

ASSISTANT COMMISSIONER MICHAEL JAMES CONDON v. POMPARO PTY LTD (ACN 010 634 689) & ANOR (B59/2012)

Court from which cause removed: Supreme Court of Queensland

Date cause removed: 5 October 2010

Date special case referred to Full Court: 26 October 2012

On 1 June 2012 the applicant filed an originating application in the Supreme Court of Queensland seeking a declaration pursuant to s 8 of the *Criminal Organisation Act* 2009 (Qld) (“the Act”) that the second respondent, the Finks Motorcycle Club, Gold Coast Chapter, was a ‘criminal organisation’ and that the first respondent, Pompano Pty Ltd, was part of that organisation.

The grounds of the application allege that the respondents jointly comprise an organisation consisting of a group of more than three people based inside Queensland, that its members associate for the purposes of engaging in or conspiring to engage in serious criminal activity as defined in ss 6 and 7 of the Act and that the organisation is an unacceptable risk to the safety, welfare and order of the community.

The originating application contains a large number of allegations with respect to each of the applicants and in respect of persons alleged to be members, former members and nominee members of the alleged organisation. Under the heading “Information Supporting the Grounds” the originating application pleads various allegations concerning, inter alia, the criminal and traffic histories of alleged members, former members and nominee members of the pleaded organisation and alleged interactions of those persons with police. The originating application further pleads that a number of those persons have engaged in and/or been convicted of identified criminal offences.

The questions stated for the opinion of the Court include:

- Is s 66 of the Act, by requiring the Court to hear an application that particular information is criminal intelligence without notice of the application being given to the person or organisation to which the information relates, invalid on the ground that it infringes Chapter III of the *Constitution*?
- Is s 70 of the Act, by requiring the Supreme Court to exclude all persons other than those listed in s 70(2) from the hearing of an application for a declaration that particular information is criminal intelligence, invalid on the ground that it infringes Chapter III of the *Constitution*?
- Is s 78 of the Act, by requiring a closed hearing of any part of the hearing of the substantive application in which the court is to consider declared criminal intelligence, invalid on the ground that it infringes Chapter III of the *Constitution*?

- Is s 76 of the Act, by providing that:
 - an informant who provides criminal intelligence to an agency may not be called or other required to give evidence;
 - an originating application and supporting material need not include any identifying information about an informant; and
 - identifying information cannot otherwise be required to be given to the court,invalid on the ground that it infringes Chapter III of the *Constitution*?

The first and second respondents have issued notices pursuant to section 78B of the *Judiciary Act*. The Attorney-General of the Commonwealth of Australia and the Attorneys-General for the States of Queensland, South Australia, New South Wales, Victoria, Western Australia and the Attorney-General for the Northern Territory are intervening.