



TONY PAPACONSTANTINOS
Appellant

PETER HOLMES A COURT
Respondent

RESPONDENT'S SUPPLEMENTARY NOTE

1. During the course of hearing on 10 May 2012, the respondent was requested by her Honour Justice Kiefel to provide the Court with references, by way of a Note, for academic text and authority relied upon for the submission that *Macintosh v Dun* [1908] AC 390 (*Macintosh*) should no longer be accepted as authority in Australia. The respondent accordingly relies upon the following:

1.1 As to the submission that *Macintosh* was 'ridiculed' in the Harvard Law Review, Mr McClintock was wrong – it was the Columbia Law Review, see "*Conditional Privilege for Mercantile Agencies – Macintosh v Dun*", 14 Columbia L Rev (1914), p 187 – 210 (copy attached);

1.2 As to the NSW Parliament overruling by statute the decision in *Macintosh*, see *Defamation Act 1909* (NSW), section 6 (later re enacted as section 30, *Defamation Act 1912*) (copies of both attached);

1.3 As to the House of Lords "*distinguishing out of existence*" the effect of *Macintosh*, see:

1.3.1 *London Association for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15, 26 – 27, 37 and 42 – 43; and

1.3.2 *Watt v Longsdon* [1930] 1 KB 130, 148.

1.4 As to the High Court of Australia distinguishing *Macintosh*, see *Howe & McColough v Lees* (1910) 11 CLR 361

2. In addition, as to the respondent's submission that *Coxhead v Richards* (1846) 2 CB 569, 135 ER 1069 was 'specifically disapproved' by the New Zealand Supreme Court, see *Bird v Mclean* [1866] Mac 409, 416 (copy attached).

Date: 15 May 2012.

Filed on behalf of the Respondent
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