when it proceeded with the matter remitted to be dealt with according to law. They included, it was submitted, a discretion whether or not to allow the reopening of the conduct ground originally found in the applicant's favour and also a discretion to revisit the good conduct issue but without allowing further evidence to be adduced.

The Court said that it was apparent that when the matter was remitted to the Tribunal, it understood the orders made by Sackville J as requiring a "rehearing" of the application for review of the Minister's decision. In treating the terms of remittal by Sackville J as necessitating a rehearing as opposed to a reconsideration, the Tribunal, in the view of the Court, erred in law. The order of Sackville J left to the discretion of the AAT the question whether it should allow a rehearing and to what extent. It did not compel a rehearing. It was open to the Tribunal, if it considered it appropriate in the circumstances, to act on the evidence put before it on the previous occasion and not to permit further evidence to be adduced on that issue. By acting on the basis that this course was not open to the Tribunal at all, the tribunal erred in law.

Khan v Minister for Immigration and Multicultural Affairs (1997) 150 ALR 602

(Federal Court of Australia, 27 November 1997 — Sydney, Wilcox, Foster and Emmett JJ)
Denial of substantial justice for purposes of s 420 (2) of Migration Act 1958 — Whether tribunal was required to indicate to applicant that certain evidence was not considered probative — Whether tribunal was required to hold second oral hearing to consider further evidence and argument which had come to light following first oral hearing — Circumstances in which tribunal should seek additional information

The applicant appealed against the rejection of his application for refugee status. In accordance with s 425 of the Migration Act, an oral hearing was held by the Refugee Review Tribunal. While the Tribunal's decision was pending, the applicant claimed to have converted to Christianity. On request from the Tribunal, the applicant submitted further written material. However, a further oral hearing was not held by the Tribunal, nor did the applicant request one. Upon receiving the further material, the Tribunal informed the applicant's representative that, unless there was an objection, the Tribunal intended to make a decision on the matter as soon as possible. The representative subsequently informed the Tribunal that no further material was to be submitted.

The Tribunal rejected the applicant's application for refugee status.

On appeal, the applicant asserted first, that the Tribunal denied the appellant substantial justice because the Tribunal did not give an intimation to the appellant or his representative that the evidence he had submitted concerning his alleged conversion to Christianity was not considered probative. Second, he argued that substantial justice was denied as the Tribunal did not invite a second oral hearing—the first oral hearing having been devoted exclusively to his claim for refugee status on account of a well-founded fear of persecution on the basis of political opinion. Third, the applicant claimed that no opportunity was given to advance further documentary evidence.

The Court, in dismissing the appeal, held that the applicant was not denied substantial justice by the Tribunal in the hearing of its application for review.

It held that except in cases which invoke the principle of manifest unreasonableness, the obligation to accord a hearing did not usually assume the additional obligation to direct attention to omissions in an applicant's case. In this matter, there was no indication to suggest that further material would have advanced the applicant's case. (Followed *Broussard v Minister for Immigration, Local Government and Ethnic Affairs* (1989) 98 ALR 180).

The Court further held that the Tribunal was not required to have a second hearing, and nor was there anything in the Act to preclude a second hearing. In some cases, such a hearing may provide substantial justice. Nevertheless, the absence of a second hearing in this case did not amount to a denial of substantial justice.

Further, the Tribunal could not absolve itself of its responsibility of ensuring substantial justice, because of a dereliction of duty by the applicant's representative. It was reasonable to consider the attitude of the representative when deciding if there was a denial of substantial justice. The proviso to such a principle is that if the course of action taken by the Tribunal was in fact unjust, it would not be an answer to say that the solicitor had failed to complain and merely acquiesced in that course of action.

Finally, Foster J held that considering the communications between the Tribunal and the applicant's representative, substantial justice was not denied to the applicant by the Tribunal's failure to indicate that it had formed an opposing view on the applicant's conversion to Christianity and its effects.

Wang v Minister for Immigration and Multicultural Affairs

(Federal Court of Australia—Merkel J, 21 November 1996, 13 February 1997)
Whether Federal Court has jurisdiction to review decision of Immigration Review Tribunal when application lodged outside 28 day limit)

The applicant was a Chinese student whose application for a visa was refused on the ground that he lodged it 16 days too late. He applied for a review of the decision by the Immigration Review Tribunal (IRT) which, on 20 December 1995, affirmed the decision to refuse the visa. The following day, in compliance with its statutory obligation to give the applicant a copy of the decision, the IRT sent a copy to the applicant by post. The letter enclosing the decision was incorrectly addressed and therefore was not received by the applicant.

The applicant attended the offices of the IRT in February 1996 where he was given a copy of the IRT's decision and informed that as it was now 28 days after the date of the letter of notification he could not longer appeal the decision. Ultimately, after a meeting in April 1996 with a deputy registrar of the IRT, the applicant lodged an application for review in the Federal Court. The respondent applied for dismissal of the application on the ground that it was lodged outside the time limit imposed by s 478 of the Migration Act 1958 of 28 days after the notification of the decision of the IRT.

The Federal Court held that it has no jurisdiction to review a reviewable decision unless the application for