

# High Court Notes

## CASE NOTE

**Steven John McGhee v**

**The Queen**

FC 95/026

High Court unreported

13 July 1995

The High Court (Brennan J (as he then was), Dawson, Toohey and Gaudron JJ, Deane J, dissenting) considered the interesting question of whether provocation can be raised to defeat a charge of attempted murder.

The decision very much turns on the construction of the specific provisions of the *Tasmanian Criminal Code*. The Tasmanian code does not contain a separate offence of attempted murder (whereas Section 165(a) of the *NT Code* does), thus the judgment focuses on the interaction of Section 2 (attempts), Section 157 (culpable homicide/murder) and Section 160 (provocation) of the Tasmanian code.

Nonetheless, the conclusion - that provocation cannot be raised to defeat a charge of attempted murder - would likely be the same in the Northern

Territory.

The decision is also noteworthy for:

- its reference to the historic context in which provocation developed in the common law as a "... means by which the law avoided the imposition of a mandatory death sentence for murder when, having regard to ordinary human weakness in response to provocation, that sentence would have been unacceptably harsh"; (per Dawson J at p 18)
- the comment that application of Section 160 (*Tasmanian Criminal Code*) could lead to an anomalous result where there was *no conviction*, notwithstanding that there has been an act done with intent to commit murder. Attempted manslaughter is not a crime; and
- the distinction between *defences*, such as self-defence, and *provocation* which "...does not qualify the circumstances in which culpable homicide constitutes murder. Rather, it assumes that there is a...murder...and

operates to reduce that...to manslaughter."

(per Toohey and Gaudron JJ at p 27)

Wallace Wilkinson and Webster for the appellant.

Director of Public Prosecutions (Tasmania) for the respondent.

DL

## Invitations for Nominations: Commonwealth Understanding 1996 Fellows

**Nominations are now being called for The Commonwealth Understanding Fellowship for 1996.**

In 1984 the Commonwealth Foundation launched a scheme offering 12 annual awards to carefully selected professionals to undertake a one month programme on Commonwealth Affairs in the United Kingdom.

Under the scheme, a number of countries in the Commonwealth are selected each year and invited to put forward candidates through their Commonwealth Professional Associations.

If you wish to propose a lawyer for nomination by the Commonwealth Lawyers Association (CLA) and consideration by the Commonwealth Foundation, please send the candidate's curriculum vitae with two references and a statement indicating the reason for the nomination.

A copy of the Commonwealth Foundation's letter and its selection criteria is available from The Law Society.

Nominations with supporting papers should reach the CLA no later than Friday 13 October 1995, so that the CLA Council's Officers can consider the nominations received and put forward the CLA's nominations by the due date 7 November 1995.

Nominations should be addressed to Mr Hamish Adamson, Executive Secretary, Commonwealth Lawyers Association, C/- The Law Society, Law Society House, 50 Chancery Lane, London, WC2A, 1SX, United Kingdom.

### Professional Actuarial Services including:

#### Family law

- division of superannuation benefits
- valuation of superannuation entitlements and pensions
- valuation of assets and trust arrangements
- commutation of spousal income maintenance payments

#### Economic loss

- loss of future earnings
- loss of future superannuation entitlements
- valuation of future medical and rehabilitation costs

#### Superannuation

- allocated pension advice and tax certificates
- legislation advice and interpretation

#### Computer models

- financial projections
- structured financing

### PALMER GOULD EVANS CONSULTING ACTUARIES

Contact: **Peter Crump** or **Stuart Mules**

Phone (08) 231 9911

Fax (08) 231 9860

45 Grenfell Street,  
ADELAIDE SA 5000