Summary of Judgment

THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA v DEBORAH GLASS (IN HER CAPACITY AS OMBUDSMAN FOR THE STATE OF VICTORIA) AND THE PRESIDENT OF THE LEGISLATIVE COUNCIL

[2016] VSCA 306

9 December 2016

The Court of Appeal today dismissed an appeal by the Attorney-General for Victoria against a decision that the Ombudsman for Victoria, Deborah Glass, has jurisdiction to investigate allegations that Australian Labor Party (‘ALP’) members of the Victorian Parliament misused staff budget entitlements.

In November 2015, the Legislative Council passed a resolution to refer allegations that ALP members had used electorate staff to engage in work for the ALP to the Ombudsman for investigation and report. In January 2016, the Ombudsman applied to the Supreme Court to determine whether she had the jurisdiction to investigate the referred matter. A judge of the Trial Division found the Ombudsman did have the relevant jurisdiction in a judgment handed down in August 2016.

The Attorney-General for Victoria sought leave to appeal this decision contending that the Ombudsman’s jurisdiction, on referral from one of the Houses of Parliament or a committee, was limited to matters that were otherwise within the jurisdiction and functions of the Ombudsman. In contrast, the President of the Legislative Council relied on what he submitted was the plain meaning of s 16 of the Ombudsman Act 1973 which provided that the Legislative Council could refer to the Ombudsman for investigation and report ‘any matter’, other than a matter concerning a judicial proceeding, which that House considered should be investigated by him. The Ombudsman took a neutral position, saying that she would abide the decision of the Court.

The Court of Appeal granted the Attorney-General leave to appeal but dismissed the appeal, noting that the trial judge made no error in his analysis. The Court said that the text of s 16, when considered in the light of its context and purpose, compelled the conclusion that the matter referred by the Legislative Council fell within the Ombudsman’s jurisdiction.
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.