



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 10 Jun 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S155/2025
File Title: Estate of the late Geoffrey Croft v. MTH & Ors
Registry: Sydney
Document filed: Form 27F - Appellant's Outline of oral argument
Filing party: Appellant
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Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

[130] (CAB 874-876); *Rowett v Westpac Banking Corporation* [1993] NSWCA 240.

3. There was no duty to advise the first respondent to seek a certificate under s 178 of the *Evidence Act 1995* (NSW) (EA). The trial judge correctly and repeatedly advised the first respondent that she had to prove her case. In any event, if there was error in not advising about s 178, it was immaterial for the reasons that follow.

Ground 2 and 3 — Evidence of conviction

4. The fact of Mr Croft having been charged with, and convicted of, certain offences was admitted, but the conduct the subject of the charges was not. The trial judge received the evidence of those admissions but, consistently with their terms, not as evidence of the fact: CAB 17 [48]; ABFM 99.
5. There was no certificate pursuant to s 178 EA; the evidence of conviction admitted pursuant to s 92 EA was the admission. The Court of Appeal was wrong to proceed on the basis of a fictional certificate.
6. The general rule rendering evidence of a decision in another proceeding inadmissible is s 91 EA. A limited exception is provided in, relevantly, s 92(2) EA, but extends only to the fact of conviction, and is not here engaged because (a) the special leave application pending at Mr Croft's death had not been finally determined; (b) Mr Croft is not "a person through or under whom a party claims"; (c) the Estate is not a privy of the late Mr Croft in the criminal proceedings.
7. A certificate issued pursuant to s 178 EA is limited by its contents, and its admissibility is limited by, inter alia, s 92(2) EA. The Court of Appeal conflated the scope of s 178 with the limited exception to s 91 in s 92(2) EA.
8. Notice of an intention to rely on the convictions as evidence of the facts would have engaged ss 166–169 EA, entitling the defendants to require the first respondent to call the relevant witnesses to give evidence, and for the certificate of conviction to be excluded in the event of non-compliance: ss 166(g), 167(b), 168, 169(1)(c) and (3).
9. Even if the trial judge erred in his treatment of the convictions, they were simply a piece of non-conclusive evidence in the case. The EA deliberately ascribes no particular standing or weight to evidence under s 92(2), and the

Australian Law Reform Commission expressly did not recommend a presumption of correctness of a conviction; or weight to be accorded to it; and recommended the safeguards in Part 4.6.1 EA: JBA 1732–1733 [777]–[780].

10. The proposition that the convictions, based on the first respondent’s evidence, are corroboration of “any evidence” she might give is circular: CAB 168–169 [61], 172 [71], especially where the evidence in the criminal proceedings is inconsistent with that in the civil proceedings. In any event, some corroborative evidence does not equate to wholesale acceptance of the first respondent’s evidence.
11. As the conduct the subject of the convictions was in issue, as envisaged by the EA, the trial judge had to make factual findings on the basis of the evidence before him, and on the footing that the first respondent always bore the onus of proof: s 140 EA; *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361–363 (JBA 302-304); *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442, 472–473 [60]; *Gonzales v Claridades* (2003) 58 NSWLR 188, 205-206 [66] – [68] (JBA 992-993)
12. The trial judge did what was required in a careful and thorough analysis of the evidence before him, including noting significant differences between the first respondent’s evidence in the criminal proceedings and in the proceedings before him: CAB 24-65 [84]-[282]. His Honour was not persuaded that the first respondent had discharged her onus of proof: CAB 68–9 [281]–[282]. The common law trial principles in the adversarial system had to be applied, and his Honour did so: *GLJ*, supra, 457–458 [19]–[20], 471–473 [56]–[61]; *Willmot v Queensland* (2024) 98 ALJR 1407, [30] (JBA 539).

Ground 4 — Reassessment of damages

13. On any view, the first respondent’s credit was a live issue, and, even if the trial judge had erred in his treatment of the conviction admission, this was not a panacea for the deficiencies in her evidence that his Honour exposed. If there was error in relation to damages, the only proper remedy was a new trial.

Dated: 10 June 2026



David Hooke