

McRae, Findlay

From: Ryan, David
Sent: Thursday, 28 January 2010 5:37 PM
To: McRae, Findlay
Cc: Isabel.Parsons@[REDACTED]; Elms, Greg
Subject: Witness F - Subpoena to CCP

Hi Fin

I confirm that a Subpoena was served upon the Chief Commissioner of Police yesterday which was issued by Dale's solicitors. The Subpoena is returnable in the Magistrates' Court on 1 February 2010. Greg Elms from the Victoria Police Branch of the VGSO is handling the CCP's response to the Subpoena (Greg acted for the CCP in response to the Subpoena issued in the Collins proceeding). Greg has briefed Ron Gipp to appear on behalf of the CCP (Ron also appeared on behalf of the CCP in the Collins matter). My involvement will be limited to documents relating to F.

I attended a conference this afternoon with Ron Gipp, Steve Smith and Greg Elms to discuss the CCP's response to the Subpoena. Given the scope of the Subpoena, it is not possible for it to be complied with by Monday. It is likely to be adjourned to a later date.

It is our view and counsel's view (consistent with the Moti decision) that the scope of the Subpoena requires the CCP to produce documents which record what payments have been made to F to date (ie living expenses, [REDACTED]). We confirm your instructions to authorise Ron Gipp to disclose to the defence in general terms that subsistence payments have been made to F and a rough estimate of these payments (based upon spreadsheet provided by Witsec). Further, we consider that the financial details contained in any concluded agreement reached with F would also be required to be produced.

It is our view and the view of counsel that all documents in the CCP's possession relating to without prejudice negotiations conducted with a view to reaching an agreement with F concerning any protection and assistance to be provided (eg [REDACTED] and F's responses to these documents including the response containing the exorbitant figure) do not strictly come within the scope of the Subpoena. However, we consider that the existence of these documents are likely to come to the defence's attention during the committal in the course of the cross-examination of F. In our view, the DPP should be requested by you (when you meet with him next week) to consider whether it would be appropriate for him to disclose to the defence the existence of these documents as it may be that he considers it incumbent upon him to do so consistent with the prosecution's duty of disclosure. In the event that the DPP decided to disclose the existence of these documents, then we are of the view that the CCP ought to claim that they ought not be produced to the Court on the ground of Public Interest Immunity. We have not yet clearly articulated the basis of the claim at this stage but it would relate to the public interest in maintaining the integrity of the administration of justice through the prosecution of crime and obtaining and ensuring witness co-operation. An affidavit would need to be sworn on behalf of the CCP in support of the PII claim. We will have to give thought to the deponent. Perhaps Luke Cornelius?

Also Fin, I should disclose that I will be on leave next week!

regards
Dave

VPL.0005.0003.6392

