



HIGH COURT OF AUSTRALIA

Public Information Officer

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DIANE McGRATH FINGLETON v THE QUEEN

The High Court of Australia today unanimously allowed an appeal by Ms Fingleton, the former Chief Magistrate of Queensland, and quashed her conviction for unlawful retaliation against a witness, holding that the conduct that led to the charge was protected by the immunity against criminal prosecution conferred by the *Magistrates Act*.

Section 30 of Queensland's *Criminal Code* provides:

“Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by the judicial officer in the exercise of the officer's judicial functions, although the act done is in excess of the officer's judicial authority, or although the officer is bound to do the act omitted to be done.”

Section 21A of the *Magistrates Act* provides:

“A magistrate has, in the performance or exercise of an administrative function or power conferred on the magistrate under an Act, the same protection and immunity as a magistrate has in a judicial proceeding in a Magistrates Court.”

The Chief Magistrate's responsibilities included assigning magistrates to locations throughout Queensland. Postings had been a source of tension between Chief Magistrates and the Magistrates Association. The *Magistrates Act* established a judicial committee to review grievances about a Chief Magistrate's determinations. In July 2002, Ms Fingleton decided to transfer Anne Thacker from Brisbane to Townsville. Ms Thacker applied for a review by the committee and wrote to the Magistrates Association seeking information about other transfers. Association vice-president and the coordinating magistrate for Beenleigh, Basil Gribbin, provided an affidavit in support of Ms Thacker in the review proceedings. Ms Fingleton provided an affidavit in reply. Friction between her and Mr Gribbin arose regarding an item he was circulating for the agenda for a meeting of coordinating magistrates without discussing it with Ms Fingleton. The day before the meeting, she emailed Mr Gribbin a letter asking him to show cause why she should not exercise her power to remove him from the position of coordinating magistrate. She obtained legal advice before sending the letter. She objected to him providing an affidavit for Ms Thacker as he had never discussed transfers with her and she accused him of disloyalty for circulating the proposed agenda item.

Ms Fingleton was charged with causing or threatening harm without reasonable cause in retaliation for something lawfully done in a judicial proceeding, an offence under section 119B of the *Criminal Code*. She denied sending the letter as payback for Mr Gribbin's support of Ms Thacker and said she sent it as his conduct showed she did not have his confidence and loyalty. Ms Fingleton was convicted in a second trial in the Queensland Supreme Court after the first trial resulted in a jury disagreement. Because she was found guilty of this charge, the jury was not required to return a verdict upon an alternative charge of attempting to pervert the course of justice.

The Court of Appeal dismissed an appeal against conviction but it suspended her sentence of 12 months' imprisonment for two years after she served six months in jail. The sole ground of appeal to the Court of Appeal was that no reasonable jury could have found beyond reasonable doubt an absence of reasonable cause in Ms Fingleton's conduct.

Neither section 21A of the Act nor section 30 of the Code were raised either at her trial or in the Court of Appeal. Those provisions were first raised by the High Court when considering Ms Fingleton's application for special leave to appeal, and were the basis of the primary ground of appeal. If she had available a point of law which was a complete answer to the charges against her, the point could be raised for the first time in the High Court.

The Court held that Ms Fingleton should not have been held criminally responsible for her conduct. She was entitled under the Act and the Code to an immunity that was wrongly denied to her. Ms Fingleton's conduct in calling upon Mr Gribbin to show cause why he should not be removed was conduct in the exercise of an administrative power conferred on her by section 10(2) of the Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*