

application to the District Court under the Criminal Disclosure Act 2008 seeking an order that the police disclose a number of documents and files, including a file known as the “Operation Diana file”. The application was unsuccessful.¹

[2] The applicants sought leave to appeal to the Court of Appeal against one aspect of the District Court decision, namely the Judge’s refusal to order disclosure of the Operation Diana file. The Court of Appeal granted leave to appeal, but dismissed the appeal.²

[3] The applicants now seek leave to appeal to this Court against the decision of the Court of Appeal.

[4] The Operation Diana file was the term used in the lower Courts to describe the police file in respect of civil proceedings against the applicants under the Criminal Proceeds (Recovery) Act 2009. That application is currently before the High Court.

[5] The criminal investigation of the applicants was conducted by the police under the name “Operation Homes” and was the responsibility of the Organised Crime Group in New Plymouth. The investigation for the purposes of the application under the Criminal Proceeds (Recovery) Act was undertaken by the Central Asset Recovery Unit (ARU). However, the applicants argue that, contrary to the decision of the Court of Appeal, the Operation Diana file is relevant to the criminal prosecution. They pointed to the fact that in an affidavit filed for the purposes of the Criminal Proceeds (Recovery) Act application, a police officer referred to “combined investigations” of the Organised Crime Group and the ARU.

[6] The Court of Appeal did not consider that the Operation Diana file was “relevant” to the criminal charges for the purposes of the Criminal Disclosure Act.³ This was an assessment based on the different objectives of a criminal prosecution on the one hand and a Criminal Proceeds (Recovery) Act action on the other.⁴ The Court accepted that there may be some overlap of information, but concluded that, to the

¹ *R v Hunt* [2020] NZDC 13501 (Judge Greig).

² *Hunt v R* [2020] NZCA 566 (Brown, Venning and Katz JJ) [CA judgment].

³ “Relevant” is defined in s 8 of the Criminal Disclosure Act 2008.

⁴ CA judgment, above n 2, at [32]–[33].

extent that there was an overlap, information that was relevant to the criminal charges would already have been disclosed as part of the police file for the criminal prosecution.⁵ Since the Operation Diana file was not otherwise relevant, the Court dismissed the application for disclosure.

[7] The essence of the application for leave is the applicants' wish to challenge the Court of Appeal's assessment of the relevance of the Operation Diana file. They argue that a point of public importance arises because of the importance of access by defendants to relevant information to ensure they can exercise their right to a fair trial under ss 25(a) and 24(d) of the New Zealand Bill of Rights Act 1990.

[8] In order to obtain leave, it is necessary for the applicants to satisfy this Court that a matter of public importance arises or that a miscarriage of justice may occur if leave is not granted.⁶ In addition, as this is a pre-trial application, the Court must be satisfied that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal before the proceeding is concluded.⁷

[9] The Court of Appeal's assessment of the relevance of the Operation Diana file was an orthodox application of the definition of "relevant" to the specific facts of this case. It does not raise any matter of public importance. Nor do we consider that there is any risk of miscarriage if the Court does not give leave to appeal at this stage of the proceeding. The criteria for leave are not met and the application for leave to appeal is therefore dismissed.

[10] For fair trial reasons, we make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest is permitted.

Solicitors:

Young, Carrington, & Ussher Lawyers, New Plymouth for Applicants
Crown Law Office, Wellington for Respondent

⁵ At [34].

⁶ Senior Courts Act 2016, s 74(2).

⁷ Section 74(4).