

BETWEEN:

STEVEN JAMES LEWIS
Appellant

and

THE AUSTRALIAN CAPITAL TERRITORY
Respondent

10

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Publication

1. I certify that this outline is in a form suitable for publication on the internet.

Part II: Propositions

(1) No basis for substantial compensatory damages

2. The Sentence Administration Board was obliged to cancel the Appellant's periodic detention which, coupled with his underlying sentence of imprisonment, resulted in the Appellant's detention (RS [13]-14]; [25(b)]).

Crimes (Sentence Administration) Act 2005 (ACT), s 69 (JBA Vol 1 Tab 3)

Lewis v Australian Capital Territory (2018) [2018] ACTSC 19; (2018) 329 FLR 267 at [82], [154] (CAB Tab 1)

3. The failure of the Board to afford procedural fairness, that is to ensure that the Appellant had the opportunity to decide whether to attend the inquiry at which the cancellation decision was made, was not relevant to that decision (RS [45]).

Lewis v Chief Executive of the Department of Justice and Community Safety of the Australian Capital Territory & Anor [2013] ACTSC 198; (2013) 280 FLR 118 at [203]-[205] (JBA Vol 5 Tab 41)

30

4. In the circumstances of his detention, having suffered no loss or injury, the Appellant is entitled to no more than nominal damages (RS [25]-[26]).

5. The award of nominal damages for false imprisonment in the present case is governed by ordinary compensatory principles, which are reflected in the decision in *R (Lumba) v Secretary for the Home Department* [2012] 1 AC 245 (*Lumba*) (RS [40]).

Lumba at [70], [95]; [235]; [252]-[253] (**JBA Vol 6 Tab 55**)

6. This authority has been subsequently endorsed both in the United Kingdom and in Australia, and should be followed in the present case (RS [18], [34]).

R (Hemmati) v Secretary of State for the Home Department [2019] 3 WLR 1156 at [97]-[98], [106]-[112] (**JBA Vol 6 Tab 52**)

- 10 *Bostridge v Oxleas NHS Foundation Trust* [2015] EWCA Civ 79 at [21]-[27] (**JBA Vol 4 Tab 25**)

R (Kambadzi) v Secretary of State for the Home Department [2011] 1 WLR 1299 at [38], [55]-[56]; [74], [77] (**JBA Vol 6 Tab 54**)

CPCF v Minister for Immigration and Border Protection (2015) 255 CLR 514 at [154]-[155]; [324]-[325]; [512] (**JBA Vol 2 Tab 7**)

Fernando v Commonwealth (2014) 231 FCR 251 at [76], [81]-[82], [88]-[89]; [166] (**JBA Vol 4 Tab 30**)

(2) “Vindictory damages” unavailable under Australian law

7. The Appellant has not demonstrated the existence or utility of a separate and
20 additional category of “vindictory damages” under Australian law (RS [47]-[48], [55]).

Cf. *Plenty v Dillon* (1991) 171 CLR 635 at 645 (**JBA Vol 3 Tab 13**)

8. The decisions of foreign courts relied upon by the Appellant do not demonstrate that a separate category of “vindictory damages” would serve any distinct or useful purpose in tortious cases (RS [49]-[54]).

R (Lumba) v Secretary for the Home Department [2012] 1 AC 245 at [93]; [100]-[101]; [233], [235]-[237] (**JBA Vol 6 Tab 55**)

Takitota v A-G (Bahamas) [2009] UKPC 11 at [14]-[16] (**JBA Vol 7 Tab 65**)

Cf. *Rees v Darlington Memorial Hospital NHS Trust* [2004] 1 AC 309 at [8];
30 [13], [17]; [74]; [123]; [148] (**JBA Vol 7 Tab 57**)

Cf. Roberts v Chief Constable of the Cheshire Constabulary [1999] 1 WLR 662 at 668 (**JBA Vol 7 Tab 57**)

9. The Appellant has not demonstrated that an award of nominal damages, coupled with a declaration of right, is not appropriate vindication of his interest in having questions affecting his liberty determined in accordance with law (RS [59]-[60]).

Lewis v Australian Capital Territory [2019] ACTCA 16 at [68] (**CAB Tab 6**)

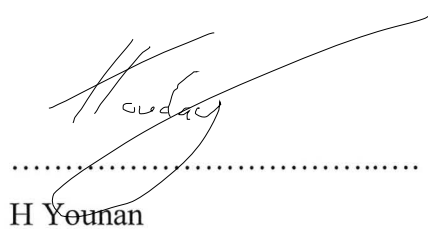
Dated: 2 June 2020

10



.....
P J F Garrison SC

Counsel for the Respondent



.....
H Younan