

## **Z v N (S229/2006)**

Court appealed from: New South Wales Court of Appeal

Date of judgment: 19 November 2004

Date of grant of special leave: 16 June 2006

This matter involves the interpretation of sections 18(2) and 18B(4) of the *New South Wales Crime Commission Act 1985* ("the Act"). It specifically concerns whether legal professional privilege, public interest immunity or a fear of reprisals can be relied upon for refusing to answer questions.

The Appellant is a solicitor who was retained by X in respect of passing information to the police about M (without X's identity being disclosed). As a result, the police acted against M on several occasions. In November 2002 M was shot, but survived. A detective told the Appellant that he suspected that police were involved in that shooting and he requested X's name and address. The Appellant declined on the basis of both legal professional privilege and his fear of reprisals to himself and his family.

In September 2003 the Appellant attended the New South Wales Crime Commission ("the Commission") and declined to answer questions about X's identity and address. He relied, inter alia, upon section 18B(4) of the Act which provides in part "...the legal practitioner or other person is entitled to refuse to comply unless the privilege is waived....However, the legal practitioner must, if so required....furnish to the Commissioner the name and address of the person to whom or by whom the communication was made."

The Appellant sought a review of the presiding member's direction in the Supreme Court. Justice Grove dismissed that application, holding that the communication by X to the Appellant of his identity was not a privileged communication. His Honour also held that even if it was, the proviso in section 18B(4) of the Act overrode it.

The Court of Appeal (Mason P, Giles JA and Wood CJ at CL) also refused the Appellant leave to appeal. Their Honours held, by majority, that section 18B(4) of the Act gave the presiding member a discretion to require an answer even where a person's name and address themselves were privileged. They further found that that discretion had not miscarried.

The grounds of appeal are:

- The Court of Appeal should have held that protection from disclosure of privileged communications given by sub-section 18B(4) of the Act extends to protection from disclosure of the name and address of a client.
- The Court of Appeal erred in as much as the majority (Mason P and Wood CJ at CL, but not Giles JA) found that the protection given to privileged communications by sub-section 18B(4) of the Act excludes from its

operation the name and address of a client.

- The Court of Appeal should have held that the communication of the name and address of the Appellant's former client, X, is subject to legal professional privilege.
- The Court of Appeal should have held that the Appellant has a "reasonable excuse" under subsection 18B(4) of the Act for refusing to answer questions seeking the name and address of his former client.