

R & ANOR v THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSIONER (M246/2015)

Court appealed from: Court of Appeal, Supreme Court of Victoria
[2015] VSCA 271

Date of judgment: 30 September 2015

Date special leave granted: 13 November 2015

The appellants ('R and M') are members of Victoria Police. On 14 January 2015, a woman was arrested and taken into custody at Ballarat police station. R and M were involved in her arrest and dealt with her while she was in custody. These dealings were subsequently the subject of a Victoria Police criminal investigation into allegations of assault by R and M. On 20 March 2015, the Independent Broad-based Anti-corruption Commission ('IBAC') commenced an investigation pursuant to s 64(1)(c) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('the IBAC Act') into the conduct of members of Victoria Police stationed at Ballarat. On 1 April 2015, the respondent issued witness summonses, pursuant to the IBAC Act, which required R and M to give evidence before IBAC at a public examination concerning investigations into, inter alia, allegations of serious police personnel misconduct on account of alleged unnecessary and/or excessive use of force towards vulnerable people at Ballarat police station.

On 15 April 2015, the appellants commenced judicial review proceedings, in the Supreme Court of Victoria, in which they sought to restrain IBAC from examining them, or from doing so in public. On 7 August 2015, the proceeding was dismissed by Riordan J.

In their appeal to the Court of Appeal (Priest, Beach and Kaye JJA) the appellants contended that the trial judge erred in finding that there was power to examine them about the ongoing facts of a criminal investigation of which they were subjects. The critical question was whether the IBAC Act had by express words or necessary intendment, demonstrated the intention to abrogate the privilege against self-incrimination to allow the examination of persons, who might be charged with an offence, about the circumstances of the alleged offence.

The Court of Appeal noted that the IBAC Act is highly prescriptive, setting out what IBAC can and cannot do in specified circumstances. They considered that in circumstances where the text of the IBAC Act would, on a plain reading, suggest that IBAC has power to conduct examinations of persons who are the subject of ongoing criminal investigations (and who have not been charged with any offence), the absence of any words of relevant limitation tended to suggest that no such limitation was contemplated or intended by the Parliament when the IBAC Act was enacted. It was clear that the IBAC Act was and is intended to permit the investigation by IBAC of serious criminal offences. In the Court's view, to construe the IBAC Act so as to deprive IBAC of a power to examine people who have not yet (and may not be) charged with any offence would significantly impede the intended operation of the IBAC Act. The Court therefore concluded that, on its proper construction, the IBAC Act empowered IBAC to examine the appellants in the present case.

The ground of appeal is:

- The Court below erred in failing to determine that the learned trial judge had erred in determining that IBAC was empowered to hold an examination under Part 6 of the IBAC Act of each of the appellants in connection with the subject matter of IBAC's "own motion" investigation referred to as Operation Ross.