

**BETWEEN:**

**MELISSA JANE COUCHY**

Applicant

and

**JEANNIE ANNE DEL VECCHIO**

Respondent

**RESPONDENT'S SUMMARY OF ARGUMENT AND ANSWER TO THE  
APPLICANT'S ADDITIONAL SUMMARY OF ARGUMENT**

**Part I – Why Special Leave should be refused**

1. The additional special leave questions are:

1.1. *Is the provision pursuant to which the applicant was convicted, namely s.7(1)(d) of the Vagrants, Gaming and Other Offences Act 1931 (Old) invalid as being beyond the legislative power of the Queensland Parliament?*

1.2. *Does the Constitution permit absolute statutory prohibition of use of insulting words to a person in or near a public place?*

1.3. *Is the decision of the Queensland Court of Appeal in Coleman v P & C [2001] QCA 539 correct, insofar as it held, by majority, s.7(1)(d) of the Vagrants, Gaming and Other Offences Act 1931 (Old) to be not invalid?*

2. The Court in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 considered the circumstances in which a law (being part of the common law or statutory provisions) would infringe the implied freedom of communication provided by the Constitution.

3. *Coleman v P & C* [2001] QCA 539 is no more than an example of an application of the law as stated in *Lange* and no special leave question arises.

4. The decision in *Coleman* was clearly correct.

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**Respondent's Summary of Argument**  
Filed on behalf of the Respondent

C/o CJ Strofield  
Queensland Police Service Solicitor  
Police Headquarters  
200 Roma Street, Brisbane, 4000  
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Our Ref: 1018CJS

## **Part II – Facts**

5. The respondent accepts the facts as stated in the applicant’s summary of argument. No additional facts are alleged in the applicant’s additional summary of argument.

## **Part III – Summary of Argument**

6. The applicant attacks the decision in *Coleman* on the basis that:
  - 6.1. The Court of Appeal held s.7A(1) of the Vagrants, Gaming and Other Offences Act 1991 (Qld) (“the Act”) was invalid;
  - 6.2. The Court of Appeal held s.7(1)(d) of the Act was valid;
  - 6.3. The result, it is submitted by the applicant, is “incongruous that the Constitution should protect a written insult but not an oral one”
7. The critical distinction drawn by the Court of Appeal between the offences created in s.7(1)(d) and s.7A(1) of the Act was not that one was written and the other was oral but rather:
  - 7.1. The coverage of s.7A(1) is wider than s.7(1)(d) in that it catches both written and oral statements made in private or public;
  - 7.2. There is no legitimate end achieved by the prohibition in s.7A(1)(a) (the second test in *Lange*, see *Lange* at p.567-568, *Coleman* at paragraph 45 and 61 – 66);
  - 7.3. The prohibition effected by s.7(1)(d) against publishing insulting words in public is one made for a legitimate end namely, preventing breaches of the peace (*Coleman* paragraph 71).
8. It is submitted that there is no basis upon which it can be said that the decision in *Coleman* is wrong.
9. Neither the decision in *Coleman* nor the facts of the present case give rise to an important question of principle.

## **Part IV – Costs**

10. The respondent’s position as to costs is as stated in her principal summary of argument.

## **Part V – Authorities**

11. *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520;

12. *Coleman v P & C (Attorney-General intervening)* (unreported) [2001] QCA 539

**Part VI – Oral Argument**

13. The respondent wishes to supplement this summary with oral argument.

Dated this 30<sup>th</sup> day of April 2002.

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R V Hanson QC, P J Davis

Counsel for the Respondent