



HIGH COURT OF AUSTRALIA

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K-GENERATION PTY LTD AND GENARGI KRASNOV v LICENSING COURT OF SOUTH AUSTRALIA AND COMMISSIONER OF POLICE

The requirement for South Australian courts to maintain the confidentiality of criminal intelligence about an applicant for a liquor licence did not diminish their integrity as impartial and independent courts, the High Court of Australia held today.

In October 2005, K-Generation applied to the SA Liquor and Gambling Commissioner for an entertainment venue licence. The director, Genargi Krasnov, wanted to set up a karaoke club called Sky Lounge KTV in premises on King William Street, Adelaide. The Police Commissioner intervened in July 2006 to introduce evidence and make representations to Liquor and Gambling Commissioner Bill Pryor, particularly on the issue of whether Mr Krasnov and his partner Adeline Tay were fit and proper persons to hold the licence. When Commissioner Pryor heard the application, the police submitted information classified by the Police Commissioner as “criminal intelligence”, pursuant to section 28A of the *Liquor Licensing Act*. The information was not disclosed to K-Generation. In January 2007, Commissioner Pryor, acting upon that information, refused the application on the ground that the grant of a licence would be contrary to the public interest.

The SA Licensing Court affirmed his decision. K-Generation and Mr Krasnov instituted proceedings in the SA Supreme Court, seeking a declaration that section 28A was invalid for being incompatible with the exercise by the Licensing Court of the judicial power of the Commonwealth. They sought a declaration that the Licensing Court, in affirming Commissioner Pryor’s decision, had failed to observe the requirements of procedural fairness. They also applied for judicial review of the Licensing Court’s decision. The proceedings were referred to the Full Court of the Supreme Court, which by majority refused the application for the declarations and dismissed the application for judicial review.

K-Generation and Mr Krasnov appealed to the High Court on the ground that the Full Court erred in finding section 28A to be valid, notwithstanding that it required the Licensing Court to hear and determine the review without disclosing the intelligence relied on by Commissioner Pryor in refusing the licence application. K-Generation and Mr Krasnov contended that section 28A deprived the Licensing Court of the reality and appearance of independence and impartiality required of a court exercising the judicial power of the Commonwealth. Their particular concern was with section 28A(5) which directs the Liquor and Gambling Commissioner, the Licensing Court and the Supreme Court to take steps to maintain the confidentiality of information classified as criminal intelligence. These steps may include receiving evidence and hearing argument about the information in private without the parties or their lawyers.

The Court unanimously dismissed the appeal. It held that section 28A did not confer upon the Licensing Court or the Supreme Court functions incompatible with their integrity as courts of the States or with their constitutional role as courts exercising federal jurisdiction. Section 28A left to the courts decisions on whether facts existed to warrant classification of information as “criminal intelligence”, what if any weight should be placed on it, and what steps to take to preserve the confidentiality of that material. Section 28A(5) did not subject the courts to the direction of the executive or an administrative authority. Therefore it did not deny to the courts the constitutional character of independent and impartial tribunals.

- *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.*