

ASSET CONFISCATION UPDATE – 14 April 2008

by Christian Juebner
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DPP v Nikolaou

Justice Kaye today handed down his decision in *DPP v Nikolaou* [2008] VSC 111, again refusing the DPP's application for forfeiture of real estate under s.32 of the *Confiscation Act*.

The DPP sought forfeiture of a house that was used to hydroponically cultivate cannabis. The hydroponic system was sophisticated, with high power lights and an electricity bypass. The respondent (and defendant) was the sole owner of the property, having inherited it from his parents.

The respondent had admitted growing the cannabis for the purpose of resale and admitted making some such sales.

In refusing forfeiture, Justice Kaye observed that the following matters were relevant to the exercise of his discretion:

- If opposing forfeiture on the grounds of hardship, it is necessary to show hardship

other than what might be expected to arise from the ordinary operation of the *Confiscation Act*.

- The gravity of the offending, the degree to which the property in question was used for the purpose of the offending and the potential effect of forfeiture on the offender and innocent third parties.
- Whether forfeiture would be disproportionate to the nature and gravity of the offence.

The refusal to order forfeiture in *Nikolaou* follows in the footsteps of three other refusals by the Supreme Court in *DPP v Tran* [2004] VSC 218, *DPP v Smith* [2007] VSC 98 and *DPP v Gyurcik* [2007] VSC 424.

About the author

Christian Juebner is a barrister at the Victorian Bar. Christian practices predominantly in confiscations and proceeds of crime.

Before coming to the Bar, Christian was a partner with Deacons. Through his commercial experience, he has a detailed

knowledge of property, equity and trust issues, all of which are relevant to and impact on proceedings under the Confiscation Act.

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