

# High Court Notes

## SENTENCE FOR CONSPIRACY

*Savvas v The Queen*

FC 95/019

Judgment of Deane, Dawson, Toohey, Gaudron and McHugh JJ delivered 1 June 1995.

The appellant was convicted in New South Wales for conspiring to import (and supply) heroin. He was sentenced to 25 years imprisonment with a minimum term of 18 years. He appealed on the grounds that the sentencing judge erred in effectively sentencing him for the substantive offences. The judge considered as relevant to the sentencing process, evidence before the jury (of which he was satisfied by the Crown case beyond reasonable doubt) of the part played by the appellant in the *actual* importation and supply which followed the agreement. In assessing the degree of criminality involved in the appellant's participation in the conspiracy the sentencing judge was entitled to have regard to the part played by the appellant. Perhaps the only way this could be done was by considering the number of importations and supplies of heroin in which the appellant was involved.

The appeal was unanimously dismissed in a joint judgment.

*RW*

## STATUTORY INTERPRETATION

*Re: Minister of State for Immigration and Ethnic Affairs v Rah Hin Teoh*

FC 95/013

HC unreported 7 April 1995.

While the provisions of an international treaty to which Australia is party do not form part of Australian law (unless validly incorporated in municipal law by statute), it is well established that international conventions may influence the *construction* of statutes and may be used as a legitimate guide in developing the common law.

The High Court, by majority (Mason CJ, Deane, Toohey and Gaudron

JJ with McHugh J, in dissent), has now held that Australia's ratification of a Convention can give rise to a *legitimate expectation* that a person who is exercising a *statutory discretion* will exercise that discretion in conformity with the terms of the Convention. Per Mason CJ and Deane J:

"The fact that the provisions of the convention do not form part of our law are a less than compelling reason — legitimate expectations are not equated to rules or principles of law. Moreover, ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights affecting the family and children. Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the convention."

If follows that failure to do so will result in procedural unfairness, which is reviewable. Further, per Toohey J, it is not necessary for a person to show that he was aware of the ratification of the Convention and had a personal expectation that its principles would be applied:

"The matter is to be assessed objectively, in terms of what expectation might reasonably be engendered by any undertaking that the authority in question has given, whether itself or, as in the present case, by the government of which it is a part."

In the case of Teoh, the application for a permanent entry permit was rejected by reason of the applicant's conviction and sentence for drug offences, notwithstanding his marriage to an Australian citizen with whom he had three children. "Compassionate grounds" were considered by the Minister's delegate, but were overridden by the policy considerations relating to the convictions.

The *United Nations Convention*

on the Rights of the Child, Article 3, provides, *inter alia*; that

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

This was not specifically addressed by the Minister's delegate. Although not *bound* to apply the terms of the convention, it was held to be reviewable error for the Minister's delegate to fail to draw this to the attention of Mr Teoh and afford him an opportunity to argue that she should do so.

The decision clearly has consequences for agencies of the executive government of the Commonwealth which, in the exercise of a statutory discretion, must now specifically address the legitimate expectations which might reasonably be engendered by the terms of a convention and, if they are to be rejected, so inform the person affected and give that person an opportunity of putting a case against taking such a course.

The question remains as to whether the ratification of a convention by the Commonwealth is done on behalf of Australia as a whole such that the exercise of statutory discretion by State and Territory agencies is similarly affected.

*DL*

## High Court of Australia Appointment of Senior Registrar

**Carolyn Rogers is the new Senior Registrar of the High Court of Australia.**

Her appointment took effect from June 5 and occurred when Frank Jones resigned to take up appointment as a Magistrate in Melbourne after 25 years with the Court.

Ms Rogers would be known by many in the profession. She has held the position as the High Court District Registrar in Sydney and Melbourne.



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