



HIGH COURT OF AUSTRALIA

Public Information Officer

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MARJORIE HEATHER OSLAND v SECRETARY TO THE DEPARTMENT OF JUSTICE

The Victorian Court of Appeal, in considering whether public interest overrode legal professional privilege attaching to advice that Mrs Osland should not be pardoned for murder, should have inspected the documents in question, the High Court of Australia held today.

In 1996, Mrs Osland was convicted of murdering her husband, Frank Osland, in 1991, allegedly after years of violence. She was sentenced to 14-and-a-half years' imprisonment, with a non-parole period of nine-and-a-half years. The High Court dismissed her appeal against conviction and sentence in 1998. Mrs Osland then submitted a petition for mercy to the Victorian Attorney-General, seeking a pardon from the Governor. On 6 September 2001, Attorney-General Rob Hulls announced that the Governor had refused the petition. In a press release Mr Hulls noted that legal advice had been received from three senior counsel (including Susan Crennan QC, now a Justice of the High Court, who did not hear this appeal). Mrs Osland sought access under the Victorian *Freedom of Information Act* (FOI Act) to various pieces of advice related to her request for a pardon. The Department of Justice refused access to the documents, both initially and upon internal review. It said the documents were exempt from disclosure by reason of section 30 (relating to internal working documents) and section 32 (relating to legal professional privilege).

That decision was overturned by the President of the Victorian Civil and Administrative Tribunal, Justice Stuart Morris. He found that the documents fell within section 32, but that the "public interest override" provided by section 50(4) of the FOI Act nevertheless required access be given to all the documents in dispute. The Secretary successfully appealed to the Court of Appeal. In that appeal, Mrs Osland maintained her action only in relation to the advice from the three senior counsel, known as Document 9. The Court of Appeal held that Justice Morris correctly decided that legal professional privilege had not been waived in respect of Document 9 but erred in dealing with the public interest override. He had inspected the documents but the Court of Appeal did not. Mrs Osland appealed to the High Court. She argued that Mr Hulls had waived the legal professional privilege of Document 9 because his press release disclosed the substance and gist of the advice and the conclusions reached in it. Mrs Osland argued that the Court of Appeal erred in concluding that there was no basis for applying the public interest override under section 50(4) without having inspected the documents for itself.

The Court, by a 5-1 majority, allowed the appeal. It held that legal professional privilege had not been waived in relation to Document 9 by Mr Hulls's press release, but that the Court of Appeal should have examined the documents in question before deciding that, in the circumstances of the case, there was no basis for the application of section 50(4). It remitted the matter to the Court of Appeal for further hearing to enable it to inspect the documents to consider whether public interest overrode legal professional privilege.

- *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.*