



HIGH COURT OF AUSTRALIA

Public Information Officer

11 May 2006

ANDREW CHARLES THEOPHANOUS v COMMONWEALTH OF AUSTRALIA

A law exposing a former MP to loss of superannuation benefits following his conviction and imprisonment on corruption charges was upheld by the High Court of Australia today.

Dr Theophanous was a Labor member of the House of Representatives from 1980 to 2001. Since then he has received a retirement allowance under the parliamentary superannuation scheme. Dr Theophanous elected to convert half of his allowance to a lump sum of \$367,763.37, and also receives a gross fortnightly payment of \$1,575.32. Should he die before his wife, Dr Kathryn Eriksson, she would continue to receive benefits under the *Parliamentary Contribution Superannuation Act*. In May 2002, Dr Theophanous was convicted of defrauding the Commonwealth by making false representations in relation to an immigration matter, taking an unlawful inducement, and soliciting an unlawful inducement. He was also convicted of conspiring to defraud the Commonwealth by making false representations in relation to an immigration matter, but this was overturned on appeal and a retrial is pending. Dr Theophanous was sentenced to three years' imprisonment for the other three offences.

In 2004, the Justice Minister, pursuant to section 16 in Part 2 of the *Crimes (Superannuation Benefits) Act* (CSB Act), authorised the Director of Public Prosecutions to apply to the Victorian County Court for a "superannuation order" in respect of Dr Theophanous. That application has yet to be heard. Section 16 provides for a superannuation order when a current or former employee is convicted of an offence and the Minister is of the opinion that the offence is a corruption offence. "Employee" includes a member of Parliament. A superannuation order means all rights to future super benefits would cease, employer contributions must be repaid to the Commonwealth, plus interest, and the employee keeps only their own super contributions. Dr Eriksson would not be entitled to a benefit as a surviving spouse. The County Court has restrained Dr Theophanous from disposing of his interest in two parcels of land without the DPP's written consent.

In the High Court, Dr Theophanous issued a writ of summons seeking a declaration that Part 2 of the CSB Act is invalid so far as it applied to him. He argued that the relevant provisions are invalid as they provide for the acquisition of property – his parliamentary superannuation entitlement – but such acquisition was not on just terms in accordance with section 51(xxxi) of the Constitution. Dr Theophanous also asserts the operation of the Act on the contingent interest of his wife is invalid.

The High Court unanimously held that section 51(xxxi) is irrelevant to the application of Part 2 of the CSB Act to Dr Theophanous and that Part 2 is a valid law of the Commonwealth. A law such as Part 2 of the CSB Act which qualifies MPs' rights to remuneration by way of a sanction for corrupt abuse of office is within the power to grant remuneration. To place the law within section 51(xxxi) would weaken or destroy the sanction. The Court held that Dr Eriksson would only have an entitlement as a surviving spouse if her husband, at the time of his death, were entitled to a retirement allowance. If the superannuation order against Dr Theophanous is made, his wife will not become entitled to any such benefit.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*