

DPP has win in withholding documents

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By Bret Christian

The "open book" policy of the Director of Public Prosecutions took a knock this week when one of his prosecutors successfully fought in the Supreme Court to withhold hundreds of pages of documents from the defence.

Lawyers for Sam Fazzari applied to be given access to running sheets of the police investigation into the death of Phillip Walsham at Stirling railway station in 1998.

Malcolm McCusker QC, for Mr Fazzari, told Chief Justice Wayne Martin that the defence had been given typewritten extracts from the running sheets.

These related to the years 2000 to 2004.

But during the second trial of the three men in March this year, the prosecution began referring to handwritten running sheets.

These covered the early part of the investigation, from 1998.

Mr McCusker said that eight years after the death, his clients were at a disadvantage in defending charges of wilful murder and were now mounting an appeal against the conviction.

During the trial, the handwritten notes were made available to the accused men, but they were not allowed to see them for this appeal.

DPP prosecutor Bruno Fiannaca said an application in an appeal must relate to a ground for appeal.

Otherwise, the request for documents should be treated as a fishing expedition.

He said no application had been made for an adjournment during the 10-week 2006 trial to give the accused men more time to study the running sheets.

Chief Justice Martin said that parliament apparently intended that appeal applications be linked to a ground for appeal.

He also refused an application for a list of 12 to 20 other suspects referred to in an interview by Detective Inspector Scott Higgins on the ABC's Australian Story program.

He said the television interview could not be regarded as evidence.

Another application for copies of train videos was also refused.

It was also revealed that test results on samples scraped from underneath Mr Walsham's fingernails became available only after the trial had ended.

These revealed no DNA from fending off a possible attacker, or fibres, but DNA "consistent with Mr Walsham".

Chief Justice Martin refused a request from the defence to independently test the fingernail samples.