



HIGH COURT OF AUSTRALIA

Public Information Officer

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RYAN D'ORTA-EKENAIKE v VICTORIA LEGAL AID AND IAN DENIS McIVOR

Declining to depart from a 1988 decision of the Court, the High Court of Australia today upheld advocates' immunity from lawsuits for negligence in the conducting of cases and in making decisions about such conduct.

In 1996 Mr D'Orta-Ekenaik was charged with rape. He sought legal assistance from Victoria Legal Aid which retained Mr McIvor as his barrister. At the committal proceeding Mr D'Orta-Ekenaik entered a plea of guilty, but on arraignment in the County Court he pleaded not guilty. His guilty plea was led in evidence during the trial. He was convicted and sentenced to three years' jail. The Victorian Court of Appeal allowed an appeal and ordered a retrial on the ground that the trial judge had failed to give proper directions about the use the jury might make of the original guilty plea. At the retrial evidence of the guilty plea was not admitted and Mr D'Orta-Ekenaik was acquitted.

He then sued VLA and Mr McIvor who had allegedly advised him during conferences before the committal that he had no defence to the rape charge, a guilty plea would earn him leniency. Mr D'Orta-Ekenaik alleged that undue pressure was exerted upon him by both Mr McIvor and Robyn Greensill from the VLA. He claimed that he suffered loss and damage including being jailed between his conviction and the quashing of that conviction, lost income, psychotic illness, and the expense of the appeal, retrial and the civil proceeding. Judge Thomas Wodak in the County Court ordered a permanent stay of proceedings. The Court of Appeal refused leave to appeal.

In the High Court, Mr D'Orta-Ekenaik's application for special leave to appeal was argued as though on appeal. The Court unanimously granted special leave but by a 6-1 majority dismissed the appeal. It declined to depart from the Court's 1988 decision in *Giannarelli v Wraith* that an advocate cannot be sued by a client for negligence in the conduct of a case or in out-of-court work affecting the conduct of the case. The Court held that the central concern is the finalisation of controversies which are not to be reopened except in a few narrowly defined circumstances. The judicial system's concerns are wider than the concerns of the particular parties to the controversy in question. Restraints on the nature and availability of appeals, rules about what points may be taken on appeal and rules about when fresh evidence may be called are all based on the finality principle. Other rules, affecting persons other than the parties in a case, including immunity from suit, are also justified by the need for finality in judicial decisions. Along with advocates, judges, witnesses and jurors enjoy immunity from suit. The Court held that the immunity also extends to advice leading to a decision (such as a guilty plea) which affects the conduct of a case in court.

- *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.*