

GYPSY JOKERS MOTORCYCLE CLUB INCORPORATED
v. COMMISSIONER OF POLICE (P26/2007)

Court appealed from: Court of Appeal, Supreme Court of Western Australia

Date of grant of special leave: 15 June 2007

The appellant is the registered proprietor of premises used for a clubhouse in respect of which the Assistant Commissioner of Police, as delegate for the respondent, issued a fortification removal notice (“the notice”) on 5 May 2004 pursuant to section 72(1) of the *Corruption and Crime Commission Act 2003* (WA) (“the Act”). Subsection 72(2) of the Act provides that the respondent may issue a notice if he or she reasonably believes, after considering the appellant’s submissions, that the premises are fortified and are habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.

Subsection 76(2) of the Act provides:

The Commissioner of Police may identify any information provided to the court for the purposes of the review [of the fortification removal notice] as confidential if its disclosure might prejudice the operations of the Commissioner of Police, and information so identified is for the court’s use only and is not to be disclosed to any other person, whether or not a party to proceedings, or publicly disclosed in any way.

By originating motion filed 12 May 2004, the appellant applied for review of the notice, in response to which the respondent’s delegate filed an affidavit identifying information material which had been taken into account in issuing the notice and which was said to be confidential within the meaning of section 76(2) of the Act. Blaxell J referred to the Court of Appeal for determination the following questions of law:

- (a) Is section 76 of the Act valid?
- (b) In the alternative, is section 76(2) of the Act valid?

A third question concerning the validity of the whole of Part 4 Division 6 of the Act was put before the Court of Appeal by originating motion and argued, but that decision is not the subject of challenge in this Court.

The appellant argued that the section was invalid because it may deny a party access to evidence relied upon by the executive in a judicial proceeding and thereby may result in a denial of natural justice, such that the provision is inconsistent with the requirements of Chapter III of the Commonwealth Constitution and in particular the requirement that the parliaments of the States not legislate to impose procedures on State courts which are repugnant to, or incompatible in their exercise with, the judicial power of the Commonwealth.

A majority of the Court of Appeal (Martin CJ and Steytler P; Wheeler JA dissenting) concluded that the provision is valid. The majority of the Court concluded that the Court’s function under the impugned legislation is limited to deciding, having regard to the submissions by the appellant and to any material relied upon by the respondent, whether the respondent could have reasonably

had the belief required by subsection 76(2) of the Act at the time of issuing the notice. Wheeler JA would have answered the questions referred in the negative. Her Honour concluded that the provision was invalid because it involved a departure from the basic requirements of the judicial process and with the notion of institutional integrity, and was therefore invalid as incompatible with Chapter III of the Commonwealth Constitution.

The grounds of appeal include:

- Whether the majority of the Court of Appeal erred in finding that section 76(2) of the Act is not invalid on the ground that it infringes Chapter III of the Commonwealth Constitution.