**SHORT PARTICULARS OF CASES**
**APPEALS**

**MARCH 2016**

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# ATTWELLS & ANOR v JACKSON LALIC LAWYERS PTY LIMITED (S161/2015)

Court appealed from: New South Wales Court of Appeal
[2014] NSWCA 335

Date of judgment: 1 October 2014

Special leave granted: 7 August 2015

Jackson Lalic Lawyers Pty Limited ("Jackson Lalic") appealed against a decision of Justice Harrison in proceedings known as "the negligence proceedings". In those proceedings his Honour had relevantly declined to answer, by way of a separate question, whether the advocates' immunity from suit ("the Immunity") was a complete answer to Mr Gregory Attwells' and Mr Noel Attwells' ("the Attwells") claim of negligence against Jackson Lalic.

The negligence proceedings arose out of allegedly negligent advice given by Jackson Lalic to their client, the Attwells, in proceedings known as "the guarantee proceedings". This was in circumstances whereby a guarantee was sought to be enforced against the Attwells. That advice led to the settlement of the guarantee proceedings by way of consent order.

At the hearing of the separate question, a statement of agreed facts which clearly defined the allegedly negligent breach of duty to the Attwells (in the guarantee proceedings), was before Justice Harrison.

On 1 October 2014 the Court of Appeal (Bathurst CJ, Meagher and Ward JJA), unanimously upheld Jackson Lalic's appeal. Their Honours held that Justice Harrison had erred in declining to answer the separate question. They found that in circumstances whereby the alleged breach was clearly defined and agreed upon, it was appropriate for Justice Harrison to answer it.

The Court of Appeal also held that the advice given by Jackson Lalic fell within the scope of the Immunity because it led to the guarantee proceedings being settled. It was therefore intimately connected to them.

On 19 October 2015 the Law Society of New South Wales filed a summons, seeking leave to be heard as *amicus curiae* in this matter.

The grounds of appeal include:

- The Court of Appeal fell into error in that it held that the Immunity applied in the context of negligently advised and/or effected settlement, and/or an outcome not the result of a judicial determination on the merits.

- The Court of Appeal fell into error in that it applied the wrong test for the boundaries of the Immunity or in the alternative, misapplied the "intimate connection" test for the Immunity.

# NGUYEN v THE QUEEN (S271/2015)

Court appealed from: New South Wales Court of Criminal Appeal
[2013] NSWCCA 195

Date of judgment: 28 August 2013

Special leave granted: 11 December 2015

On 8 September 2010 Constable William Crewes was shot dead during a police drugs raid on a block of units in Bankstown. He was initially shot, but only wounded, by Mr Philip Nguyen. During the ensuing confusion however, a number of further shots were fired (by both the police and Mr Nguyen), with ballistics experts proving that the fatal shot was fired by Detective Senior Constable Roberts. Despite not having fired that shot himself, Mr Nguyen pleaded guilty to both manslaughter and to wounding with intention to cause grievous bodily harm. In doing so, Mr Nguyen accepted the proposition that his initial shot (which merely wounded Constable Crewes) substantially contributed to the exchange of gunfire which followed, during which Constable Crewes was killed.

In March 2013 Mr Nguyen was sentenced to 9 years and 6 months imprisonment, with a non-parole period of 7 years. In sentencing Mr Nguyen, Justice Fullerton took into account, on a Form 1, an offence of possession of a prohibited firearm contrary to s.7(1) of the *Firearms Act* 1996 (NSW).

The Crown then appealed against the sentence imposed upon the following grounds:

Ground 1 - the sentencing Judge erred in the assessment of the objective seriousness of the manslaughter offence;

Ground 2 - the sentencing Judge erred in failing to sentence in accordance with the finding made as to the objective seriousness of the wounding with intent offence;

Ground 3 - the sentencing Judge erred in the approach to the totality principle in determining that the overall criminality could be comprehended by the sentence for manslaughter;

Ground 4 - the sentences were manifestly inadequate.

On 28 August 2013 the Court of Criminal Appeal ("CCA") (Beazley P, Johnson & R A Hulme JJ) unanimously upheld all grounds of the Crown's appeal. Their Honours found that Justice Fullerton had erred by using Mr Nguyen's absence of knowledge that Constable Crewes was actually a police officer (Constable Crewes was not in uniform during the raid) as being a mitigating factor in reducing the perceived seriousness of this offence. They further found that her Honour had erred in characterising Mr Nguyen's offending as being "mid-range" in terms of seriousness. The CCA additionally held that the sentence imposed for the manslaughter offence could not sufficiently cover the totality of Mr Nguyen's criminality. It followed therefore that the sentence imposed by Justice Fullerton was manifestly inadequate. The CCA then resentenced Mr Nguyen to an overall effective sentence of 17 years and 2 months imprisonment, with a non-parole period of 13 years.

The grounds of appeal include:

- The CCA erred in:

  a) Finding that the sentencing Judge erred by having regard to the absence of a factor, which, if it existed, would have rendered the Appellant liable for a more serious offence, thereby breaching the principle in *The Queen v De Simoni* (1981) 147 CLR 383;

  b) Relying on the principle in *The Queen v De Simoni* to justify the imposition of a greater sentence than that which would otherwise have been imposed.