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News

Court spikes Wickenby case

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Dozens of people prosecuted for offshore tax fraud by the six-year-old Project **Wickenby** taskforce could have their cases reviewed after a court threw out a case against two men due to flawed evidence.

The coup for the two accused could affect similar cases in what would be a disaster for the taskforce, which has uncovered about $1.3 billion in tax debts and had 65 people charged.

A former partner of law firm Gadens, Ross Seller, and Patrick McCarthy were charged with dishonestly influencing the tax office between May 2001 and December 2002 relating to a tax-effective whisky distilling scheme in the Scottish highlands.

On Friday, Supreme Court judge Peter Garling stayed the Commonwealth Department of Public Prosecution case because "any trial would not be fair".

The Australian Crime Commission had shared evidence with the CDPP, collected under extensive powers. The ACC has special laws in gathering evidence allowing it to skirt the privilege against self-incrimination which, in effect, gives an accused the right to silence.

By making that evidence available to the prosecutor, the ACC took a critical misstep. That act was not authorised by its governing laws, the judge said, and "compromised rather than ensured" a fair trial. A failure to grant a stay would "lead to an erosion of public confidence because the court's processes may lend themselves to oppression and injustice".

Justice Garling rejected ACC claims that an "administrative oversight" was to blame. There was no evidence of this, he said, and the close relationship between the two offices suggested "an early and intentional decision was made to share all available information".

Acting for Mr Seller, Speed and Stracey's Malcolm Stewart said the Taxation Office, ACC and CDPP would have to review all **Wickenby** files to find if there were other cases of improper sharing. "I think you will find this issue will arise in others, perhaps a significant number."

"The procedures within the ACC were not robust enough to stop this from happening," he said. "I think there are a lot of defendants who have been convicted who'll want their lawyers to check their case."

Of the 65 persons charged with serious offences under Project **Wickenby**, 17 resulted from ACC investigations.

Robinson Legal director David Rydon said the case was a "remarkable slap" to the ACC and CDPP. "It could have significant ramifications," he said.

Those convicted under similar circumstances would want to revisit the evidence in their case, he said.

Mr Rydon queried whether it might go even further, to evidence shared beyond **Wickenby**. "It's highly probable that the methodology has been applied persistently," he said.

The CDPP has 28 days to appeal. Mr Stewart said he was not certain whether the decision would impact on a separate case against Mr Seller.

Mr Seller told the Weekend Financial Review the result reinforced his belief in the judiciary.

"It's been a long slog. It's been seven years," he said. "It's just become a part of my life – it's going to take a while to sink in that it's probably all gone."

ACC chief executive officer John Lawler said the commission noted the decision and was "considering implications". The Tax Office declined to comment.

Key points A Project **Wickenby** tax case has been thrown out by a court. It could have repercussions for other similar cases. One solicitor described it as a 'remarkable slap' to prosecutors.

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