The Queen v Poulier [2007] NTCCA 04

PARTIES:	THE QUEEN v POULIER, ROGAN LORENZ
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	RESERVATION OF A POINT OF LAW FOR CONSIDERATION OF THE COURT OF CRIMINAL APPEAL PURSUANT TO S 408 OF THE CRIMINAL CODE
FILE NO:	CA 25 of 2006 (20504184)
DELIVERED:	28 March 2007
HEARING DATES:	28 February 2007
JUDGMENT OF:	MARTIN (BR) CJ, MILDREN & THOMAS JJ

CATCHWORDS:
CRIMINAL LAW – reservation of a point of law – counts – duplicity and latent ambiguity – whether single count can allege obtaining amount exceeding $100,000 over a period of time as a circumstance of aggravation

STATUTES – Interpretation – words expressed in singular to be construed as including plural – Interpretation Act (NT) s 24

LEGISLATION:
Acts Interpretation Act (1954) (QLD)
Criminal Code (NT) s 1, s 210(2), s 303, s 305, s 310, s 310(2), s 408
Criminal Code (QLD) s 398(1), s 398(2), s 398(9), s 568(1)
Criminal Law Consolidation Act (SA) s 137, s 194, s 195
Interpretation Act (NT) s 24, s 24(2)(a)
Justices Act (NT) s 120
Larceny Act 1861 (UK) (24 and 25 Vict c96) s 6, s 71
Theft Act 1968 (UK)

CITATIONS:

Applied

R v Moussad (1999) 152 FLR 373
Walsh v Tattersall (1996) 188 CLR 77

Distinguished

R v Ruddell (2006) 1 Qd R 361

Referred to

AM v The Queen (2006) 18 NTLR 110; [2006] NTCCA 18
Birkeland-Corro v Tudor-Stack (2005) 15 NTLR 208
Blue Metal Industries Ltd v Dilley (1969) 117 CLR 651
DPP v Merriman [1973] AC 584
Hoessinger v The Queen (1992) 107 FLR 99; (1992) 62 A Crim R 146
Johnson v Miller (1937) 59 CLR 467
Megson v The Queen [2006] NTSC 15
R v Ballysingh (1953) 37 Cr App R 28
R v Bleasdale (1848) 2 Car & K 765; 175 ER 321
R v Firth (1869) 11 Cox 234
R v Hamzy (1994) 74 A Crim R 314
R v Lawson (1952) 36 Cr App R 30
R v Richard John Scott SCC 20326807 delivered on 23 August 2005
R v Shepherd (1868) 11 Cox 119
R v Tania Lee Weinert SCC 20326339 delivered on 6 July 2004
R v Tomlin (1954) 38 Cr App R 82
R v Tyson [2005] NTCCA 9
R v Wilson (1979) 69 Cr App R 83
Sanby v The Queen (1993) 117 FLR 218
The Queen v Balls (1871) LR 1 CCR 328
The Queen v Greenfield (1973) 57 Cr App R 849
Tuck v The Queen (1993) 117 A Crim R 305

REPRESENTATION:

Counsel:

Crown:	R Coates & N Rogers
Accused:	J Tippett QC

Solicitors:

Crown:	Office of the Director of Public Prosecutions
Accused:	NT Legal Aid Commission

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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Poulier [2007] NTCCA 04
No. CA 25 of 2006 (20504184)

IN THE MATTER OF S 408 OF THE CRIMINAL CODE (NT)

AND IN THE MATTER of the reservation of a point of law by the Supreme Court of the Northern Territory

BETWEEN:

THE QUEEN

AND:

ROGAN LORENZ POULIER

CORAM: MARTIN (BR) CJ, MILDREN AND THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 28 March 2007)

Martin (BR) CJ:

[1] For the reasons given by Mildren J I agree that s 24 of the Interpretation Act applies and that the answer to the question reserved is "yes".

Mildren J:

[2] This is a reservation of a point of law for consideration of the Court pursuant to s 408 of the Criminal Code.

[3] The indictment charges the accused with one count of aggravated stealing in the following terms:

> "ROGAN LORENZ POULIER
>
> BETWEEN 13 June 2002 and 7 April 2004 at Darwin in the Northern Territory of Australia, stole $126,624.80 in cash, the property of Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation.
>
> AND THAT the said stealing involved the following circumstance of aggravation, namely,
>
> (i) that the money stolen had a value of $100,000 or more."

[4] For the purpose of the reservation, it was agreed that: the accused was employed as the executive director of Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation between 22 April 2002 and 7 April 2004; that during the period of his employment the accused stole cash from his employer on numerous occasions to the total sum of $126,624.80; and that no individual instance of stealing involved a sum of money in the amount of $100,000 or more.

[5] The general rule is that an indictment must not charge a person with more than one offence in the same count: see s 303 and s 305 of the Criminal Code. If the charge alleges more than one offence, it is bad for duplicity: see *Walsh v Tattersall* (1996) 188 CLR 77 at 92-93 per Kirby J. Alternatively, even if the charge is not duplex, the facts may reveal latent ambiguity. The rules against duplex charges and latent ambiguity have been applied in this

Court on a number of occasions: see *Hoessinger v The Queen* (1992) 107 FLR 99; (1992) 62 A Crim R 146; *Sanby v The Queen* (1993) 117 FLR 218; *R v Tyson* [2005] NTCCA 9; *AM v The Queen* (2006) 18 NTLR 110; [2006] NTCCA 18.

[6] These pleading rules have occasioned particular difficulty with certain types of crime, particularly theft and assaults. In these cases s 310 of the Code provides some relief. In particular, s 310(2) provides:

> "In an indictment against a person for stealing property where the property was stolen over a period of time the accused person may be charged and proceeded against for stealing the property over the period of time, notwithstanding that different acts of stealing took place at different times and it is not possible to identify in all instances each particular act of stealing."

[7] The question reserved for the Court is whether the admitted facts in this case are, in law, capable of founding a verdict of the guilt of the accused as to the circumstances of aggravation asserted against him in the indictment.

[8] The "duplicity rule" (by which I mean to include latent ambiguity) may be illustrated by the facts in *R v Ballysingh* (1953) 37 Cr App R 28. In that case the accused was charged with a single count of larceny of various articles, the property of Lewis Ltd. The evidence showed that the defendant had stolen the several articles from different departments of the same store. The Court of Criminal Appeal held that the indictment was bad for duplicity, although in reality this was a case of latent ambiguity which, if the point had been taken would have required the prosecutor to have been put to an

election: see *The Queen v Greenfield* (1973) 57 Cr App R 849; *Johnson v Miller* (1937) 59 CLR 467 esp. at 486 per Dixon J. There have been a number of attempts to avoid this consequence where the offender has committed a number of thefts from the same victim: see the discussion by Slicer J in *Tuck v The Queen* (1993) 117 A Crim R 305 at 310-311. In particular, in 1861, the Larceny Act 1861 (UK) (24 and 25 Vict c96) permitted up to three separate stealings to be included in one charge of larceny (s 6) or three separate embezzlements in one count of embezzlement or fraudulent application or disposition (s 71) without the requirement to put the prosecution to election.

[9] In the United Kingdom, there are two lines of authority where the Courts have approved charging one appropriation of property in one count where the evidence lead at trial disclosed that the property had been, or might have been, appropriated on two or more occasions. The first line of cases dealt with the "one continuous transaction" rule: see *R v Shepherd* (1868) 11 Cox 119, a case involving the cutting of trees at such times as to form one continuous taking; *R v Firth* (1869) 11 Cox 234, a case involving the taking of gas over a lengthy period of time; *R v Bleasdale* (1848) 2 Car & K 765; 175 ER 321, a case involving the stealing of £10,000 worth of coal belonging to forty different proprietors over a period of four years. In these cases it was held that s 6 of the Larceny Act 1861 did not apply, because there was one continuous transaction. The rule was approved by the House of Lords in *DPP v Merriman* [1973] AC 584 per Lord Morris at 593; per

Lord Diplock at 607, in general terms not restricted to cases of larceny and has since been followed in Australia: *R v Hamzy* (1994) 74 A Crim R 314; *R v Moussad* (1999) 152 FLR 373.

[10] The second line of authority is known as the "general deficiency" cases. Where there was a charge of embezzlement or fraudulent conversion prior to the Theft Act 1968 (UK), the leading case of *The Queen v Balls* (1871) LR 1 CCR 328 established that notwithstanding s 71 of the Larceny Act 1861, where a person received small sums which he had to account for on a particular day, he could be charged with embezzling the total amount not accounted for, even if the individual sums embezzled could have been charged and proved. In *R v Lawson* (1952) 36 Cr App R 30, Linskey J held that it is proper to allege a general deficiency if one can prove that there was a fraudulent conversion of either the whole or part of the sum embezzled at one time. Thus, where a solicitor embezzled money from her trust account in a manner such that the individual sums embezzled could not be proved, it was open to allege and prove the conversion of a total amount on a date between certain dates. *R v Lawson* was expressly approved by the Court of Criminal Appeal in *R v Tomlin* (1954) 38 Cr App R 82.

[11] The provisions of the Larceny Act 1861 s 6 were enacted by the Criminal Law Consolidation Act (SA), s 137. Section 194 of the Criminal Law Consolidation Act permitted a charge of a general deficiency in accounts in the case of larceny or embezzlement as a clerk or a servant. Section 195 permitted any number of counts of embezzlement in the one information.

Those statutory provisions remained in force in the Northern Territory until 1984 when the Criminal Code came into force.

[12] It is against this background that the purpose of s 310(2) of the Code becomes clear. Section 310(2) enabled the prosecutor to allege a single count of stealing the "property" even though the "property" was stolen over a period of time. "Property" is defined by the Code, s 1, to mean "every thing, animate or inanimate, capable of being the subject of ownership including: (a) things in action and other intangible property." Clearly, the definition of "property" is very wide and by definition "property" could include a number of items. Further, it includes money whether it is in the form of coins, banknotes or things in action such as a promissory note or cheques and other intangible property. The offence of stealing can therefore be expressed in a rolled-up form as a single offence because s 310(2) enables the prosecutor to plead a stealing in this rolled-up form whether the stealing was one continuous transaction or not and, further, it enables a charge of a general deficiency in a case which was formerly charged as embezzlement without having to prove that the defendant was required to account for the money on a particular date. The evident purpose of s 310(2) is to enable a count which, under the previous law, would have been objectionable because of latent ambiguity, to be pleaded as a single charge of stealing.

[13] That being so, it seems to me that the prosecutor can also plead and rely on the circumstance of aggravation that the "thing stolen had a value of

$100,000 or more" because the "thing stolen" is the "property" and it does not matter that the property consists of more than one item. Even under the law as it existed before the Larceny Act 1861, a single count of larceny could cover more than one item and if more than one item, to a value of all of the items: see for example, *R v Shepherd* (supra) where the defendant was charged with stealing eight oak trees of a value exceeding £5. In *DPP v Merriman* (supra) at 593, Lord Morris rhetorically asked, "If A in the dwelling house of B steals ten different chattels, some perhaps from one room and some from others, has he committed one offence or several?" Despite the ruling in *R v Ballysingh* (supra) in *R v Wilson* (1979) 69 Cr App R 83, the Court of Criminal Appeal held that a thief who stole goods from different departments of the one store could be charged with one count because the stealing was part of the same activity and it was legitimate to charge in a single count one activity even though the activity involved more than one act.

[14] Counsel for the accused relied upon the decision of the Court of Appeal, Queensland in *R v Ruddell* (2006) 1 Qd R 361 which dealt with a similar problem. The applicant in that case was employed as a co-manager of a hairdressing salon in Gladstone. The applicant had access to her employer's computer records and deleted a large number of transactions recording payments made by customers. A single count of stealing was preferred as permitted by s 568(1) of the Queensland Code. The jury drew the inference that the applicant had kept the money which totalled between $15,000 and

$20,000. There were some 1,260 individual transactions involved, none of which exceeded $140. A simple stealing carried a maximum of five years imprisonment, but if the thing stolen is property, including an animal that is stock and its value is more than $5,000, the offender is liable to imprisonment for 10 years. McPherson JA, with whom Cullinane and Jones JJ agreed, held that it was improbable that the legislature intended to increase the penalty if the things stolen had an aggregate value of $5,000 or more and that the expression "value" was singular in form.

[15] I am unable to accept that the reasoning in *R v Ruddell* (supra) should be applied to the circumstances of this case. McPherson JA relied upon words in the Queensland Code which have no equivalent in s 210(2), namely "an animal that is stock", in arriving at his conclusion, but even if these words did appear in s 210(2), with the greatest respect, I cannot agree with the conclusion reached. Clearly, s 24(2)(a) of the Interpretation Act (NT) requires words in the singular to be read as including the plural and whilst there may be occasions where the context or extrinsic aids permit a departure from this rule (as to which see *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651), neither the context nor the history of the legislation suggests that result. Indeed, as I have endeavoured to demonstrate, the opposite is to be inferred.

[16] I would answer the reservation of the point of law in the affirmative.

Thomas J

[17] This application involves a point of law reserved for the Court of Criminal Appeal pursuant to s 408 of the Criminal Code (NT). The point of law is as follows:

> "Whether the admitted facts in this case are, in law, capable of founding a verdict of the guilt of the accused as to the circumstance of aggravation asserted against him in the indictment herein dated 28 November 2006".

[18] The indictment against the accused reads as follows:

> "Between 13 June 2002 and 7 April 2004 at Darwin in the Northern Territory of Australia, stole $126,624.80 in cash, the property of Danila Dilba Biluru Butji Binnilutum Health Service Aboriginal Corporation.
>
> AND THAT the said stealing involved the following circumstance of aggravation, namely,
>
> (i) that the money stolen had a value of $100,000 or more.
>
> Section 210(1) and (2) of the Criminal Code."

[19] The agreed facts are as follows:

> "(1) The accused was employed as the executive director of Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation between 22 April 2002 and 7 April 2004.
>
> (2) During the period of his employment, the defendant stole cash from the Health Service on numerous occasions to a total sum of $126,624.80.
>
> (3) However, no individual instance of stealing involved a sum of money in the amount of $100,000 or more."

[20] The defendant entered a plea of guilty to the substantive charge. He entered a plea of not guilty to the circumstance of aggravation.

[21] Before the Court of Criminal Appeal, Mr Tippett QC stated, on behalf of the accused, that the question should be resolved in accordance with the views expressed by the Queensland Court of Appeal in *R v Ruddell* (2006) 1 Qd R 361. The accused relies on the following passage from that authority at page 364 per McPherson JA:

> "… The question is whether the indictment in this form had the effect through the operation of special case 9 in s 398 of attracting the application of s 564(1) of the Code requiring the averment of a special circumstance. In my view, it did not. To hold that it did in the present instance would involve reading special case 9 in plural form, as if it said "If the things stolen are property … and their values are [or aggregate more than] $5,000, the offender is liable to imprisonment for 10 years". Even with the assistance of the Acts Interpretation Act 1954 in substituting the plural form throughout, it seems improbable that this was the legislative intention in enacting special case 9 of s 398. It is much more likely that the intention was (because of its greater value) to impose a special penalty for stealing a single item of property (or sum of money) worth more than $5,000. In other words, the expression "value" was deliberately adopted in its singular form. …"

[22] The Queensland Court of Appeal was dealing with the interpretation of s 398 paragraph 9 of the Queensland Criminal Code. The equivalent provision in the Northern Territory is s 210(2) of the Criminal Code (NT). Section 210 provides as follows:

> "(1) Any person who steals is guilty of a crime and is liable, if no other punishment is provided, to imprisonment for 7 years.
>
> (2) If the thing stolen is a testamentary instrument, whether the testator is living or dead, or if the thing stolen has a value of $100,000 or more, the offender is liable to imprisonment for 14 years."

Section 398(1) of the Queensland Criminal Code states as follows:

> "(1) Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 5 years."

and also at 398:

> **"Punishment in special cases**
>
> **Stealing property of value exceeding $5000**
>
> 9. If the thing stolen is property, including an animal that is stock, and its value is more than $5000, the offender is liable to imprisonment for 10 years."

[23] Mr Coates submitted on behalf of the Crown that since the inception of the Criminal Code (NT) it has been the practice of the Northern Territory Supreme Court on pleas of guilty to deal with different acts of stealing over a period of time as one offence as authorised by s 310(2) of the Criminal Code (NT). He stated that such a practice means that plea hearings are much shorter and less complicated than if individual counts are laid. Section 310(2) of the Criminal Code (NT) provides as follows:

> "(2) In an indictment against a person for stealing property where the property was stolen over a period of time the accused person may be charged and proceeded against for stealing the property over the period of time, notwithstanding that different acts of stealing took place at different times and it is not possible to identify in all instances each particular act of stealing."

[24] I agree that this has been the accepted practice of this Court. Mr Coates referred to two recent decisions of this Court in support of that proposition *R v Tania Lee Weinert* SCC 20326339 delivered on 6 July 2004 and *R v Richard John Scott* SCC 20326807 delivered on 23 August 2005.

[25] The equivalent provision in the Queensland Criminal Code is s 568 which states as follows:

> "(1) In an indictment against a person for stealing property the person may be charged and proceeded against on 1 charge even though-
>
> (a) the property belongs to the same person or to different persons; or
>
> (b) the property was stolen over a space of time; or
>
> (c) different acts of stealing took place at different times, whether or not the different acts can be identified."

[26] The submission on behalf of the Crown is that s 120 of the Justices Act empowers a magistrate to hear and determine in a summary manner a charge in respect of an offence against s 210 where the value of the property does not exceed $5,000. That jurisdiction may be exercised whether or not the defendant consents to its exercise. The argument for the Crown is that if s 210(2) is construed in line with the dicta of *R v Ruddell* (supra) and the Crown is thereby required to charge multiple individual counts of theft, then persons in the position of the accused could be effectively denied the right to trial by jury. Such an offender it is argued could be pursued in the Court of Summary Jurisdiction on multiple counts (at least 79 counts in the case of this accused) each carrying a maximum penalty of five years imprisonment.

[27] On behalf of the Crown it is submitted that a construction of the legislation which deprives a defendant of a right to trial by jury should not be inferred in the absence of plain wording to that effect (*Birkeland-Corro v Tudor-*

Stack (2005) 15 NTLR 208), followed by the Full Court of the Supreme Court in *Megson v The Queen* [2006] NTSC 15.

[28] Mr Tippett QC on behalf of the accused submits that the construction of s 210(2) should be read in the singular. This provision increases the penalty from seven years to 14 years. The argument for the accused is that the use of the singular in s 210(2) is in accordance with the purpose of the Act which is to punish singular acts of stealing. If there is any ambiguity then the argument for the accused is that this should be resolved in favour of the accused as statutes imposing a criminal offence are to be strictly interpreted.

[29] On the argument for the accused the answer to the question should be "No".

[30] Mr Coates, on behalf of the Crown, relies on s 24 of the Interpretation Act (NT) in support of his argument that s 210(2) of the Criminal Code (NT) carries the presumption of plurality. Section 24 of the Interpretation Act (NT) provides as follows:

> "(1) In an Act, words indicating a gender include each other gender.
>
> (2) In an Act –
>
> (a) words in the singular include the plural; and
>
> (b) words in the plural include the singular."

[31] I would distinguish the Queensland Court of Appeal decision in *R v Ruddell* (supra) from the matter before this Court.

[32] In *R v Ruddell* (supra), the Queensland Court of Appeal was considering an appeal against sentence following a finding of guilt by a jury that the appellant stole sums of money from the appellant's employer. Following the verdict the trial judge imposed a sentence of two years imprisonment.

[33] There had been no objection taken to the form of the indictment. The judges on the Court of Appeal found that there was no requirement to aver a special circumstance. McPherson JA concluded, as already set out in the submissions made by counsel for the accused, that it was more likely the legislature intended, because of its greater value, to impose a special penalty for stealing a single item of property or sum of money worth more than $5,000. In reaching this conclusion, McPherson JA rejected the application of the Acts Interpretation Act (1954) to read the singular as the plural in para (9) of s 398 of the Queensland Criminal Code.

[34] Section 398(2) of the Queensland Criminal Code is in somewhat different, and considerably more extensive in its terms, than s 210(2) of the Criminal Code (NT). Section 398(2) of the Queensland Criminal Code reads as follows:

> "(2) If the thing stolen is an animal that is stock, and the offender is sentenced to pay a fine in addition to, or instead of, imprisonment, whether the offender is liable to imprisonment for 5 years or for any longer period provided under this section, the fine shall be not less than $1000 or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal stolen.

> If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for life.
>
> If the offence is committed under any of the circumstances following, that is to say--
>
> (a) if the thing is stolen from the person of another;
>
> (b) if the thing is stolen in a dwelling, and its value exceeds $1000, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling;
>
> (c) if the thing is stolen from any kind of vehicle or place of deposit used for the conveyance or custody of goods in transit from 1 place to another;
>
> (d) if the thing is stolen from a vehicle which is in distress or wrecked or stranded;
>
> (e) if the thing is stolen from a public office in which it is deposited or kept;
>
> (f) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument;
>
> the offender is liable to imprisonment for 10 years. …"

The wording of s 398(2) more readily lends itself to the interpretation that it applies to the singular and not the plural. As counsel for the Crown submitted McPherson JA made specific reference to this when he said at p 365.1:

> "… In other words, the expression 'value' was deliberately adopted in its singular form. That is suggested by the reference in special case 9 to 'an animal that is stock.' …"

[35] I am not able to accept that it is appropriate to ignore the provisions of s 24 of the Interpretation Act (NT) with respect to s 210(2) of the NT Criminal Code. I have concluded the Court can accept that Parliament was aware of

the relevant provision, being s 24 of the Interpretation Act (NT) when s 210(2) was enacted. There is a presumption of plurality in s 210(2). There has been no basis established for a finding that in the Northern Territory the legislature had in mind that the additional punishment relied on a single act.

[36] Section 310(2) of the Criminal Code (NT) provides for the roll up of individual acts of stealing into one count. It is a practise that has been in place for many years.

[37] Section 310(2) of the Criminal Code (NT) enables the Crown to charge a series of thefts as one charge. This simplifies the charge and is more efficient than having to allege each individual theft.

[38] Provided the total amount alleged to have been stolen exceeds $100,000 there can be no unfairness in reading the singular as a plural in s 210(2). If the total amount stolen does not exceed $100,000 then s 210(2) will never fall for consideration. Neither counsel have suggested that the present system of presenting such indictments creates an unfairness to the accused. There is no uncertainty in the charge and the defendant is aware of the charge he has to meet. There is no unfairness demonstrated. Mr Tippett QC maintains that statutes creating criminal offences should be strictly interpreted. I accept that statutes creating criminal offences should be strictly interpreted.

[39] I have distinguished the decision of *R v Ruddell* (supra) even though it is a decision of the Court of Criminal Appeal in Queensland which, like the

Northern Territory, is a Code State. I prefer the application of the principle expressed by the New South Wales Court of Criminal Appeal in *R v Moussad* (1999) 152 FLR 373, which accords with the history of s 310(2) in the Northern Territory. The Court of Criminal Appeal in New South Wales dealt with an appellant charged under s 29D of the Crimes Act 1914 (Cth) with defrauding the Commonwealth between January 1991 and July 1993. The Crown alleged that as part of a single criminal enterprise, the appellant submitted nine false quarterly claims for child care fee relief which were supported by false records in respect of 18 children.

[40] The trial judge ruled that the count was not duplicitous and there was no unfairness, as the appellant knew the case she had to meet. The appellant contended that the judge should not have allowed the Crown to lead evidence of multiple acts of dishonesty in respect of the single count in the indictment. The Court of Appeal dismissed the appeal. Smart AJ stated at p 382:

> "The courts in this State have found that "enterprise" counts have their place in drug supply and fraud cases where it is important to stress the overall criminality. Some large scale heroin and cocaine operators supply relatively small amounts at a time so that if caught, they cannot be charged with supplying a commercial quantity or a large commercial quantity. In order to bring home the full extent of their criminality and ensure appropriate punishment, the quantities from a number of acts of supply have to be aggregated. The enterprise is to supply large commercial quantities of heroin, cocaine or other harmful drugs.
>
> In some of the fraud cases, as part of a systematic and long term defrauding, small sums are taken by overclaims and other dishonest means. Each instance may well involve only a small sum which can be dealt with by a magistrate. Often the frauds continue for some

> years. The smaller the sum taken, the less likely it is to be investigated and discovered. Despite the arguments to the contrary, if there had been a series of separate counts, whether nine based on the false quarterly fee claims or forty-six based on the false statements. I would not have regarded separate counts as appropriate."

and further at page 384:

> "Having regard to the practice in New South Wales as reflected in *Hamzy* and the cases there cited and the subsequent cases including *R v F* and the absence of a clear ratio in *Walsh v Tattersall* which can be applied in this case, this Court should continue to follow *Hamzy* and *R v F* where the Crown has framed and relied upon a single count alleging a criminal enterprise."

[41] There are good reasons for enabling the individual charges of stealing to be rolled into one. Section 210(2) allows for one or more theft to exceed $100,000 when s 24 of the Interpretation Act (NT) is applied.

[42] I have concluded that the answer to the question is "Yes".
