

Norman Murray Ingledew v The Financial Services Board

Case CCT 6/02

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The applicant, Mr Ingledew, was sued by the Financial Services Board in terms of the Insider Trading Act 1998. Before pleading to the claim, Mr. Ingledew asked for the production of the full record of an investigation by the Board into alleged insider trading by the applicant and others. When the Board refused his request, he applied to the Pretoria High Court for an order compelling the Board to furnish him with the requested information. The High Court refused this application. He subsequently approached the Constitutional Court for leave to appeal against the order of the High Court refusing him the requested information.

In his application to the Constitutional Court, the applicant contended that he was entitled to information under rule 35(14) and that, in view of the penal nature of the proceedings, the subrule should be construed purposively and in a manner that is consistent with section 32(1)(a) of the Constitution. In the alternative, he contended that he was nevertheless entitled to information sought directly under section 32(1)(a). The Board contended that Mr Ingledew does not need the material for purposes of pleading but will be entitled to some of it for the purposes of conducting trial. In addition, it argued that revealing some of the material would infringe the Board's professional legal privilege, would breach the right to privacy of informants and would jeopardise future investigations into insider trading.

The Court found that the central constitutional question raised by Mr. Ingledew is whether he could during the course of litigation obtain information directly under section 32(1)(a) without challenging the constitutionality of rule 35(14). Justice Ngcobo, who wrote the judgment for the Court, found it unnecessary to decide the constitutional question raised by the application. He concluded, however, that it was not in the interests of justice to grant the application for leave to appeal because the applicant will not be prejudiced if he did not get the information required at this stage of the proceedings. In reaching this conclusion, Justice Ngcobo found, amongst other things, that: (a) the applicant will be able to plead even if he did not get the information required; and (b) the applicant can utilize the pre-trial discovery procedures to obtain this information later. He accordingly dismissed the application for leave to appeal and directed the applicant to pay the costs of the application.