

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Question No. 58

Senator Humphries asked the following question at the hearing on 18 October 2011:

Senator BRANDIS: Was that restraining order made on an interim basis when the matter was last before the court?

Mr Craigie: As I understand it, yes.

Senator BRANDIS: Was that a consent order?

Mr Craigie: It would appear so.

Senator BRANDIS: Who were the respondents? Obviously Mr Hicks. Was his publisher, William Heinemann, also a respondent?

Mr Craigie: I do not have the process in front of me. That is what would help answer that question.

Senator BRANDIS: I would just like to know what procedural steps have been taken and what orders have been made.

Mr Craigie: If you permit me, I will take that on notice and we can refer to the papers as filed and see who is indicated.

Senator BRANDIS: Can you also tell me—surely you have this in front of you on your file—if there are any respondents other than Mr Hicks and his publisher and, if so, who they are?

Mr Craigie: I do not have that detail.

Senator BRANDIS: You do not know?

Mr Craigie: Not in detail.

Senator BRANDIS: Take it on notice please. On the interim orders that were made by the Supreme Court, were there ancillary orders made at the same time in relation to the disclosure of the location of proceeds?

Mr Craigie: I am not across that particular detail. Again, it is something I can certainly give you on notice.

The answer to the Honourable Senator's question is as follows:

On 19 July 2011, the Commonwealth Director of Public Prosecutions (CDPP) commenced proceedings by way of summons in the Supreme Court of NSW seeking a restraining order pursuant to section 20 of the *Proceeds of Crime Act 2002* and a literary proceeds order pursuant to section 152 of the *Proceeds of Crime Act 2002*. The defendants to the proceedings are David Matthew Hicks (the first defendant) and Lakewood Pty Ltd as Trustee for the Misha Family Trust (the second defendant).

On 3 August 2011 the Court ordered, by consent:

pursuant to section 20 of the *Proceeds of Crime Act 2002* (Cwth), the specified property of Lakewood Pty Ltd as Trustee for the Misha Family Trust described in the First Schedule is not to be disposed of or otherwise dealt with by any person.

The property listed in the First Schedule is funds standing to the credit of a bank account in the name of Lakewood Pty Ltd as Trustee for the Misha Family Trust, including interest accrued after the date of this order, and any right, power or privilege attached thereto.

The Court further ordered that the matter be listed for directions on 16 August 2011. No ancillary orders were made in relation to the disclosure of the location of proceeds.

On 16 August 2011 the Court directed that:

1. the matter be listed for legal argument on 26 August 2011 at 2pm.
2. the first defendant file and serve written submissions on this issue by 22 August 2011 at 4pm.
3. the plaintiff file and serve its response to the first defendant's submissions by 25 August 2011 at 4pm.
4. the plaintiff serve any evidence on which he relies by 27 September 2011.
5. the matter is otherwise stood over for further directions on Tuesday 4 October 2011.

On 26 August 2011 the Court heard submissions from the plaintiff and the defendants and reserved judgment.

On 9 September 2011 the Court ordered:

1. the application of the plaintiff, Commonwealth Director of Public Prosecutions, for orders, by way of case management, that the first defendant serve any evidence upon which he intends to rely in advance of the hearing of the proceedings is dismissed.
2. the costs of this application are to be costs in the cause.
3. the proceedings are stood over for further directions to 4 October 2011.

His Honour, Justice Garling published his reasons in *Director of Public Prosecutions v Hicks* [2011] NSWSC 1060.

On 4 October 2011 the Court ordered that:

1. The defendants are to notify the plaintiff by letter on or before 4.00pm on Tuesday 18 October 2011, of all the evidence served by the plaintiff to which objection is taken, such notification to include:
 - a. All legal reasons why not admissible; and
 - b. Where any objection is based upon evidence, an outline of the facts matters and circumstances to be relied upon for any objection.
2. The matter was stood over for mention at 9.00am on 20 October 2011.
3. Liberty is granted to the parties apply on 24 hours' notice.

On 20 October 2011 the Supreme Court ordered that:

1. The defendants file and serve all affidavits or other documents upon which they intend to rely in any voir dire on admissibility, by 4pm on Friday 2 December 2011.
2. The plaintiff is to file and serve all affidavits or other documents upon which the plaintiff intends to rely in the voir dire, by 4pm on Thursday 9 February 2012.
3. The matter is listed for further directions before his Honour, Justice Garling at 9.30 am on Thursday 16 February 2012.
4. Both parties are given leave to restore the matter with 24 hours' notice.