



HIGH COURT OF AUSTRALIA

Manager, Public Information

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BRIAN GEORGE LANE v COLONEL PETER JOHN MORRISON [2009] HCA 29

The High Court today determined that Colonel Peter Morrison, a Military Judge, may not proceed with trying charges against Mr Brian Lane, a former member of the Royal Australian Navy (RAN), because the legislation creating the Australian Military Court, in which the charges were to be heard, is constitutionally invalid.

Mr Lane was a member of the RAN before transferring to the Naval Reserve on 14 March 2007. On 8 August 2007 he was charged with offences alleged to have occurred in August 2005 when he was still a member of the RAN. He was discharged from the Naval Reserve with effect from 3 September 2007. On 26 November 2007 the Chief Military Judge of the Australian Military Court (AMC) nominated Colonel Morrison to try the charges against Mr Lane. When the matter first came before the AMC on 25 March 2008, Mr Lane objected to the jurisdiction of the AMC. In May 2008 he filed an application in the High Court seeking an order prohibiting Colonel Morrison from hearing the charges, and a declaration that the provisions of the legislation which created the AMC are invalid.

The AMC was created by the insertion of new provisions into the *Defence Force Discipline Act* 1982 (Cth), to replace the system of courts-martial which had previously existed. The new provisions state that the AMC is a court of record, and that it consists of a Chief Military Judge and such other Military Judges as hold office from time to time in accordance with the Act. A Note to section 114 of the Act specifically states the AMC is not a court for the purpose of Chapter III of the Constitution.

Having regard to the attributes of the AMC and the way in which it operates, the Court concluded that the legislation requires the AMC to exercise the judicial power of the Commonwealth, without being set up as a court established under Chapter III of the Constitution (in which the power to create the federal judiciary is contained). For that reason the legislation creating the AMC was invalid.

The High Court ordered that a writ of prohibition should issue, prohibiting Colonel Morrison from proceeding with the charges against Mr Lane, and made a declaration that Division 3 of Part VII of the *Defence Force Discipline Act* 1982 (Cth), which created the AMC, was invalid.

- *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.*