

## **HENDERSON v STATE OF QUEENSLAND (B22/2014)**

Court appealed from: Court of Appeal of the Supreme Court of Queensland  
[2013] QCA 82

Date of judgment: 16 April 2013

Special leave granted: 16 May 2014

In April 2002, police searched a motel room at which the appellant was staying. There they found illegal drugs in the possession of acquaintances of the appellant's who were the focus of the search. The police also searched a car that the appellant had hired. In the boot they found a small quantity of cannabis, along with \$598,325 cash ("the money"). The appellant, who had a lengthy criminal record, claimed to have obtained the money by selling a collection of antique jewellery which he and three of his siblings had inherited from their late father. The police however seized the money and banked it, suspecting it to be tainted property.

The police later obtained a restraining order against the money under the *Criminal Proceeds Confiscation Act 2002 (Qld)* ("the Act"), upon satisfying the Supreme Court that they had reasonably suspected that the money was property of a person who had engaged in an activity that constituted a serious criminal offence.

The respondent ("the State") later applied, under s 56 of the Act, for an order of forfeiture of the money to it. In response, the appellant applied for an exclusion order under s 65 of the Act, to exclude the whole of the money from any forfeiture order that would be made. The success of the appellant's application depended upon a finding under s 68(2)(b) of the Act that the money had probably not been illegally acquired.

The appellant gave evidence that his father, about four to five years before his death in 2001, gave the appellant a boxful of jewellery and told him to use it to look after his siblings. The appellant and three of his siblings all gave evidence that their father had told them that he had a collection of jewellery that had been given to an ancestor of his as a reward for services provided to Russian nobles. Such a gift would have been made in the late 1800s or early 1900s. The appellant's evidence was that after his father's death he obtained a valuation of the jewellery, which estimated it to be worth between \$600,000 and \$700,000 wholesale or \$1 million retail. The appellant then sold the jewellery for \$620,000 cash to a man who was later untraceable, as his details had been written only on a \$50 note which had since been exchanged (either by the appellant or by the police when the money was banked). The valuer named by the appellant was unfit to give evidence, but sketches of the jewellery made by him were examined by a valuer called by the State, who gave evidence that the jewellery in those sketches would have been made after 1950.

On 22 November 2011, Justice P Lyons ordered that the money be forfeited to the State and dismissed the appellant's application for an exclusion order. His Honour found that the appellant had received the jewellery from his father and

that the money was the product of the sale of that jewellery, as “[t]he evidence does not identify any other potential source of the funds.” Justice Lyons then held however that the appellant had failed to prove that the jewellery had not been illegally acquired, as he was unable to establish how his father had come to possess it.

On 16 April 2013 the Queensland Court of Appeal (Holmes & White JJA, Daubney J) unanimously dismissed the appellant’s appeal. Their Honours held that the appellant could not succeed by raising an absence of evidence as to how his father had acquired the jewellery, as the Act cast the onus on the appellant to prove that relevant property had not been illegally acquired. He therefore had to prove both that the jewellery was from an era when it had allegedly come into the family and that his father had not unlawfully acquired it. The Court found it open to Justice Lyons to find that that onus had not been discharged.

The grounds of appeal include:

- The Court of Appeal erred in ruling that for the appellant to succeed in his application he had to persuade the Court that his deceased father prior to gifting him the jewellery had come by the jewellery lawfully.
- The Court of Appeal erred in failing to find that possession of the jewellery by the appellant’s deceased father was prima facie evidence of ownership by the appellant’s father.