



HIGH COURT OF AUSTRALIA

Public Information Officer

20 April 2005

IN THE MATTER OF AN APPLICATION BY THE CHIEF COMMISSIONER OF POLICE
(VIC) (four matters)

No grounds existed for the permanent suppression of aspects of police operations which led to two murder convictions, the High Court of Australia held today. At the conclusion of an August 2004 hearing, the Court unanimously dismissed all four applications for the identities of undercover police and covert police methods to be permanently suppressed. The Court issued its reasons today.

During two unrelated trials of Alipapa Tofilau and Lorenzo Favata for murder in the Victorian Supreme Court in September-October 2003, evidence was presented that had been gathered by undercover police. In each case the trial judge made an order prohibiting publication of the methods used and of any material that would identify the officers involved but the orders had specific expiry dates. The Victorian Court of Appeal dismissed the Commissioner's two applications for leave to appeal and held that indefinite suppression would be both offensive to the principle of open justice and ineffective in practice.

By special leave, the Commissioner appealed to the High Court against each order on the grounds that the Court of Appeal erred in failing to hold that she had an appeal as of right, and that the Court of Appeal had denied her procedural fairness because she was allegedly denied the opportunity to present argument on whether the trial judges were in error in making only limited suppression orders. In the event that the Court of Appeal had no jurisdiction to hear appeals (whether as of right or by leave) against the trial judges' orders, the Commissioner also applied for further special leave to appeal from those orders. The original suppression orders were extended until the matters were dealt with by the High Court.

Those additional applications for special leave were heard by the Court along with the appeals. At the end of the hearing, the Court ordered that both appeals and both applications for special leave be dismissed and that the Commissioner pay the costs of *The Age* newspaper which had been given leave to intervene. The special leave applications were dismissed because an appeal was deemed to have insufficient prospects of success to warrant the grant of special leave.

The Court held that no appeal by the Commissioner lay as of right to the Court of Appeal. If an appeal lay at all to the Court of Appeal it lay only by leave. Orders made by the trial judges did not finally dispose of any rights and no exceptions set out in the *Supreme Court Act* were engaged.

The Court held that the Commissioner had not been denied procedural fairness and that the Court of Appeal had not confined argument to the question about its jurisdiction. It was for the Commissioner to demonstrate to the Court of Appeal why leave should be granted. What arguments were advanced and what evidence was relied on was a matter for her. Filing further evidence and submissions without leave after argument had concluded, as the Commissioner did, did not demonstrate any want of procedural fairness.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*