



HIGH COURT OF AUSTRALIA

10 March 2016

R & ANOR v INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSIONER
[2016] HCA 8

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that the power of the Independent Broad-based Anti-corruption Commission ("the IBAC") to hold an examination under Pt 6 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ("the IBAC Act") can be exercised in relation to persons who have not been, but might subsequently be, charged and put on trial for an offence relating to the subject matter of the examination.

On 20 March 2015, the IBAC commenced an investigation into the conduct of certain members of Victoria Police stationed at Ballarat police station. The investigation, named "Operation Ross", was concerned with whether the appellants, two officers of Victoria Police, assaulted a woman in a cell at the Ballarat police station on 15 January 2015 as well as with a number of other incidents alleged to have occurred at the Ballarat police station in recent years which might have involved human rights violations in respect of other women.

On 1 April 2015, the IBAC issued a witness summons to each of the appellants, requiring them to give evidence in a public examination of their knowledge of matters falling within the scope of Operation Ross. The appellants each delivered written submissions to the IBAC Commissioner submitting that the examinations should be held in private. The first appellant also submitted that the first appellant could not be compelled to give evidence. The Commissioner rejected the appellants' submissions.

On 16 April 2015, the appellants commenced judicial review proceedings in the Supreme Court of Victoria seeking orders preventing the IBAC from examining them. The primary judge dismissed the claim. His Honour held that because the appellants had not yet been charged with an offence, the process of criminal justice had not commenced and the principle whereby an accused person cannot be compelled to assist the prosecution to make its case ("the companion principle") had not been engaged. The primary judge also held that the IBAC Act had abrogated each appellant's privilege against self-incrimination. The Court of Appeal refused the appellants leave to appeal against the primary judge's decision.

By grant of special leave, the appellants appealed to the High Court. The Court held that the companion principle was not engaged, and so could not prevent the IBAC's examination, because the appellants had not been charged with any offence and there was no prosecution pending. There was no reason to extend the principle to the circumstances of the present case and to do so would fetter the pursuit and exposure of a lack of probity within the police force contrary to the object of the IBAC Act. The Court also held that the privilege against self-incrimination was abrogated by s 144 of the IBAC Act.

- *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.*