



Summary of Judgment

AB v CD and EF

[2017] VSC 350

[2017] VSC 351

[2017] VSCA 338

3 December 2018

The Court of Appeal today lifted a suppression order in respect of a decision of the Court (Ferguson CJ, Osborn and McLeish JJA) made on 21 November 2017, in respect of which the High Court revoked a grant of special leave to appeal on 5 November 2018. The lifting of the suppression order coincides with the High Court lifting a suppression order and publishing its reasons for revoking special leave.

By its decision, the Court of Appeal dismissed an appeal brought against a decision made by Ginnane J in two proceedings which have also been the subject of suppression orders.

In the principal proceeding, the Chief Commissioner of Police sought to restrain the Director of Public Prosecutions from making certain disclosures to Mr Tony Mokbel and six of his associates. After the conviction of those persons on various serious offences, a report prepared on behalf of the Independent Broad-based Anti-corruption Commission recommended that the Director consider whether any prosecutions had resulted in a miscarriage of justice as a result of the conduct of a barrister acting for those persons.

The then Director formed the view that his duty of disclosure as a prosecutor required him to inform the seven persons that the barrister had given information to police about them at the same time as she was acting for them and that she had provided information to police about other persons for whom she acted, who then made statements against particular persons among the seven. The Chief Commissioner of Police, together with the barrister, sought to prevent such disclosures. It was argued that disclosure would place the barrister and her children at extreme risk of death or other harm and deter future potential informers from giving confidential assistance to police.

The Court of Appeal held that the trial judge had properly taken account of the risks posed to the barrister and her children, as well as the risk of deterring future informers, and weighed them against the public interest in the right to a fair trial with the assistance of independent legal advice. The Court of Appeal upheld the trial judge's conclusion that the public interest in disclosure of the information outweighed those risks, so that the disclosures were not protected by public interest immunity, which normally prevents the identification of police informers. The Court observed that it must ensure that its processes are used fairly by the State for the administration of justice, and that public confidence in the courts depends on maintaining the integrity and fairness of court processes.

The Court of Appeal also upheld the trial judge's dismissal of the second proceeding, in which the barrister sought to prevent the disclosures on the basis that they amounted to a breach of confidence. Among other things, the Court agreed with the trial judge that the disclosures would reveal the real likelihood of a serious misdeed of public importance on the part of the barrister and Victoria Police.

The Court has published a version of its reasons for decision which has been redacted to a limited extent, primarily in order to protect the safety of persons and in order to preserve the confidential nature of the witness protection program. The reasons of the trial judge will be published on the same basis. **The Court has also made an order, consistent with corresponding orders made by the High Court, having the effect of prohibiting publication of the barrister's name or image in connection with the proceedings, until 5 February 2019.**

Also consistently with orders made by the High Court, the Court's files in respect of the appeal and the trial are to remain closed until 5 February 2019, and more limited suppression orders are in place, so as to enable the parties to make applications in respect of the limited redaction of material on those files before that date.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.