

# Access to affidavit denied

## *Quall v Northern Territory* [2010] FCA 417

Mansfield J, 21 April 2010

### **Issue**

The issue in this case was whether the Federal Court should accede to an oral request by a respondent party in one matter for access to a person's affidavit apparently filed in a different matter.

### **Background**

Victor Collins was a respondent party to the Howard Springs claimant application, one of a number of such applications made by Tibby Quall (the Quall applications) which had been dismissed. He sought access to the affidavit of John Hicks but made no formal application and did not support his oral application by affidavit. Mr Collins acknowledged that he could not use his status as a respondent to the Howard Springs application for some extraneous purpose, such as the acquisition of information for use in a different proceeding, but maintained the material would assist Mr Quall, the applicant in the Howard Springs application. The court refused his application on the grounds that:

- Mr Quall did not attend, did not seek the material and did not indicate that he supported Mr Collins seeking it on his behalf;
- 'more importantly', it was inappropriate to consider the application while the Quall applications stood dismissed;
- no real purpose would be served in terms of benefitting Mr Quall in the Howard Springs application unless and until the High Court heard and favourably determined his application for special leave to appeal and, if leave was granted, the appeal—at [4] to [7].

### **Decision**

The application was refused but leave was granted to renew it if the Howard Springs application was subsequently 're-enlivened'—at [8].

### **Postscript – special leave refused**

On 30 July 2010, Justices Hayne, Crennan and Bell refused to grant Mr Quall special leave to appeal—see *Quall v Northern Territory* [2010] HCATrans 186.