



HIGH COURT OF AUSTRALIA

30 November 2011

AUSTRALIAN CRIME COMMISSION v LOUISE STODDART & ANOR

[2011] HCA 47

Today the High Court upheld an appeal by the Australian Crime Commission ("the ACC") against the decision of the Full Court of the Federal Court of Australia, which had granted a declaration that the *Australian Crime Commission Act 2002* (Cth) ("the Act") had not abrogated the common law privilege against spousal incrimination. The High Court held that the common law does not recognise a privilege against spousal incrimination.

The ACC is established by s 7(1) of the Act. One of its functions is to investigate matters related to "federally relevant criminal activity". Section 24A of the Act empowers an examiner appointed by the Governor-General under s 46B of the Act to conduct an examination for the purposes of a "special ACC operation/investigation". In response to a summons issued under s 28 of the Act by the second respondent, an examiner, the first respondent, Louise Stoddart, attended an examination to give evidence of "federally relevant criminal activity" involving named persons including the first respondent's husband. Section 30(2)(b) of the Act provides that a person appearing as a witness before an examiner shall not refuse or fail to answer a question that he or she is required to answer by the examiner. Failure to answer questions as required is an offence punishable on conviction by penalties including imprisonment.

In the course of answering questions concerning details of her husband's business, the first respondent claimed to be entitled to "the privilege of spousal incrimination", meaning she had a right not to give evidence that might incriminate her husband. The Act contains no mention of such a privilege. The examination was adjourned to enable the first respondent to bring proceedings in which the questions whether the claimed privilege existed, and if so whether it continued to have effect, could be determined.

In the Federal Court the primary judge dismissed the first respondent's application for declaratory and injunctive relief, holding that a spousal privilege existed at common law but that it was abrogated by the Act. On appeal, the Full Court of the Federal Court held by a majority that the common law privilege against spousal incrimination existed and that the Act had not abrogated that privilege, and granted declaratory relief.

The appellant appealed to the High Court, submitting that the Full Court erred in recognising a common law privilege against spousal incrimination, and, in the alternative, that the Full Court should have held that s 30 of the Act dealing with the privilege against self-incrimination abrogated the spousal privilege if it otherwise existed. The High Court held by majority that the claimed privilege against spousal incrimination does not exist at common law. The first respondent was a competent witness to be examined under the Act and was compelled by the provisions of that Act to give evidence. No privilege of the kind claimed could be raised in answer to that obligation. It was therefore not necessary to consider the appellant's alternative submission.

- *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.*