



## HIGH COURT OF AUSTRALIA

9 October 2013

### JASON LEE (AKA DO YOUNG LEE) & ANOR v NEW SOUTH WALES CRIME COMMISSION

[2013] HCA 39

Today the High Court, by majority, dismissed an appeal from the Court of Appeal of the Supreme Court of New South Wales, which had ordered that the appellants be compulsorily examined under oath before a registrar of the Supreme Court of New South Wales pursuant to s 31D of the *Criminal Assets Recovery Act 1990* (NSW) ("the Act").

The appellants were each charged with drug and firearm offences and the first appellant was also charged with an offence of money laundering. The New South Wales Crime Commission ("the Commission") applied to the Supreme Court for orders under s 31D(1)(a) of the Act that the first appellant be examined on oath concerning his own affairs and that the second appellant be examined on oath concerning the affairs of the first appellant and a third party. There was a risk that the subject matter of those examinations would overlap with the subject matter of the pending criminal proceedings. A judge of the Supreme Court declined to make the orders sought by the Commission, holding that the risk such examinations posed to the appellants' pending trials may not be avoided by provisions of the Act.

The Commission applied for leave to appeal to the Court of Appeal. At that time, the appellants had been convicted of some of the drug and firearm charges and had lodged appeals against those convictions. The original money laundering charge and further money laundering charges against the first appellant were listed for trial. The Court of Appeal granted the Commission leave to appeal, allowed the appeal and made orders for the examination of the appellants. By special leave, the appellants appealed to the High Court.

In the High Court, the appellants argued that s 31D of the Act should not be construed as conferring power to order the examination on oath of a person against whom criminal proceedings have been commenced but not completed, to the extent that the subject matter of the examination would overlap with the subject matter of those proceedings.

The High Court, by majority, dismissed the appeal. The Court held that s 31D, when read in the context of the Act, authorised the Supreme Court to order such an examination. The potential prejudice to the fair trial of the examinee was mitigated by limitations on how information elicited from an examination could be used in criminal proceedings and by the discretion of the Supreme Court to decline to make an examination order in exercise of its inherent power to prevent the misuse of its processes. The minority Justices held that the case was governed by the High Court's decision in *X7 v Australian Crime Commission* (2013) 87 ALJR 858; (2013) 298 ALR 570; [2013] HCA 29 and that the appeal should be allowed.

- *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.*