



HIGH COURT OF AUSTRALIA

10 August 2011

ABLE SEAMAN JOSEPH ANTHONY PETER HASKINS v THE COMMONWEALTH OF AUSTRALIA

PAUL NICHOLAS v THE COMMONWEALTH OF AUSTRALIA & ANOR

[2011] HCA 28; [2011] HCA 29

Today the High Court held that items 3, 4 and 5 of Schedule 1 to the *Military Justice (Interim Measures) Act (No 2) 2009* (Cth) ("the Interim Measures No 2 Act") are valid laws of the Commonwealth Parliament. The High Court also held that the Interim Measures No 2 Act provided lawful authority justifying the detention of Able Seaman Haskins.

On 26 August 2009, in *Lane v Morrison* (2009) 239 CLR 230, the High Court declared that the Australian Military Court ("AMC") established under the *Defence Force Discipline Act 1982* (Cth) ("the Discipline Act") was not validly created.

In September 2009, in response to the Court's decision in *Lane v Morrison*, the Commonwealth Parliament enacted the *Military Justice (Interim Measures) Act (No 1) 2009* (Cth) ("the Interim Measures No 1 Act") and the Interim Measures No 2 Act. The Interim Measures No 1 Act amended the Discipline Act to restore the system of military disciplinary tribunals in existence before the AMC's creation. The Interim Measures No 2 Act imposed disciplinary sanctions on persons corresponding to punishments which had been invalidly imposed by the AMC in the period between the AMC's establishment and the declaration of invalidity by the High Court. The Interim Measures No 2 Act did not purport to validate any convictions or punishments imposed by the AMC or convict any person of any offence.

Able Seaman Haskins enlisted in the Royal Australian Navy on 5 April 2004. On 11 December 2008, he was found guilty by the AMC of 11 counts of misusing a Defence Travel Card. On one count he was sentenced to a severe reprimand and on the others he was sentenced to detention for various periods. He served his sentences at the Defence Force Corrective Establishment between December 2008 and January 2009.

From 1 January 2004 until 25 August 2008, Mr Paul Nicholas was a commissioned officer in the Australian Army, holding the rank of Captain. In August 2008 he was convicted by the AMC of two charges of obtaining a financial advantage contrary to s 135.2(1) of the *Criminal Code* (Cth) and two charges relating to perverting the course of justice. He was sentenced to be reduced in rank to Lieutenant, to dismissal from the defence force and to a severe reprimand. Orders were made that he pay reparation to the Commonwealth.

After *Lane v Morrison* was decided and the Interim Measures Acts enacted, Able Seaman Haskins and Mr Nicholas separately brought proceedings in the High Court's original jurisdiction. Able Seaman Haskins claimed, among other things: (a) a declaration that he was falsely imprisoned by the Commonwealth, its officers, representatives, servants and/or agents, (b) damages, and (c) a

declaration that his claims in (a) and (b) were unaffected by the Interim Measures No 2 Act. Mr Nicholas sought a declaration that item 5 of Schedule 1 to the Interim Measures No 2 Act was invalid, together with declarations that the convictions recorded by the AMC against him, the punishments imposed on him and his dismissal from the defence force were invalid and of no effect.

In both proceedings, the High Court, by majority, held that the impugned provisions of the Interim Measures No 2 Act did not contravene Ch III of the Constitution and were valid.

In the proceedings brought by Able Seaman Haskins, the High Court held that, on its proper construction, the Interim Measures No 2 Act provided lawful authority justifying his detention. The impugned provisions of the Interim Measures No 2 Act were also held not to contravene s 51(xxxi) of the Constitution on the basis that no action for false imprisonment lay against the Commonwealth and that therefore no property of Able Seaman Haskins was acquired.

- *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.*