**SHORT PARTICULARS OF CASES**
**APPEALS**

**COMMENCING TUESDAY, 2 AUGUST 2011**

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**WOTTON v. STATE OF QUEENSLAND AND ANOR (S314/2010)**

Writ of Summons: Issued 22 December 2010

Date of Referral of Special Case to the Full Court: 16 May 2011

The plaintiff, Lex Wotton, is an Australian citizen and Aboriginal person who was born on Palm Island in the State of Queensland and has resided on Palm Island for most of his life. He has been and wishes to continue to be an active participant in the public life of Palm Island and a leader in the Palm Island Aboriginal community. He also wishes to participate in public discussion of political and social problems affecting Aboriginal persons in Australia and problems in the prison system in Queensland that he experienced as a result of his incarceration.

On or about 26 November 2004 a riot occurred on Palm Island following the death of an Aboriginal man, Mulrunji Doomadagee. In November 2008, following a trial by jury, Mr Wotton was sentenced to six years imprisonment for his part in this riot.

Mr Wotton was released on parole on 19 July 2010. His parole order imposed a number of conditions on him including a number of special conditions imposed pursuant to s 200(2) of the *Corrective Services Act* 2006 (Qld). These special conditions included conditions that he: not attend public meetings on Palm Island without the prior approval of the corrective services officer (condition (t)); be prohibited from speaking to and having any interaction whatsoever with the media (condition (u)); and, receive no direct or indirect payment or benefit to him, or through any members of his family, through any agent, through any spokesperson or through any person or entity negotiating or dealing on his behalf with the media (condition (v)). His parole order will expire on 18 July 2014.

The Special Case states the following questions for consideration by the Full Court:

- Is s 132 of the *Corrective Services Act* 2006 (Qld) invalid because it impermissibly burdens the freedom of communication of government and political matters, contrary to the Commonwealth Constitution?

- Are conditions (t), (u) and (v) of the Plaintiff's Parole Order invalid because they impermissibly burden the freedom of communication of government and political matters, contrary to the Commonwealth Constitution?

- Is s 200(2) of the *Corrective Services Act* 2006 (Qld) invalid to the extent it authorizes the imposition of the conditions (t), (u) and (v) of the Plaintiff's Parole Order?

- Who should pay the costs of the special case?

Notice of a Constitutional Matter has been given as required by s 78B of the *Judiciary Act* 1903 (Cth). The Attorneys-General for Victoria, and New South Wales have indicated that they will be intervening in this matter pursuant to s 78A of the *Judiciary Act.*

**MOTI v. THE QUEEN (B19/2011)**

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| Court appealed from: | Court of Appeal of the Supreme Court of Queensland [2010] QCA 178 |
| Date of judgment: | 16 July 2010 |
| Date of grant of special leave: | 13 May 2011 |

This appeal challenges the decision of the Court of Appeal to set aside the order of Mullins J to stay proceedings, as an abuse of process, on an indictment charging the appellant with 7 counts of unlawful sexual intercourse with a person under the age of 16 years, contrary to s50BA of the *Crimes Act* 1914 (Cth). The appellant was at the relevant time an Australian citizen and the offences are alleged to have occurred outside Australia (in Vanuatu and New Caledonia) in 1997.

The appellant had been charged in 1998 in Vanuatu with several offences relating to the same conduct but was ultimately discharged. The appellant later travelled to the Solomon Islands. The Australian High Commissioner to the Solomon Islands urged an investigation by the Australian Federal Police into the Vanuatu charges, on the basis of concern about the appellant's possible appointment as the Attorney-General of the Solomon Islands. In October 2004 the AFP commenced an investigation into possible offences under s50BA of the *Crimes Act*, travelling to Vanuatu to obtain statements from the complainant, her parents and her brother. A warrant for the appellant's arrest and an Interpol notice were issued in August 2006. The appellant was appointed Attorney-General of the Solomon Islands in September 2006, although he lost that office with the change of government in December 2007. On 21 December 2007 the Australian Government issued a further extradition request but on 24 December 2007 the new government of the Solomon Islands made a deportation order against the appellant. He was arrested, escorted onto a flight to Brisbane by Solomon Island officials to whom visas for that purpose were granted, and arrested on arrival by AFP officers.

The complainant had been brought to Brisbane by the AFP in October 2006 and remained for several months for the purpose of giving statements to the AFP and the Commonwealth DPP. During this time she raised concerns about her safety in Vanuatu but the AFP found no evidence of an actual threat and she returned to Vanuatu. On 24 December 2007 the complainant told the AFP that she wanted herself and her family taken to Australia until the end of the appellant's trial or she would withdraw from the case. Her father told the AFP that his business in Vanuatu was adversely affected by the publicity and that the complainant and her family wanted to be taken to Australia and given financial support or the complainant would withdraw from the case. The AFP brought the complainant to Australia and, between February 2008 and November 2009, paid financial support in a monthly allowance in total of $67,576 to the complainant and $81,639 to her parents and brother in Vanuatu.

Mullins J found that the purpose of the financial support was to ensure that the complainants and her parents and brother remained willing to give evidence against the appellant. Her Honour concluded that it raised questions about the integrity of the administration of justice, brought the administration of justice into disrepute and was an affront to public conscience. Her Honour rejected the

appellant's argument that the circumstances of the appellant's deportation constituted an abuse of process.

The Court of Appeal unanimously allowed the respondent's appeal and set aside the stay order. Holmes JA gave the principal judgment, with which Muir JA agreed. Fraser JA agreed with the orders of the majority and with the reasoning of Holmes JA on the witness payments point. Unlike Holmes and Muir JJA, Fraser JA would have granted leave to the appellant to file a notice of contention, but agreed with Holmes JA that there was no merit in the proposed grounds, primarily being that the deportation of the appellant was a de facto extradition and of itself constituted an abuse of process. Holmes JA found that the primary judge had erred by failing to recognise that the witness payments were not designed to procure evidence from the witnesses but to ensure their continuing willingness to give evidence. Their statements had been given before the payment of the financial support. Her Honour also held that the primary judge had failed to pay sufficient regard to the fact that although the payments were beyond the applicable guidelines, they were not illegal. On the notice of contention issue, Holmes JA held that because the appeal had been brought under s 669A(1A) of the Criminal Code, which provides for an appeal by the Attorney-General against an order staying proceedings on an indictment, the Court of Appeal was limited to an examination of the primary judge's reasons for granting the stay.

The grant of special leave to appeal was limited to two grounds of appeal. A notice pursuant to s 78B of the *Judiciary Act* 1903 (Cth) has been filed.

The grounds of appeal for which special leave was granted are:

- The Court of Appeal erred in holding that it was not open to the primary judge to exercise her discretion to stay proceedings against the appellant on the basis that payments to prosecution witnesses in the circumstances brought the administration of justice into disrepute;

- The Court of Appeal erred in failing to give effect to the principle established in *R v Horseferry Road Magistrates Court; ex parte Bennett* [1994] 1 AC 42 that the courts should refuse to try an accused who has been brought to the jurisdiction, with the concurrence or connivance of the executive authorities, in disregard of extradition procedures and in breach of his rights under the Deportation Act of the Solomon Islands and in breach of a court order made in the Solomon Islands.

**STRONG v WOOLWORTHS LIMITED T/AS BIG W & ANOR (S172/2011)**

Court appealed from: New South Wales Court of Appeal
[2010] NSWCA 282

Date of judgment: 2 November 2010

Date of grant of special leave: 13 May 2011

On 24 September 2004 the Appellant (an amputee who uses crutches) fell and injured herself at the Centro Taree Shopping Centre. The accident occurred indoors, in a "sidewalk sales" area occupied by Woolworths Limited ("Woolworths") trading as "Big W". In the proceedings before Judge Robison, the Appellant submitted that her fall had resulted from the Second Respondent's negligence (in failing to keep the floor area clean), or alternatively Woolworths' failure to do likewise. The sole dispute in this matter was whether the Appellant had established causation.

Judge Robison accepted that there had been grease on the floor (from a fallen chip) which had caused the Appellant to slip. His Honour also found that Woolworths, as “occupier", had the responsibility for cleaning the area in question. He noted however that Woolworths had no cleaning system in place. Judge Robison then went on to conclude that Woolworths was liable in negligence and he awarded the Appellant a substantial sum of damages. His Honour also dismissed the claim against the Second Respondent.

Upon appeal, Woolworths disputed Judge Robison's conclusion that there was a causal connection between its breach of duty and the damage suffered by the Appellant. On 2 November 2010 the Court of Appeal (Campbell & Harrison JJ, Handley AJA) unanimously agreed. Their Honours held that even if a reasonable cleaning system had been in place, the Appellant still may have slipped and injured herself.

Their Honours held that the Appellant, while keeping a careful lookout for potential hazards, was partly distracted by the pot plants on sale in the "sidewalk sales" area. In asking whether she would not have been injured even if Woolworths had a reasonable cleaning system in place, the Court of Appeal said that the answer was *“maybe”* and not *“more likely than not”*. In the circumstances then, their Honours held that the Appellant had not established causation.

The grounds of appeal are:

- The New South Wales Court of Appeal erred in its finding that causation had not been established by the Appellant.
- The New South Wales Court of Appeal erred in its findings as to causation relating to:
    a) What was available to be found by way of inference in the circumstances;
    b) The correct application of principles governing legal and evidential onus;

c) The correct interpretation and application of ss 5D and 5E of the *Civil Liability Act* 2002 (NSW) in so far as they may have applied to the case; and

d) The failure to direct itself as to the proper legal and evidential questions which arose in the case.

**WILLIAMS v COMMONWEALTH OF AUSTRALIA & ORS (S307/2010)**

Writ of summons filed: 21 December 2010

Special case referred to the Full Court: 9 May 2011

Special case filed: 18 May 2011

The Plaintiff is the parent of four children currently enrolled at the Darling Heights State Primary School ("the School"). The Fourth Defendant, Scripture Union Queensland ("SUQ") has provided chaplaincy services in Queensland schools for reward since at least 1991. The National School Chaplaincy Program ("NSCP") was introduced by former Prime Minister, Mr John Howard, in 2006. In 2010 the current Prime Minister, Ms Julia Gillard, pledged $222 million to extend that program for four years.

In 2007 the Commonwealth entered into a funding agreement ("the Darling Heights Funding Agreement") with SUQ for the provision of funding under the NSCP with respect to the School. Neither the Plaintiff, nor any of his children, has participated in any program or chaplaincy service at the School provided pursuant to the NSCP. There is also no obligation for them to have done so.

The Plaintiff seeks to stop the Federal Government from spending taxpayer's money on the NSCP. He argues that that funding breaches s 116 of the Constitution which states:

*"The Commonwealth shall not make any law for establishing any religion or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".*

On 9 May 2011 Justice Gummow referred this matter into the Full Court by way of a special case.

The questions of law reserved for the consideration of the Full Court include:

- Does the Plaintiff have standing to challenge:

  a) the validity of the Darling Heights Funding Agreement?

  b) the drawing of money from the Consolidated Revenue Fund for the purpose of making payments pursuant to the Darling Heights Funding Agreement during the following financial years:

     i) 2007-2008;
     ii) 2008-2009;
     iii) 2009-2010;
     iv) 2010-2011?

  c) the making of payments by the Commonwealth to SUQ pursuant to the Darling Heights Funding Agreement during the following financial years:

i) 2007-2008;
ii) 2008-2009;
iii) 2009-2010;
iv) 2010-2011?

- If the answer to Question 1(a) is Yes, is the Darling Heights Funding Agreement invalid, in whole or in part, by reason that the Darling Heights Funding Agreement is:

  a) beyond the executive power of the Commonwealth under s 61 of the Constitution?

  b) prohibited by s 116 of the Constitution?

Notices pursuant to s 78B of the *Judiciary Act* 1903 have been filed on behalf of both the Plaintiff and the First, Second and Third Defendants. The Attorneys-General for New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania have all advised the Court that they will be intervening in this matter.

On 5 May 2011 the Churches Commission on Education Incorporated filed a summons, seeking leave to intervene in this matter.