

## **State Coroner's ruling concerning DPP's claim for LPP over para 156 documents**

The DPP claims LPP over a number of documents listed in paragraph 156 of the affidavit of DSC Staples.

There are six in total I shall refer to the as 1 to 6. Document 3 has already been admitted into evidence as Exhibit 7.

The remaining documents appear by their description to be of a nature that one would readily accept attract LPP.

This is confirmed by the words following the paragraph indicating the documents are prepared for the bail hearing.

I am prepared to proceed on the basis that the documents do attract LPP.

The question then becomes whether that LPP has been waived by the conduct of the DPP.

One way in which that could occur would be if an ODPP solicitor when appearing on the bail hearing on 12 December tendered the documents or made overt reference to them and their contents. None of the parties urging that the claim for LPP be dismissed has pointed to that occurring.

Another way the LPP could be waived would be the DPP allowed into evidence what Tamberlin J in *Bennetts v CEO Customs* referred to as "the gist or conclusions" of the LPP material.

In paragraph 14 of his judgement Tamberlin J restricted that approach by acknowledging the disclosure of one conclusion and not others in the LPP material did not amount to disclosure of all. He went on to observe however if the conclusions and reasoning are so interconnected that they cannot be separated or isolated that it may be that the whole of the material that LPP is claimed should be considered to be waived. Similarly, waiver can be implied if the conduct of the party who holds the LPP engages in conduct inconsistent with the maintenance of confidentiality which the LPP is meant to protect.

In *Mann v Carnell* it was held a finding of such inconsistency can be informed by considering whether it would be unfair to allow the client to continue to assert confidentiality.

Applying those principles to this case I consider that if Ms Staples' statements; her oral evidence; or statements of an ODPP solicitor disclose the "gist or conclusions" of the communications between Staples and an ODPP solicitor the LPP that might have otherwise protected those communications may be impliedly waived.

In that regard I note that yesterday without objection at T867 line 17 and following Ms Staples described a document she says she prepared outlining how the alibi evidence of Ms Droudis has been discredited. She gave more detail of its content at T920 line 21 and following.

I conclude that she is referring to the first document in paragraph 156

I consider that the maintenance of LPP over that document is inconsistent with the giving of that evidence without objection from the DPP. Accordingly I dismiss the claim LPP in relation to it.

Having reviewed the material I am of the view LPP has not be expressly or impliedly waived in relation to the other documents in paragraph 156 other than the third which is already in evidence.

I recognise this may cause difficulty for the inquest and the parties in ascertaining why the bail application was dealt with as it was. While that may seem unfair it is not unfairness of the kind referred to in *Mann v Carnell* and it is simply the effect of the law relating to LPP. There is nothing I can do about that.

Magistrate Barnes

20 August 2015