



## HIGH COURT OF AUSTRALIA

13 April 2022

### HOANG v THE QUEEN

[2022] HCA 14

Today, the High Court unanimously allowed appeals from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales concerning the mandatory discharge of a juror under s 53A(1)(c) of the *Jury Act 1977* (NSW) where the juror has engaged in "misconduct". "[M]isconduct" includes "conduct that constitutes an offence against" the *Jury Act*. It is an offence against s 68C(1) for a juror for the trial of any criminal proceedings to make an inquiry – such as conducting research by using the internet – for the purpose of obtaining information about any matters relevant to the trial.

The appellant was tried in the District Court of New South Wales on an indictment charging him with 12 counts of sexual offences against children, which were alleged to have been committed whilst the appellant was a mathematics tutor. As part of its case, the Crown led evidence that the appellant did not hold a Working with Children Check. Character evidence was adduced by the appellant to counter that evidence, and his counsel made submissions about that evidence, which the trial judge then referred to in her summing up. During their deliberations, the jury provided a note to the trial judge stating they had reached unanimous verdicts on eight counts. The following day, the foreperson provided a note to the trial judge stating that a juror had disclosed that they had Googled the requirements for a Working with Children Check and discovered the relevant legislation. The note stated that the juror had been a teacher and was curious as to why they did not have a check. The trial judge then proceeded to take ten verdicts, eight of which the jury had indicated they had reached the day prior to the juror's Google search, and only then discharged the juror under s 53A(1)(c). The remaining jurors later delivered guilty verdicts in respect of the two remaining counts.

A majority of the Court of Criminal Appeal dismissed the appellant's appeal, holding that the juror had not engaged in misconduct because the juror had made the inquiry for the purpose of "satisfying herself as to why she did not require a Working with Children Check", which was not a matter relevant to the trial. The Court of Criminal Appeal also held that mandatory discharge under s 53A(1)(c) was not required before the trial judge took the ten verdicts as her Honour had only tentatively formed the view that there was misconduct before taking those verdicts.

The High Court unanimously held that the juror did engage in misconduct and the trial judge erred in taking the verdicts before discharging the juror. The phrase "information about ... any matters relevant to the trial" is to be understood as including, at least, information about matters of evidence given or addresses to the jury at the trial. Section 68C(1) is not concerned with the juror's motive. It is the fact of the inquiry, and that the purpose of the inquiry was to obtain information about a particular matter relevant to the trial, which is the subject of the prohibition. In this case, the matter about which the juror made the inquiry was the Working with Children Check, which was the subject of evidence and was referred to in defence counsel's submissions and the trial judge's summing up. Discharge was therefore mandatory. The High Court quashed the appellant's convictions on the counts in respect of which verdicts of guilty were entered before the juror was discharged, ordered there be a new trial on those counts, and remitted the matter to the Court of Criminal Appeal in respect of the appellant's sentence on the remaining counts.

- *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.*