

Goussis v The King [2022] VSCA 255 (21 November 2022)

Public interest immunity – contradictor

The Chief Commissioner of Police appealed a judgment ([2009] VSC 16) which concluded that confidential documents over which public interest immunity was claimed be provided to the applicant's legal representatives, subject to confidentiality undertakings.

Judgment

Beach JA concluded that a contradictor ought to be appointed and that role should, on the giving of appropriate undertakings, be given to the applicant's legal representatives (at [27]). There was an unsatisfactory risk that the Court's analysis (unassisted by a contradictor) would be superficial and that the applicant might be deprived of material, the real significance of which, may not be apparent to the Court (at [21]). As serious as the issues might be in public interest immunity cases, the present case involved the question whether a person sentenced to life imprisonment had been wrongly convicted as a result of a failure of the Crown's duty of disclosure (at [22]). Whether a contradictor, amicus curiae or the other party's legal representatives was permitted to see material required examining the specific facts, all the circumstances, the importance of the issue, the likelihood of any claimed risk eventuating and the seriousness of any consequences (at [23]). A Court would derive greater assistance from lawyers with a deep understanding of the applicant's case, rather than Court-appointed ones whose understanding was necessarily more limited (at [26]).

Implications

This judgment identified the considerations relevant to whether a contradictor or amicus curiae should be appointed, or whether providing confidential material to an individual's legal representatives was sufficient. The Court contemplated that a call for the production of disputed documents may be abandoned after being provided to those representatives as contradictor, thereby dispensing with any public interest immunity claims and saving scarce judicial resources (at [28]).

CHAPTER III



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