HIGH COURT OF AUSTRALIA

26 May 2010 **Manager, Public Information**

THE QUEEN v LK
THE QUEEN v RK

[2010] HCA 17

On 19 May 2008, the respondents, LK and RK, were charged under s 11.5 of the *Criminal Code* (Cth) ("the Code") with conspiring to deal with money worth $1 million or more, being reckless as to the fact that the money was proceeds of crime. The money was part of a larger sum, in the order of $150 million, of which the Commonwealth Superannuation Scheme had been defrauded. Neither respondent was said to be a party to the fraud or to have knowledge of it. However, RK had agreed to a proposal, made by LK at the behest of a third party, that RK's Swiss bank account be used for the transfer of funds from Australia.

At the conclusion of the Crown's case in the District Court of NSW, the respondents submitted that there was no case to answer and requested that the trial judge direct the jury to acquit. The trial judge held that the offence with which the respondents had been charged was bad at or unknown to law. The Crown appealed under s 107 of the *Crimes (Appeal and Review) Act* 2001 (NSW) to the NSW Court of Criminal Appeal. That Court dismissed the appeal, holding that, to support the charge of conspiracy under the Code, the Crown had to prove that the respondents knew the facts constituting the offence the object of the conspiracy. Special leave to appeal to the High Court was granted on 19 June 2009.

Before the High Court, the Crown argued that the Court of Criminal Appeal's interpretation of the Code was incorrect. Today, that argument was rejected. The Court held that a person cannot be found guilty of conspiracy under the Code unless he or she knows — and is not simply reckless as to — the facts that make the proposed act or acts unlawful. In this case, the relevant fact was that the money was proceeds of crime.

The respondents had argued that no appeal lay to the Court of Criminal Appeal because s 107 of the *Crimes (Appeal and Review) Act* did not come into effect until after the proceedings against the respondents had been commenced. The High Court rejected the argument on the basis that the respondents' trial commenced with their arraignment in the District Court, which was after 15 December 2006, when the *Crimes (Appeal and Review) Act* came into operation.

The respondents had also argued that the provision of an appeal by the Crown against a directed verdict of acquittal infringed the guarantee in s 80 of the Constitution of trial by jury for offences against Commonwealth law tried on indictment. This argument was also rejected. The High Court held that the creation of such a right of appeal did not interfere with the jury's function because a jury can exercise no discretion in the face of a direction from a trial judge to return a verdict of acquittal. As the appeal against the directed verdict involved only questions of law, there was no infringement of s 80 of the Constitution.

The High Court dismissed the appeals and upheld the decision of the Court of Criminal Appeal.

- *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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6881
Email: enquiries@hcourt.gov.au