

Nine Network v McGregor SM, 24, 25 May, 3 June 2004
Thomas & Murdoch Angel, Mildren & Riley JJ
[2004] NTSC 27

At the commencement of committal proceedings against Bradley John Murdoch charged with murder and other offences, the prosecution successfully applied for a suppression order in relation to portions of its opening address. The order was made pursuant to s.58 of the *Evidence Act* which allows a court to prohibit the publication of *any evidence given or used in the proceeding*. The term *evidence* is not defined in the Act. Extensive submissions were subsequently made to the presiding magistrate (Mr McGregor SM) on behalf of two media outlets, Nine Network and Nationwide News, that s.58 did not empower the magistrate to make a suppression order with respect to the prosecution's opening address, which was no more than a summary of the evidence which the prosecution anticipated it would lead. The magistrate declined to change his earlier order.

The committal was brought to a halt when Nine Network (the plaintiff) filed an application in the Supreme Court for a judicial review of the magistrate's order. Pursuant to s.21 of the *Supreme Court Act* the matter was then referred to the Full Court of the Supreme Court for determination. The plaintiff submitted that s.58 conferred a narrow power on the Court to suppress *evidence* for the limited purpose of ensuring non-contamination of witnesses in the proceedings before it. Further, that the phrase *evidence given or used* did not include a summary of evidence to be given. The second and third defendants (the prosecutor and the defendant) argued that the section conferred a broad discretionary power to suppress evidence, including evidence to be given.

The court unanimously dismissed the plaintiff's application holding that the prosecutor's opening address was *evidence* for the purposes of s.58. The underlying purpose of s.58 is to provide a power to make a suppression order where it is necessary *for the furtherance or otherwise in the interests of the administration of justice*. Seen in this light, if the word *evidence* in s.58 were to be so narrowly construed as not to include an account of counsel's opening address or closing submissions in respect of the evidence, the power given by either s.57 or s.58 would be virtually worthless.