

ASSET CONFISCATION UPDATE – 26 June 2009 – Part 2

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DPP v Ali ***Court of Appeal decision*** ***concerning civil forfeiture*** ***restraining order***

On 26 June 2009, the Court of Appeal (Maxwell P, Weinberg JA and Kyrou AJA) handed down its decision in *DPP v Ali* [2009] VSCA 162.

The Court of Appeal set aside the decision of Smith J below in which Smith J held that the DPP was not permitted to make an application for a civil forfeiture restraining order over property of Mr Ali in circumstances where:

- that same property had previously been the subject of a conviction based restraining order; and
- the conviction based restraining order ceased to operate upon Mr Ali's acquittal.

The effect of the Court of Appeal's decision is that the DPP can seek to restrain property (for the purposes of civil forfeiture) which

is suspected of being tainted property in relation to a Schedule 2 offence even **after** the particular defendant has been acquitted of the charges and despite the fact that an earlier restraining order ceased to operate upon acquittal.

It follows that practitioners can expect the DPP to make applications to restrain property for the purposes of civil forfeiture after acquittal where there is a reasonable suspicion that the relevant property is tainted property in relation to a Schedule 2 offence.

Although the acquittal will bring finality to the criminal process, it will no longer bring finality to proceedings under the *Confiscation Act*.

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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