

STOTEN v. THE QUEEN (B24/2011)
HARGRAVES v. THE QUEEN (B28/2011)

Court appealed from: Court of Appeal of the Supreme Court of
Queensland [2010] QCA 328

Date of judgment: 23 November 2010

Date of grant of special leave: 13 May 2011

On 8 March 2010 after a trial by jury, each of the appellants were convicted of one count of conspiracy to dishonestly cause a loss to the Commonwealth, and were acquitted of one count of conspiracy to defraud the Commonwealth. They were each sentenced to six and a half years' imprisonment with a non-parole period of three years and nine months. The appellants, together with the brother of Mr Hargraves (acquitted on identical counts) were directors and shareholders of a company ("PDC") which produced local phone directories. PDC used a Chinese company, QH Data, to compile data for incorporation into PDC products. The Crown alleged that the appellants agreed to make false representations to the Commonwealth as to the allowable tax deductions of PDC. The agreement was implemented by a scheme which involved PDC entering into an agreement in 1999 devised by Strachans (a Swiss accounting firm) whereby instead of QH Data rendering its invoices to PDC it would render them to Amber Rock Pty Ltd (a company incorporated in the British Virgin islands). Amber Rock would inflate the amount of each invoice by an amount specified by one of the appellants and forward it to PDC. PDC would then pay the total invoiced amount to Amber Rock. Amber Rock would pay QH Data the amount invoiced by it and pay the balance into trusts from which distributions would be made into bank accounts held by the appellants. Those accounts would be accessed by the appellants through withdrawals from automatic teller machines in Australia. In its 2000 to 2004 tax returns, PDC claimed tax deductions for the inflated amounts. The scheme continued to operate until, in mid-2005 as part of Operation Wickenby, the appellants' offices and homes were raided by the Australian Crime Commission and the Australian Federal Police. The appellants' defence was that, based on professional advice they had received, they believed at all times that the scheme was a legitimate means of tax minimisation, and a critical basis for this belief was that they did not have control over the structure and, in particular, the disposition of the moneys paid to Amber Rock and the trusts.

The Court of Appeal dismissed the appeals against convictions but allowed the appeals against sentence. Muir JA gave the principal judgment of the Court, with which Fraser JA and Atkinson J agreed. Muir JA rejected the appellants' argument that the trial judge misdirected the jury as to the belief about the legitimacy or unlawfulness of the scheme by leaving open to the jury the rejection of such a belief by reference to "another possibility" not raised by either the prosecution or the defence. Muir JA found error in the trial judge's direction to the jury that they may evaluate evidence on the basis of the interest of a witness in the outcome of the trial. However, her Honour concluded that the evidence adduced by the Crown was overwhelming and applied the proviso.

The grant of special leave to appeal was limited to a single ground of appeal. Notices pursuant to s 78B of the *Judiciary Act* 1903 (Cth) have been filed in each appeal.

The ground of appeal for which special leave was granted is:

- In applying the proviso, the Court of Appeal did not take into account:
 - whether the “interest” direction constituted a significant denial of procedural fairness as described in *Weiss*;
 - whether, given that these were offences under Commonwealth law, the provisions of s 80 of the *Constitution* are inconsistent with the application of the proviso.