps.*[6] In the appeal of the present matter to the Court of Criminal Appeal, Kelly J also concluded that the interview was an entirely exculpatory account.[7]

12. It is submitted that the interview, which took place more than three weeks after the robbery took place, should be construed as exculpatory in nature. Any admissions that it contained were of no material significance as a consequence of the appellant's agreement as to facts during the course of the trial **[AFB 56 - 57]** and at a point in time long after the Crown had advised that it would not be adducing evidence of the interview at the trial **[AFB 79.7]**. Accordingly, consistent with the decision of *R v Callaghan*[8] as applied by Riley J in *Flowers,*[9] the contents of the interview are self serving and therefore inadmissible.

13. In the event that this characterisation is rejected and the interview is construed as being mixed, it is submitted that there was no obligation on the prosecutor to adduce evidence of it in the Crown case and therefore no miscarriage of justice as a result of it not being so adduced.

14. It is well accepted that there is an obligation on a prosecutor to call all material witnesses.[10] That duty necessarily extends to the adducing of all admissible evidence from those witnesses. It is reflected in professional codes of conduct provided for all prosecution offices within Australia.[11] The duty is restated in rules of professional conduct that apply in the Northern Territory such as rule 17.52 of the Law Society of the Northern Territory Rules of Professional Conduct and Practice and rule 66B of the Northern Territory Bar Association Barristers Conduct Rules.[12]

15. In *R v Kneebone*,[13] James J summarised the obligation as including the presentment of evidence which assists the defence case, however there is a discretion to refuse to adduce evidence which the prosecutor considers unreliable.[14] That approach was endorsed in

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[6] (2016) 126 SASR 486 at [38]
[7] *Singh v The Queen* [2019] NTCCA 8 per Kelly J at [66] and at CAB 95.30
[8] [1994] 2 Qd R 300 at 303; 354
[9] At [37]
[10] *Richardson v The Queen* (1974) 131 CLR 116, *Whitehorn v The Queen* (1983) 152 CLR 657; *R v Apostilides* (1984) 154 CLR 563
[11] See for instance Rule 14.4 of *The Guidelines of the Director of Public Prosecutions (NT)*
[12] Both of which can be found at *www.lawsociety.asn.au*
[13] (1999) 47 NSWLR 450
[14] At [57]

Dyers v The Queen by Gaudron and Hayne JJ.[15] It is similarly reflected in prosecutor guidelines across jurisdictions and in particular guidelines 14.5 – 14.7 of Guidelines for Director of Public Prosecutions for the Northern Territory. Those guidelines specifically require conference with a witness before a decision is made not to call a witness.[16] Of course conferencing is not an option when the prosecution is dealing with the out of court representations of an accused.

16. The rationale behind the prosecutor retaining a discretion to elect not to adduce evidence that the prosecutor deems unreliable is consistent with the basis for inadmissibility of self serving statements made by an accused. It is only where statements are against interest that the risk of unreliability is sufficiently reduced and such statements become admissible as an exception to the hearsay rule.[17]

17. The appellant refers to provision 27 of the *Victorian Criminal Procedure Manual* (VCPM) in its written submissions.[18] Such obligation is not reproduced in the *Victorian Bar Association Rules,*[19] Rule 89 providing in identical terms to the NSW Bar Association Rule 89 set out in paragraph 11 of the appellant's written submissions. Further, provision 27 of the VCPM does not fit comfortably with provision 29 which acknowledges the scope for a prosecutor to test the evidence of a witness whose evidence is unfavourable to the Crown case in accordance with the provisions of s38(1) of ENULA.

18. In its interim report the ALRC made the following comments:-

"...the need for accurate fact finding and considerations of fairness justify allowing a party to test by cross-examination that part of a witness' testimony that is unfavourable to the case of the party whether the witness was called by the party of not. If the party does not test such evidence it is likely that no one will."[20]

19. The appellant submits that an unfairness derives from the prosecution election not to adduce evidence of an out of court statement relied on for its truth that is exculpatory because it is connected with another statement which is inculpatory and therefore admissible. The obligation only arises where statements are 'mixed'. There is a logical

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[15] (2002) 210 CLR 285 at [11]
[16] Guideline 14.6
[17] See *Evidence (Interim) Report* [1985] ALRC 26 at [753]
[18] At [13]
[19] Reproduced at *vicbar.com.au*
[20] *Op cit* at [625] and adopted without amendment in *Evidence Report* [1987] ALRC 38 at [114]

flaw in reasoning on this basis in that it would suggest the same unfairness arises as a consequence of a prosecutor's election not to adduce evidence of hearsay statements which are exculpatory only. The unfairness is not cured because there happens to be some hearsay statements contained within an interview which can be characterised as inculpatory. The unfairness complained of by the appellant derives from the fact that the law prohibits the reception of hearsay statements except in circumstances which sufficiently enhance their reliability to a point that it is in the interests of justice that they should be admitted. The inherent unreliability of self serving statements, the fact that they derive from a person who the prosecution does not accept as a witness of truth on the subject about which the statement is made and the lack of capacity to test the evidence in cross examination are all powerful reasons for the exclusion of such representations.

20. The appellant asserts that a direction consistent with that approved in the decision of *Mule v The Queen*[21] is sufficient to alert the jury about the inherent weaknesses of self serving hearsay statements. This submission however fails to recognise the difficulties inherent in properly assessing the weight to be attributed to such statements. As this court stated in *Mule*:

"As has been noted, many cases involving evidence of out of court "mixed" statements by an accused person are more complex than the present. In *R v Cox* [1986] 2 Qd R 55 at 65, Thomas J rightly cautioned against inappropriate generalisations concerning the difference between inculpatory and exculpatory parts of a statement: a difference that in some cases (not including the present) might be difficult to discern. He said, in a passage quoted by McLure J in her reasons:

"With respect, it seems to me to be undesirable that juries be given general *a priori* directions as to what sorts of evidence are likely to be true, or as to the weight which should be accorded to different parts of the one statement. The matter of weight is for them, and the weight of each part of the statement should be determined in the light of the whole of the evidence. There is, of course, no reason why the trial judge should not point out that such statements have not been made on oath and (where appropriate) that they have not been tested by cross-examination. He may *explain the traditional reasons why admissions against interest are commonly regarded as reliable evidence, and* make any appropriate comments about particular parts of the evidence. The weight which may fairly be accorded to a self-serving statement varies so much from case to case that it is

[21] [2005] HCA 49; 221 ALR 85

unwise to lay down any general disparaging directions concerning such statements, although of course, critical comments may be made in appropriate cases." (emphasis added)

Apart from the words emphasised in that passage, it is a sound guide to jury direction. In view of the long-standing controversies about why admissions are received, and in view of the fact that an admission need not have been against interest at the time it was made, it is undesirable to direct juries along the lines suggested by the words emphasised."[22]

21. The abolition of the right of an accused to make a dock statement is a clear indication by parliament that insufficient weight can generally attach to statements of denial by an accused that cannot be tested in cross examination and justifying their exclusion. A decision by a prosecutor that, in a particular matter, inculpatory statements contained in a "mixed" interview are of insufficient import to warrant their introduction into evidence does not give rise to any unfairness to any greater degree than the exclusion of exculpatory statements generally; a consequence not of the decision of a prosecutor but of the application of s59 of ENULA.

22. It is submitted that the preponderance of authority from the various jurisdictions recognises that the prosecutor retains a discretion not to adduce evidence of self serving statements. That discretion was acknowledged by Riley J in *Flowers,*[23] where he referred to the decisions of Pincus JA and Thomas J in *R v Callaghan,*[24] Parker J in *S v The Queen,*[25] Parke J in *R v Higgins*[26] and Roberts-Smith J in *Assafiri v Horne.*[27]

23. The plurality in *R v Soma*[28] acknowledged the existence of a discretion when discussing the prosecutor's obligation to act fully and fairly:

"To the extent to which those statements were admissible and incriminating, the prosecution, *if it wished to rely on them at the respondent's trial,* was bound to put them in evidence before the respondent was called upon to decide the course he would follow at his trial. To the extent that an otherwise incriminating statement contained exculpatory

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[22] *Ibid* at [23]
[23] At [37] – [40]
[24] [1994] 2 Qd R 300
[25] (2002) 132 A Crim R 326 at 330
[26] (1829) 172 ER 565
[27] [2004] WASCA 40
[28] (2003) 212 CLR 299

material, the prosecution, *if it wished to rely on it at all,* was bound to take the good with the bad and put it all before the jury." [29] (emphasis added).

24. The appellant relies on the comments of Hayne J in *Mahmood v Western Australia.*[30] It is submitted however that Hayne J's statements at [39] and [41] must be put in the context of the factual situation with which he was dealing. He was part of the plurality that made the statement in *Soma* referred to above. No such obligation is said to be placed on the prosecutor by the plurality in *Mahmood.* The real issue in *Mahmood* was the unfairness that arose from the prosecution cherry picking one part of the post offending conduct of the accused and putting that forward as indicative of a course of conduct in circumstances where other material would have put this selection in its proper context.

25. In the instant case in the court below, Kelly J agreed with the comments of Kourakis J in *Barry v Police (SA)*[31] that the comments of Hayne J in *Mahmood* had to be considered in the context of prosecutorial obligations of fairness where there are several out of court statements, only some of which are adduced in evidence.[32]

26. In *Barry* Kourakis J engaged in a detailed analysis of the authorities[33] in concluding that the evidence of self serving statements will only be received, even when they form part of a mixed statement, when they are introduced as part of the Crown package. He commented:

"...it would be anomalous to require the prosecution to put before the Court as probative material the self serving assertions of the defendant, whom it very obviously, does not consider to be a witness of truth."[34]

27. The appellant refers to the obiter comments of Peek J in *R v Helps* in support of the proposition that the prosecution is obliged to play an EROI containing mixed statements. The appellant however, fails to acknowledge the comments of the judges in the majority, Kelly and Lovell JJs, neither of whom were critical of the reasoning of Kourakis J in *Barry.*[35] Lovell J in fact, approached the question in a slightly different way, posing the

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[29] At [31]
[30] (2008) 232 CLR 397
[31] (2009) 197 A Crim R 445 at [54]
[32] *Singh* at [64] CAB 93.40
[33] At [44] – [71]
[34] At [68]
[35] At [29] – [35, [390]
[22] (2009) 23 VR 444

question as to what constitutes a "mixed statement". He concluded, on the basis of decisions from England,[36] that it will be mixed if containing both exculpatory statements and admissions of fact which are significant to any issue in the case, that is, capable of adding any degree of weight to the prosecution case on an issue which is relevant to guilt. Lovell J stated:-

"It is, in my view, a matter for the prosecutor in any particular case whether the admissions of fact are "significant to any issue in the case" and are capable of adding "some degree of weight to the prosecution case and on an issue relevant to guilt."[37]

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28. In preserving the discretion of the prosecutor to determine whether the Crown seeks to rely on hearsay statements made by an accused, the anomalous situation where the defence is seeking to have put before the jury hearsay evidence of exculpation that would not otherwise be admissible is avoided. If the Crown wishes to rely on what is considers to be statements of admission of any significance, taking the whole of the statement into account and other evidence in the Crown case, then it is entitled to adduce into evidence such statements but it must do so in their entirety. That is the fairness which ensured by the rule in *Soma*.

20 29. The appellant refers to a large number of decisions from Australian courts at appellate level in support of its contention that there is some divergence in the law between jurisdictions. In almost all of the decisions that the appellant refers to, the situation that presented for determination was that the Crown had elected to lead inculpatory statements without also leading the exculpatory material[38], or in circumstances where the defence had been refused permission to cross examine into evidence though a Crown witness the exculpatory hearsay evidence of an accused.[39] Each of those situations is distinguishable from the question as to whether the Crown is obliged to lead in its case evidence of hearsay statements of an accused.

30 30. The appellant relies on a passage from *R v Keevers*[40] in support of the contention that NSW courts have taken a different approach to the obligation by the Crown to adduce

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[23] (2003) 212 CLR 299
[24] At [69]
[36] *R v Garrod* [1997] Crim LR 445 approved in *R v Thorpe* [2011] EWCA Crim 1128 at [25]
[37] *Helps* at [396]
[38] *Rudd v The Queen* (2009) 23 VR 444 per Redlich JA at [58] – [62];
[39] *R v Helps* per Kelly J at [23] & [36] and per Lovell J at [398] – [399]
[40] Unreported NSW Court of Criminal Appeal No. 60732 of 1993, 26 July 1994 per Hunt CJ at CL at 7

evidence of denials by an accused. As Kelly J pointed out in her decision in the court below,[41] *Keevers* was an appeal against the admission of a hearsay statement made by the appellant. The statement was held to be admissible on the basis that, if it were not admitted, it might give rise to speculation as to what the accused would have said in response to an expected confrontation with the complainant's mother. Such potential for speculation was a basis for the admission of the evidence to prevent any unfairness accruing to the Crown.[42]

31. *Keevers* was decided before the commencement of the *Evidence Act* 1995 (NSW). In the court below, Kelly J correctly questioned the admissibility of the evidence in Keevers[43] In circumstances where such statement does not constitute an admission, the evidence could only be relevant for the purposes of assessing the credibility of a witness.[44] Such evidence would now be excluded by the operation of s102 of ENULA. Alternatively, the representation may well constitute an admission under the broad definition of admission contained in ENULA in circumstances where there is evidence contradicting the representation.[45] In any case, *Keevers* is not authority for the proposition that there is some rule of practice in NSW that the Crown is obliged to lead hearsay statements made by an accused.

32. Nor should the statements of Badgery Parker J in *R v Familic*[46] or *R v Astill*[47] be taken as authority for the above proposition. In both cases the court was assessing the admissibility of representations made by an accused to investigators which the appellants sought to exclude. Any comment by His Honour about the usual practice of admitting responses which were self serving was *obiter dictum*. Further, as Kelly J stated in *Singh*, the fact that a practice has been observed in the past does not make it correct at law. Admissibility must first be determined in accordance with the rules of evidence. It is only after the rules of evidence have been applied that a discretion to exclude might be considered on the grounds of fairness.[48]

33. Similarly, the comments of Grove J in *R v Rymer* (2005) 156 A Crim R 84 do not assist the appellant in its submission that a duty should be recognised. Grove J ruled that the

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[41] CAB 73.20
[42] *Keevers* at 6-8
[43] *Singh* at [41]
[44] ENULA s55(2)
[45] *R v Esposito* (1998) 105 A Crim R 27 per Wood CJ at CL at 42
[46] (1994) 75 A Crim R 229
[47] Unreported NSW CCA 60754 of 1991 17 July 1992
[48] CAB 72.20 and 77.10

exculpatory statements of the appellant in that matter were admissible by virtue of s60 of the *Evidence Act 1995* (NSW) because the representations were relevant, though not admissible, for another purpose; that is to bolster the credibility of the plea of not guilty by an accused. Leaving to one side the criticisms by Kourakis J in *Barry*[49] as to the evidentiary status of a plea, s101A of ENULA would now capture the representations within the definition of credibility evidence and render them inadmissible by virtue of s102 of that Act.

34. The appellant's contention that an unfairness arises as a consequence of the Crown not adducing evidence of hearsay statements made by an accused depends upon an acceptance that the principle enunciated in *Apostolides* extends beyond an obligation to call all material witnesses to an obligation to adduce all available evidence. There is no authority for that proposition. Reliance on statements such as that contained at [27] of *R v Manning*[50] which is extracted at paragraph 23 of the appellant's submissions, is to take out of context the principle that is established in *Apostolidies*. In *Manning* the court was dealing with the prosecutor's obligation to call all material witnesses. The obligation imposed was premised on the evidence being both "material and not unreliable". The Queensland Court of Appeal was not diverging from previously established principles.

35. Any detriment that accrues as a consequence of the exclusion of exculpatory statements is as a consequence of the operation of the rules of evidence, not because of an exercise of prosecutorial discretion. The obligation placed upon a prosecutor is to call all material witnesses. That obligation does not extend to the adducing of hearsay statements made by an accused. An accused is not a competent witness for the prosecution.[51] The reliability of statements made by an accused cannot be tested in any way by the prosecution unless the accused elects to give evidence. Receipt of self serving representations which are not subject to testing runs the risk that the jury will receive information which is unreliable. It is for this reason that hearsay evidence is generally excluded.

36. That a consequence of the discretion is that the jury does not receive evidence of an accused's challenge to the Crown case is no more an incidence of unfairness than results as a consequence of an accused's election to exercise a right to silence. In all such

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[49] At [52] and [53]
[50] [2017] QCA 23
[51] ENULA s17(2)

instances the jury is directed that no inference can be drawn from the election not to give evidence. As Kelly J correctly pointed out in *Singh*:

"If one were to limit the asserted prosecutorial duty to "mixed" statements, as the appellant does, then whether or not an accused's denials get before a jury would still depend on "happenstance" (ie whether the exculpatory account happened to contain some admissions). Indeed, even if there is said to be a duty to tender all pre-trial statements by an accused, whether or not the accused can communicate an exculpatory account to the jury without giving sworn evidence will still depend upon whether the accused elected to exercise his right to silence when confronted by police. (The appellant accepts that the prosecution would have no duty to tender a contrived ex post facto denial at the instigation of the accused.)"[52]

37. In the event that an accused does elect to give evidence, any attack upon the credibility of the accused's account by the prosecutor can be deflected in re-examination by reference to prior consistent statements such as exculpatory statements made in a police interview in accordance with s108 of ENULA.

38. A prosecutor is entitled to assess the significance of statements made by an accused and make a decision about whether such statements should be adduced in the Crown case. The discretion is not arbitrary in nature, but rather will be based on an assessment of the significance of the representations to the Crown case. Where such representations have little worth, the prosecutor is entitled to elect not to adduce them. The accused is not a witness in the Crown case. The obligation upon the prosecutor is to call all material witnesses, not to adduce all available evidence. To conclude otherwise would require, because of the operation of the rule in *Soma,* that a prosecutor adduce otherwise inadmissible evidence.

39. For these reasons the conclusion of Kelly J in *Singh,* with which Barr J agreed, that no unfairness accrued to the appellant as a consequence of the prosecutor's election not to adduce evidence of the interview was correct and this appeal should be dismissed.

40. The North Australian Aboriginal Justice Agency (NAAJA) has sought leave to be heard in this appeal and the Respondent has received NAAJA's written submissions in this

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[52] CAB 67.40

matter. In response to those submissions The Respondent submits that, even though NAAJA's submissions purport to be concerned with prosecutorial obligations to adduce evidence of mixed records of interview (MROI), the submissions are really directed to a complaint about the inadmissibility of out of court statements made by an accused generally.

41. Submissions in support of the contention that statements made by an accused when first taxed with an allegation should be adduced by the prosecution so as to ensure fairness to an accused do not differentiate between the exculpatory or inculpatory nature of such statements. In effect, the submissions argue against the reliability principle that underpins the provisions of ENULA generally excluding hearsay statements except in certain circumstances where reliability is sufficiently enhanced.

42. In *Flowers,* Southwood J acknowledged the position that developed in England as reflected in decisions such as *R v Pearce.*[53] However, he recognised several aspects of the limitations of such evidence in England; that is that such statements must be spontaneous and relevant and must give weight to other testimony which has been given in the case and that the statements do not go to the truth of what was said. Further, the law in Australia has diverged from that in England so that there is no rule that such statements are admissible.[54]

43. There may be some instances where exculpatory statements made by an accused are so spontaneous and contemporary that their evidentiary value is sufficiently enhanced to overcome the general rule of exclusion. Such statements which may previously have been captured by the *res gestae* rule, may now be admissible in accordance with s66A of ENULA. The relatively limited scope of s66A reinforces the legislative intent that hearsay statements will generally be inadmissible.

44. NAAJA submits that an expectation is created by virtue of the content of the police caution given to indigenous witnesses in local languages. That caution is translated at note 76 to NAAJA submissions. The first sentence of the translation provided by NAAJA is:

"Police might take your story to court and the judge and other people in court can listen to your story and hear you talking."

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[53] (1979) 69 Cr App R 274
[54] *Op cit* at [51] – [56]

The caution is premised on a possibility that an interview *may* be played to the jury; not a positive representation that it *will* be played. In any case the contents of the caution does not have the status of law and any issue as to admissibility must be determined by reference to the applicable provisions of ENULA.

45. NAAJA submits that a significant unfairness may accrue to indigenous witnesses who, because of disadvantage caused through various physical and social factors, may be less capable of giving evidence in their defence. These submissions ignore the at least similar if not significantly greater difficulties which must necessarily arise during police questioning in circumstances where an accused has not had the opportunity to receive detailed advice from their lawyer after full disclosure of the evidence upon which the Crown intends to rely.

46. In summary it is submitted that there is no logical basis for departure from the test that the legislature has adopted based on reliability for modifying the general rule of inadmissibility of hearsay evidence because of the characteristics of any particular accused.

Part VI: Respondent's argument on Notice of Contention or Cross Appeal

47. Not applicable.

Part VII: Estimate of time for Respondent's oral argument

48. The Respondent estimates that one hour will be sufficient for oral submissions.

Dated this 1st day of November 2019

DAVID MORTERS SC
Counsel for the Respondent