

COURT OF APPEAL

McMURDO P  
McPHERSON JA  
HOLMES J

CA No 294 of 2003

THE QUEEN

and

JOHN ERNEST DUNWOODY

Appellant

BRISBANE

..DATE 23/04/2004

JUDGMENT

THE PRESIDENT: The appellant has, at this late stage of the proceedings, asked for leave to amend the grounds of appeal. It emerged during the respondent's submissions that the respondent understood and prepared its outline of submissions on the basis of the grounds of appeal, understandably, which were:

"That the learned trial judge erred in finding that legal professional privilege was waived in respect of those documents within the schedule of documents to the Crown outline of submissions which had not been tendered in the bankruptcy examination."

The appellant now wishes to amend those grounds to:

"That the learned trial judge erred in finding that legal professional privilege was waived."

The respondent objects to that amendment, primarily because of the lateness of the application and because he has prepared the matter on the grounds argued, and also that there will be significant inconvenience in that the matter will have to be adjourned, affidavit material obtained, and possibly a change of counsel.

The appellant's submissions to me made it plain enough that he was intending to challenge the ruling of the primary Judge as to legal professional privilege in respect of all documents, including what are known as category 2 documents, and not to

limit the challenge to the primary Judge's ruling to those documents set out in the ground of appeal. He is unrepresented and I think he ought to be able to make the amendment despite the lateness of his application because, it seems to me, clear enough from his submissions that this was always what he intended.

He understands that this will mean the matter will have to be adjourned and the rehearing will not be able to be brought on quickly. I cannot see that the respondent will suffer any prejudice that cannot be cured by the granting of all necessary amendments, although the course proposed is not particularly convenient to the Court or to the respondent, in my view, it seems the just course. I would allow the amendment to be made.

McPHERSON JA: I have the misfortune not to agree with the proposal that the amendment should be allowed at this stage.

HOLMES J: I agree with the President. The outline of argument clearly sets out on the opening page that part of the argument structure concerns the category 2 documents and those documents are dealt with in the body of the argument, so it seems to me that it was evident that those documents were the subject of the appeal.

THE PRESIDENT: The amendment will be allowed.

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