

## update

17 November 2006

## Friday Facts: High Court rejects appeal for witness coaching

*The High Court of Australia has rejected an application for special leave to appeal on the grounds of procedural fairness when it was alleged by the appellant, Panel Beaters Australia that Insurance Australia Group [formerly NRMA Insurance] had coached its witnesses in Court.*

Panel Beaters Australia lost an appeal to the Full Court of the Federal Court in a case they had brought against Insurance Australia Group alleging that it had breached the Trade Practices Act when it exclusively hired certain repairers to fix damaged cars.

Whilst the aspect of the case concerning the restriction of trade was of interest, the more interesting aspect of the case was the allegation that the lawyers acting for Insurance Australia Group were seen by a Court officer mouthing answers to their witness or moving their heads whilst their witnesses were under cross-examination in Court. The Court officer brought it to the attention of the primary judge.

The lawyers acting for Panel Beaters Australia sought leave during the trial to have six affidavits concerning the alleged coaching that had occurred in Court to be admitted into evidence. The primary judge refused to admit the evidence on the basis that it was only relevant to the credibility of the witnesses and s102 of the Evidence Act prevented such evidence from being adduced unless it fell within one of the exceptions contained in the Act.

In this case the lawyers sought to rely on the exemption in s106(e) of the Act, that being that the evidence concerning the alleged coaching tended to prove that the witnesses were knowingly making a false representation to the Court whilst being under an obligation to tell the truth. The judge indicated that he would proceed to judgment as he was satisfied that the answers given by the witnesses in question would not affect his judgment in the case.

The Full Court of the Federal Court on appeal dismissed the appeal point stating that in their opinion the primary judge had dealt with the matter which was drawn to his attention in an exemplary matter and was not biased by the events that occurred in Court. The Full Court did however indicate that it was open to the lawyers acting for Panel Beaters Australia to bring an application during the course of the trial that there had been contempt of Court on the part of the defendant's witnesses however no such application was made.

It remains to be seen whether any complaints will be lodged with the Legal Services Commissioner concerning the conduct of the solicitors concerned.

### For more information

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