

IN THE COURT OF APPEAL (CIVIL DIVISION)
SUPREME COURT OF VICTORIA

No 8744 of 2005

IN THE MATTER OF an Appeal pursuant to Section 17(2) of the Supreme Court Act 1986

BETWEEN :

**THE QUEEN (ON THE APPLICATION OF THE DIRECTOR OF PUBLIC
PROSECUTIONS FOR THE STATE OF VICTORIA)**

and

Solicitor 2

Appellant

Respondent

AND

Solicitor 2

Appellant

and

THE QUEEN

Respondent

SUMMARY

Date of document:	25 May 2006
Filed on behalf of:	Appellant
Prepared by:	Solicitor's code: 7539
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1. On 8 May 2004 Sean VINCENT (also known as Lewis CAINE) was murdered by ^{Mr Gregory}
^{Mr Gregory} and Evangelos GOUSSIS. **Solicitor 2** was then the de facto partner of the deceased.

2. On the evening of 9 May 2004 Detective Senior Constable STAMPER and Detective Senior Constable ROBERTSON attended at **Solicitor 2** place of residence where they informed her of the death of the deceased. (Appeal Book Volume 2, Tab G, 18.10.05 p 32)
3. On 19 May 2004 ^{Mr Gregory} and Evangelos GOUSSIS were arrested for the murder of Sean VINCENT (also known as Lewis CAINE).
4. That evening **Solicitor 2** was informed of the arrest and attended the St Kilda Rd Police Complex at the invitation of Detective Senior Constable ROBERTSON. (18.10.2005 pp 34-35) **Solicitor 2** provided a statement to police from approximately 11pm on 19 May 2004 until 1.40am on 20 May 2004. (Appeal Book Volume 1, Tab D, p 18)
5. Upon the conclusion of the statement **Solicitor 2** told Detective Senior Constable STAMPER that she did not want to sign the statement and stated that ^{Mr Gregory} had spoken with her then employer, a Mr George DEFTEROS. She stated that ^{Mr Gregory} had told DEFTEROS to tell **Solicitor 2** to keep her mouth shut otherwise ^{Mr Gregory} would hold DEFTEROS personally responsible. (Appeal Book Volume 2, Tab G, 18.10.2005 p 38)
6. The Committal Hearing of ^{Mr Gregory} and Evangelos GOUSSIS for the murder of Sean VINCENT (also known as Lewis CAINE) commenced on 28 February 2005 and concluded when both were committed for trial on 16 March 2005.
7. **Solicitor 2** attended parts of the committal hearing when the accused men were present in court. (Appeal Book Volume 2, Tab G, 18.10.2005 p 108)
8. On 2 March 2005 in response to a Summons for Production issued on 25 February 2005, Acting Inspector Gavan RYAN swore an Affidavit in which he objected to the production of notes of conversations police had with **Solicitor 2** on the grounds of public interest immunity.

He stated that:

“The disclosure of these documents would identify **Solicitor 2** as the person who provided the information. That she should be so identified as having provided the information places her in danger of reprisals by those she has informed on”.

In evidence on 18 October 2005 Acting Inspector RYAN stated that the notes to which public interest immunity was claimed related to material other than that which was in **Solicitor 2** statement and which police regarded as confidential in nature. (Appeal Book Volume 2, Tab G, 18.10.05 p 73)

Public interest immunity was not claimed with respect to the statement made by **Solicitor 2** and copies were made available to defence counsel and the presiding Magistrate. Defence counsel were also given the opportunity to read portions of the transcript in which **Solicitor 2** gave evidence at the Australian Crime Commission. (Appeal Book Volume 1, Tab F, 3.10.2005 pp 21-22)

9. On Monday 26 September 2005 **Solicitor 2** was served with a Subpoena to give evidence at the trial of ^{Mr Gregory} and GOUSSIS commencing on 3 October 2005.

 10. On Friday 30 September 2005 a Mention in the matter of ^{Mr Gregory} and GOUSSIS was held before His Honour Justice Teague. Mr C Heliotis Q.C appeared on behalf of **Solicitor 2** who attended the hearing. The prosecutor Mr Parsons S.C. stated that he would seek to lead the witness on matters contained within her statement including the fact that she spent the last afternoon with the deceased, any telephone calls received by the deceased, his financial situation and his interest or otherwise in a motor vehicle. (Appeal Book Volume 1, Tab E, p 14)
- Mr Heliotis Q.C. informed His Honour that **Solicitor 2** was facing charges of giving false evidence at the Australian Crimes Commission and that she would claim the privilege against self-incrimination if called to give evidence in the trial. Mr Heliotis Q.C. informed His Honour that should that not succeed, then “she would stand mute and take whatever the court meted out to her for so doing”. (Appeal Book Volume 1, Tab E, p 19)
- Mr Heliotis Q.C. went on to say that ‘**Solicitor 2** is frankly terrified for her life.’ (Appeal Book Volume 1, Tab E, p 20)

11. On Monday 3 October 2005 Mr Parsons S.C. applied for leave to add **Solicitor 2** name to the presentment, which had been filed in the Supreme Court on 3 May 2005. Mr Heliotis Q.C. again appeared on behalf of **Solicitor 2** who attended the hearing. Mr Heliotis Q.C. applied for the subpoena to be set aside as an abuse of process and stated that **Solicitor 2** did not intend to answer any questions. (Appeal Book Volume 1, Tab F, p 12)
- Mr Parsons S.C. undertook to provide Mr Heliotis Q.C. and defence counsel with a list of the matters which he would seek to lead from **Solicitor 2**. (Appeal Book Volume 1, Tab F, p 31)
12. On Tuesday 4 October 2005 Mr Shirrefs S.C. appeared on behalf of **Solicitor 2** who attended the hearing. Mr Shirrefs S.C. applied for the subpoena to be set aside for a number of reasons and Mr Parsons S.C was given an opportunity to respond. (Appendix A, attached to this Summary: - Transcript of the hearing on 4 October 2005)
- Mr Shirrefs S.C. acknowledged receipt of the document Mr Parsons S.C had undertaken to provide the previous day. (Appendix A, p 61)
- His Honour Justice Teague stated that he was not satisfied that Mr Shireff's application ought be granted and that he would provide his reasons at a later date. (Appendix A, p 64)
- His Honour's ruling with respect to the application to set aside the subpoena was handed down on 3 May 2006 and is attached to this Summary as Appendix B.
- After a short adjournment Mr Shirrefs S.C. informed the Court that **Solicitor 2** wished to make an application for admission into the Witness Protection Scheme. (Appendix A, p 65) The trial was then adjourned to the following day for the process to be initiated.
13. On Thursday 6 October 2005 **Solicitor 2** swore an affidavit in support of her application that she be admitted to the Victorian Witness Protection Program. (Appeal Book Volume 1, Tab D, p 12).
14. On Friday 7 October 2005 Mr Lancy on behalf of the Chief Commissioner of Police informed the Court that **Solicitor 2** application for entry into the Witness Protection Program had been unsuccessful.

15. Ms N Gobbo of Counsel appeared on behalf of **Solicitor 2**. Mr Parsons S.C. informed the Court that the Director of Public Prosecutions had granted the **Solicitor 2** a derivative use indemnity with respect to her evidence in the proceedings. After being sworn as a witness **Solicitor 2** refused to answer any questions when directed so to do by the presiding judge His Honour Justice Teague. His Honour decided that the matter of dealing with the Respondent for her refusal to answer questions should be dealt with by a judge other than himself. (Appeal Book Volume 1, Tab A)
16. On Monday 10 October 2005 the matter came before His Honour Justice Harper. Mr Shirrefs S.C appeared on behalf of **Solicitor 2** and Mr McArdle Q.C appeared on behalf of the Crown.
His Honour on that day ordered (inter alia) that:-
“The Director of Public Prosecutions file and serve an Originating Motion returnable before the Honourable Justice Harper at 10.30am on Tuesday 18 October 2005 and any material upon which it seeks to rely by noon on Wednesday 12 October 2005.”
(Appeal Book Volume 1, Tab B, p 1)
17. On Tuesday 11 October 2005 in the trial of *R v* ^{Mr Gregory} *and Goussis* the Crown provided an opening address to the jury. On this day **Solicitor 2** filed and served a Subpoena for Production upon the Chief Commissioner of Police, returnable before the Supreme Court on 13 October 2005.
18. On Wednesday 12 October 2005 the Crown filed and served an Originating Motion, pursuant to the Order made by His Honour Justice Harper on 10 October 2005. Also filed and served was the accompanying Affidavit of Detective Senior Constable Andrew John STAMPER together with a copy of the Presentment and Further Presentments of the accused ^{Mr Gregory} and GOUSSIS. (Appeal Book Volume 1, Tab B, p 2)
Also on this day Acting Inspector Gavan RYAN swore an Affidavit in response to **Solicitor 2** Subpoena for Production dated 11 October 2005. (Appeal Book Volume 1, Tab D, p 1)

19. The matter came before His Honour Justice Harper on Thursday 13 October 2005. Mr Nash Q.C. appeared on behalf of **Solicitor 2**, Mr McArdle Q.C. appeared on behalf of the Director and Mr Lancy of Counsel appeared on behalf of the Chief Commissioner of Police. His Honour heard argument as to the subpoena issued by Ms GARDE-WILSON upon the Chief Commissioner of Police. (Appeal Book Volume 1, Tab C)

A copy of the affidavit sworn by Acting Inspector Gavan RYAN dated 2 March 2005 was also handed up to His Honour Justice Harper and to Mr Nash Q.C. on this day. (Appeal Book Volume 1, Tab D p 42)

20. On 14 October 2005 **Solicitor 2** filed and served an Affidavit (Appeal Book Volume 1, Tab D, p 4) which exhibited the following documents:

- Affidavit in support of her application that she be admitted to the Victorian Witness Protection Program dated 6 October 2005 (Appeal Book Volume 1, Tab D, p 12);
- Statement of **Solicitor 2** dated 20 May 2004 (Appeal Book Volume 1, Tab D, p 18);
- Excerpts of Statement of **Solicitor 2** dated 2 July 2004 (Appeal Book Volume 1, Tab D, pp 24 & 29);
- Transcript of meeting between Mr George DEFTEROS and **Solicitor 2** on 7 June 2004 (Appeal Book Volume 1, Tab D, p 26);
- Criminal History report of **Solicitor 2** (Appeal Book Volume 1, Tab D, p 31);
- Criminal History report of ^{Mr Gregory} (Appeal Book Volume 1, Tab D, p 34);
- Affidavit of Acting Inspector Gavan RYAN dated 2 March 2005 (Appeal Book Volume 1, Tab D, p 42);
- Psychological report of A.A. CATANESE dated 6 October 2005 (Appeal Book Volume 1, Tab D, p 45).

21. On Tuesday 18 October 2005 His Honour Justice Harper heard evidence from the following witnesses:

- Detective Senior Constable STAMPER (Appeal Book Volume 2, Tab G, pp 28-65);
- Acting Inspector Gavan RYAN (Appeal Book Volume 2, Tab G, pp 66-74);
- Detective Sergeant Martin Robertson (Appeal Book Volume 2, Tab G, pp 76-92);

- **Solicitor 2** (Appeal Book Volume 2, Tab G, pp 94-110).
His Honour then heard addresses by both counsel.
22. On Wednesday 9 November 2005 His Honour Justice Harper ordered that the Respondent be adjudged guilty of contempt of court, and published his reasons for doing so. (Appeal Book Volume 2, Tab H)
23. On Thursday 17 November 2005 the plea hearing of Ms GARDE-WILSON took place before His Honour Justice Harper. (Appeal Book Volume 3, Tab J, p 164)
Mr Nash Q.C. on behalf of **Solicitor 2** called the following witness in support of his client's plea in mitigation:
- Steven Alexander SHIRREFS S.C. (Appeal Book Volume 3, Tab J, p 164).
24. Mr Nash Q.C. tendered the following documents:
- Psychological report of Jeffrey CUMMINS dated 16 November 2005 (Appeal Book Volume 3, Tab I, p 1);
 - Letter from Ms Wendy NORTHEY, psychologist, dated 15 November 2005 (Appeal Book Volume 3, Tab I, p 8);
 - References from Mr David GRACE Q.C., Mr Douglas MOREY, Mr Sean GRANT, Mr Paul GUGGENHEIMER, Ms Lea WEAVER, and Mr Con HELIOTIS Q.C.
- Both counsel then addressed His Honour. (Appeal Book Volume 3, Tab J, pp 184-231)
25. On Tuesday 22 November 2005 His Honour Justice Harper ordered that a conviction for contempt be recorded against the Respondent and there be no further penalty be imposed. His Honour published his reasons and Order on that day. (Appeal Book Volume 3, Tab K)
26. The Director of Public Prosecutions filed and served a Notice of Appeal on Monday 5 December 2005. (Appeal Book Volume 3, Tab L)
27. **Solicitor 2** filed and served a Notice of Appeal on 17 February 2006. (Appeal Book Volume 3, Tab M).