



## HIGH COURT OF AUSTRALIA

15 April 2015

### INDEPENDENT COMMISSION AGAINST CORRUPTION v MARGARET CUNNEEN & ORS

[2015] HCA 14

Today the High Court held, by majority, that the New South Wales Independent Commission Against Corruption ("ICAC") has no power to conduct an inquiry into allegations that were made against the respondents, because the alleged conduct was not "corrupt conduct" as defined in s 8(2) of the *Independent Commission Against Corruption Act 1988* (NSW) ("the ICAC Act").

The first respondent is a Deputy Senior Crown Prosecutor of the State of New South Wales. In late 2014, ICAC summoned the respondents to give evidence at a public inquiry. The purpose of the inquiry was to investigate an allegation that the first and second respondents had, with the intention to pervert the course of justice, counselled the third respondent to pretend to have chest pains in order to prevent police officers from obtaining evidence of the third respondent's blood alcohol level at the scene of a motor accident.

The respondents commenced proceedings in the Supreme Court of New South Wales seeking, amongst other orders, a declaration that ICAC did not have power to conduct the inquiry. The Supreme Court dismissed the proceedings. But the Court of Appeal allowed an appeal and declared that ICAC did not have power to conduct the inquiry because the alleged conduct was not "corrupt conduct" as defined in the ICAC Act. ICAC applied for special leave to appeal to the High Court, and the application was referred to a Full Court to be heard as on an appeal.

Section 8(2) of the ICAC Act relevantly provides that "corrupt conduct" is "any conduct of any person ... that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official" and which could involve certain kinds of misconduct listed in the sub-section, including perverting the course of justice.

The alleged conduct did not concern the exercise of the first respondent's official functions as a Crown Prosecutor. ICAC contended that the alleged conduct was corrupt conduct because it could adversely affect the exercise of official functions by the investigating police officers and by a court that would deal with any charges arising from the motor vehicle accident.

The High Court unanimously granted special leave but, by majority, dismissed the appeal. The majority held that the expression "adversely affect" in s 8(2) refers to conduct that adversely affects or could adversely affect the probity of the exercise of an official function by a public official. The definition of "corrupt conduct" does not extend to conduct that adversely affects or could adversely affect merely the efficacy of the exercise of an official function by a public official in the sense that the official could exercise the function in a different manner or make a different decision.

The alleged conduct was not conduct that could adversely affect the probity of the exercise of an official function by a public official. The alleged conduct was therefore not corrupt conduct within the meaning of s 8(2) of the ICAC Act and ICAC has no power to conduct the inquiry.

- *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.*