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LEGAL PRACTICE



Search warrants - what went wrong in ABC journalist Annika Smethurst's case?

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Search warrants are a vital tool for police and law enforcement officers in the investigation of crimes. The legislation governing search warrants sets out the various criteria that must be met before a warrant can be validly executed. Given that search warrants often involve an invasion of the privacy of a person's home, the law recognizes that such powers need to be exercised in strict accordance with legal requirements.

The ABC journalist case of Annika Smethurst

The recent High Court case of *Smethurst v Commissioner of Police* gave the High Court an opportunity to emphasize this principle.

Smethurst was the high profile case involving search warrants executed by the Australian Federal Police (AFP) on the home of an ABC journalist following the publication of articles written by her containing classified information of a national security character.

Documents were seized during the execution of the warrants and the journalist, Ms Smethurst subsequently applied to the court for a ruling that the warrants were invalidly issued, and the seized documents should be returned to her.

The High Court ruling

In a case that went all the way to the High Court, the journalist was ultimately successful.

The High Court ruled unanimously that the warrants relied upon by the AFP were invalid;

- on the ground they did not correctly state the substance of the crime being investigated; and

- failed to state the offence that the warrant related to with sufficient precision.

In particular, the warrants adopted language from a specific exception to the offence and incorrectly cited it as an element of the offence.

The entry, search and seizure undertaken by the AFP officers was therefore unlawful. The court unanimously ordered that the warrant be quashed, although declined to grant an injunction to the plaintiff for the return of the items seized.

Reasoning cited by the High Court

Citing the common law principle that a person's home is inviolable, the High Court noted that the requirement that a warrant properly states the offence is a matter that serves to strictly confine any exception to that principle.

The power to search has always been regarded as an exceptional power, to be exercised only under certain justifying conditions. The court noted that one essential condition found in statutes authorizing the issue of warrants for search and seizure is that the object of the search be specified by reference to a particular offence.

Here, the court said that this requirement of clarity is not satisfied simply because a court, with the benefit of submissions, is able to interpret the warrant in a way that provides sufficient content as to the offence.

"A statement of the offence… must have sufficient clarity that, without careful thought and consideration, it will inform the owner or occupier of the premises of the basis of the search and will reveal the nature and boundaries of the search to those executing the warrant."

In summary

The case serves as an important reminder of the importance of precision with search warrants and other compulsive methods provided to law enforcement agencies by legislation.

You can read more about search warrants in Queensland, in our article "Dealing with a Police search warrant – the do's and don'ts".

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