



## HIGH COURT OF AUSTRALIA

Public Information Officer

May 7, 2003

### ROBERT JAMES MACLEOD v THE QUEEN

The High Court of Australia today unanimously dismissed an appeal from Mr Macleod against conviction of five offences of fraud.

The charges related to an enterprise run by Mr Macleod between 1989 and 1994. He controlled three companies, including Trainex Pty Ltd, which were designed to obtain tax concessions for film production. Investors contributed more than \$6 million but only \$718,000 was used to make films or videos. Mr Macleod allegedly used more than \$2.2 million for his own benefit, including buying a \$1 million Gold Coast unit.

The five charges with which the appeal to the High Court was concerned involved the fraudulent misuse during 1991 of \$1.3 million of Trainex funds in contravention of section 173 of the New South Wales Crimes Act.

The NSW Court of Criminal Appeal rejected Mr Macleod's claim that as the sole shareholder and director of Trainex he, and therefore Trainex, consented to the particular applications of company property. It also rejected challenges to the District Court trial judge's directions to the jury on the question of what constituted fraud.

The High Court rejected Mr Macleod's submission that the prosecution had failed to prove lack of consent by the victim of the fraud, as the self-interested consent of the controller could not be said to represent the consent of the company. The Court held that under section 173 criminal liability depended upon the application of company property by an accused for his own benefit and in a manner inconsistent with the purposes of the company.

The Court also rejected claims that the jury was misdirected. It said the judge correctly directed the jury that it should decide whether Mr Macleod was acting honestly by the standards of ordinary decent people, and that it was open to the jury to conclude that he knew his actions were dishonest. There was ample evidence of a deliberate and sustained course of deception to indicate a lack of genuine belief in an entitlement to use Trainex's property for his own benefit instead of fulfilling his obligations to investors.

- *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.*