

ELIZABETH WILSON QC

NOTABLE CASES

***Comptroller-General of Customs v Yip; Comptroller-General of Customs v So; Comptroller-General of Customs v Johal* [2016] QCA 339** - TAXES AND DUTIES – CUSTOMS AND EXCISE – GENERALLY – INTERPRETATION OF CUSTOMS AND EXCISE LEGISLATION – where the respondents each intentionally failed to declare jewellery and Rolex watches attempting to evade payment of duty after arriving in Brisbane from Hong Kong – where the undeclared jewellery and watches were seized – where the magistrate ordered fines and, in addition, an order for condemnation under s 205D(3) of the *Customs Act* – where, on appeal, the judge of the District Court concluded that the magistrate failed to give adequate reasons – where the District Court judge, in finding legal error, proceeded on the footing that s 205D(3)(c) reposed in the court a discretion and that it fell to him to exercise the discretion afresh and concluded that a condemnation order ought to be made with respect to the undeclared jewellery but not the watches – where the applicant alleges that the judge of the District Court erred in law in his characterisation of s 205D(3) – whether such a characterisation was infected by legal error

***R v Blackmore* [2016] QCA 181** - CRIMINAL LAW – JURY’S MISCONDUCT – IRREGULARITIES AS REGARDS PROCEDURE – MATTERS RELATING TO JURIES - whether the communications between the juror, his wife, and the registry staff member were in contravention of s 50, s 53 and s 54 Jury Act 1995 (Qld) - – where the trial judge gave the jury a majority verdict direction – where half an hour later a juror indicated he felt unwell – where the juror was discharged and the jury directed to continue deliberating with 11 members – where there was no evidence that the discharged juror was the sole dissenting juror – whether the trial judge erred in allowing the trial to continue with 11 jurors.

***Addinsall & Ors v Bell* [2016] ICQ 002**– COMMENCEMENT OF PROCEEDINGS – DUPLICITY, AMBIGUITY AND UNCERTAINTY – where the respondent made complaints about each of the appellants – where the Industrial Magistrate dismissed the appellants’ application to have the complaints struck out or stayed – where the appellants appeal that decision – where the respondent filed a notice of contention in respect of each of the appeals – whether the charges referred to irrelevant regulations and by so doing failed to disclose offences known to law – whether the charges proceeded on the basis that a breach of the Mining and Quarrying Safety and Health Regulation 2001 amounted to a breach of the Mining and Quarrying Safety and Health Act 1999 such that they were insufficiently precise or resulted in duplicity.

Child Support Registrar & Scullin and Anor (SSAT Appeal) [2015] FamCAFC 200

FAMILY LAW – APPEAL – LEAVE TO APPEAL – CHILD SUPPORT – PROCEEDURAL FAIRNESS - Where the Child Support Registrar sought leave to appeal the orders of the Federal Circuit Court of Australia setting aside a determination of the SSAT – Where the father appealed the decision of the SSAT to the Federal Circuit Court – Where the essential issue was whether the SSAT, in reviewing a decision of the Registrar concerning the amount of child support payable for a particular period, failed to accord the father procedural fairness by failing to inform him of the proposed duration of the assessment – Where the trial judge concluded that the father was not accorded procedural fairness – Where no denial of procedural fairness established – Where error was established – Appeal allowed.

R v Burgess [2014] QCA 290 - CRIMINAL LAW – PROCEDURE – JURIES – DISCHARGE AND EXCUSING FROM ATTENDANCE – INDIVIDUAL JURORS – where the appellant was convicted by a jury of a number of sexual offences – where, on the third day of the trial, there was an irregular incident involving a juror, the appellant and the appellant’s companion – where that juror was discharged but a juror to whom the incident was relayed was not discharged – whether the circumstances warranted the discharge of the second juror – whether a fair-minded and informed member of the public would have a reasonable apprehension of a lack of impartiality on the part of the second juror – whether the trial judge had taken relevant considerations into account before deciding to proceed with 11 jurors – Jury Act 1995 (Qld), s. 33, s. 56, s. 57 - *Webb v The Queen* (1994) 181 CLR 41, followed; *Wu v The Queen* (1999) 199 CLR 99, applied.

Burke v State of Queensland & Ors [2014] QCA 200 – TORTS – TRESPASS – TRESPASS TO THE PERSON – ACTION FOR DAMAGES – MALICIOUS PROCEDURE & FALSE IMPRISONMENT – FALSE IMPRISONMENT – JUSTIFICATION AND OTHER MATTERS – ARREST AND IMPRISONMENT IN CRIMINAL PROCEEDINGS - where the intoxicated applicant was arrested but ran away from police – where the applicant was re-apprehended through force – where the applicant sustained injuries – whether the first respondent assaulted the applicant – where the applicant served court documents on the first respondent at a police station – where the applicant was wanted for further questioning regarding a separate assault incident – where the second respondent, who was investigating the assault, was informed that the applicant would be attending the police station – where the applicant attempted to leave the police station – where the applicant was arrested – whether the arrest was lawful.

R v Teichmann [2014] QCA 50 – MURDER CONVICTION - OBJECTIONS OR POINTS NOT RAISED IN THE COURT BELOW – MISDIRECTION AND NON-

DIRECTION– where the appellant was convicted of murder by a jury – where the appellant denied assaulting the deceased – where, on the version of events most favourable to the appellant, there was evidence of a physical attack by the deceased – where defence counsel accepted that provocation was not open – whether the trial judge erred in failing to leave the partial defence of provocation to the jury – whether there was a substantial miscarriage of justice.

***R v Cannon* [2013] QCA 191** - REFERENCE ON PETITION FOR PARDON AND INQUIRY AFTER CONVICTION – PROSECUTION DISCLOSURE – where the appellant’s case with respect to both conviction and sentence was referred pursuant to s 672A Criminal Code 1899 (Qld) – where the appellant contended that the prosecution had failed to disclose evidence – analysis of prosecutor obligations as to disclosure - where the appellant contended there had been a miscarriage of justice due to fresh evidence given in later court proceedings which raised issues relevant to the credibility of a key witness at the appellant’s trial - where the appellant contends the fresh evidence would have put in doubt the reliability of the witness – whether the appellant’s sentence should be interfered with.

***Commissioner of Police v Stehbens* [2013] QCA 81** - RIGHTS OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – FAILURE TO GIVE REASONS FOR DECISION – ADEQUACY OF REASONS - where the respondent was charged with assaulting a police officer acting in the execution of his duty – whether honest and reasonable mistake of fact that applicant was not a police officer excluded – where the respondent was convicted by an Acting Magistrate – where the decision was overturned on appeal by a District Court Judge – where the District Court Judge held that the Acting Magistrate could not have been satisfied that mistake of fact had been excluded beyond reasonable doubt – where the District Court Judge quashed the conviction and entered a verdict of acquittal – adequacy of reasons given by District Court Judge.

***R v Lotoaniu* [2013] QCA 71** - APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where the applicant pleaded guilty to multiple offences of armed robbery – where the applicant contended that the sentence was manifestly excessive, taking into account the cumulative nature of the sentence – whether the sentencing judge wrongly determined the appropriate sentencing range – whether the sentence was manifestly excessive, having regard to the cumulative nature of the sentence.

***DHG v State of Queensland (represented by the Department of Justice and Attorney-General)* [2013] QSC 89** – SUPREME COURT PROCEDURE – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES – JUDGMENT AND ORDERS –

DECLARATION – REMOVAL OF INFORMATION FROM WEB PAGE - where the applicant pleaded guilty to breaching the *Workplace Health and Safety Act 1995* (Qld) – where the Industrial Magistrate ordered that no conviction be recorded – where the respondent published on its website details of the applicant’s plea and sentence – whether the website is a “record” for the purpose of s 12(3)(b) *Penalties and Sentences Act 1992* (Qld) – where s 12(3A) permits a record of a conviction to be kept by the department – whether the web pages are excused by s 12(3A) - where the applicant seeks declaration and orders requiring the removal of that information from the web pages on the basis that it breaches s 12(3)(b) - whether the court should make such orders.

Nona v Barnes and Attorney General for the State of Queensland [2012] QCA 341 - ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – DECISIONS TO WHICH JUDICIAL REVIEW LEGISLATION APPLIES – MEANING OF DECISION – where the applicant challenged the coroner’s failure to refer its findings to the Director of Public Prosecutions – where the applicant sought reasons why no referral was made – whether the coroner made a decision as defined by the Judicial Review Act 1991 (Qld) requiring him to publish reasons for that decision.

Lacey v Attorney General of Queensland (2011) 242 CLR 573 – STATUTORY CONSTRUCTION- Appeal against sentence – Appeal by Crown – Where s 669A(1) of *Criminal Code* (Q) permitted appeal by Attorney-General against sentence and provided that appellate court "may in its unfettered discretion vary the sentence and impose such sentence as to the Court seems proper" – Where appellate court increased sentence without identifying any error by sentencing judge – Whether Crown must demonstrate error by sentencing judge before discretion to vary sentence enlivened. Statutory construction – "appeal" and "unfettered discretion".

R v KU and Ors; ex parte AG (Qld) (No. 2) [2011] 1 Qd R 439 - SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – ABORIGINAL OFFENDERS – all respondents and victim of Aboriginal descent and living in remote community at Aurukun – relevance of community dysfunction – rape and sexual relations with children not in accordance with Aboriginal customary law and not condoned by Aurukun community – whether only personal disadvantages suffered by each particular respondent should be taken into account – personal disadvantages must be considered with the seriousness of the offence and other relevant factors – whether the dysfunctionality of the community from which the offender came on its own warrants leniency.

DUTY OF CROWN PROSECUTOR – officer of the Office of the Director of Public Prosecutions (Queensland) submitted that non-custodial sentences were appropriate for all respondents – Attorney-General on appeal submitted that orders for imprisonment for

the adults, and detention for the juveniles, were appropriate for all respondents – considerations of a type of 'double jeopardy', given the concessions of the prosecution at sentence – whether prosecution submissions led sentencing judge into error – whether Attorney-General may resile from the submissions of the prosecution at sentence – whether, if satisfied that the sentencing process miscarried, the appeal should be dismissed because of the conduct of the prosecution.

***R v Barden* [2010] QCA 374** - MURDER CONVICTION - MISDIRECTION AND NON-DIRECTION – EFFECT OF MISDIRECTION OR NON-DIRECTION – appellant convicted of murdering deceased by assaulting him outside hotel – prosecution case was that appellant assaulted deceased intending to cause grievous bodily harm and assault caused death – not contested that appellant assaulted deceased – following question from jury, judge re-directed jury on intent – judge directed that if person does not appreciate consequences of his actions include causing grievous bodily harm they cannot have intent to cause grievous bodily harm – whether direction led jury to believe that if appellant appreciated consequence of his actions could include grievous bodily harm he intended to inflict grievous bodily harm under s 302(1)(a) Criminal Code 1899 (Qld)– whether judge misdirected the jury – whether misdirection amounts to a wrong decision of law under s 668E(1) Criminal Code – whether there has been a miscarriage of justice.

***R v AAM; ex parte Attorney General of Queensland* [2010] QCA 305** - PARDON, REFERENCE ON PETITION FOR PARDON AND INQUIRY AFTER CONVICTION – REFERENCE TO COURT – appellant pleaded guilty in the Toowoomba Magistrate's Court to several property offences and breaching a probation order between 2001 and 2003 – appellant charged with further offences and Mental Health Court found that, in respect of those offences, appellant was 'unfit for trial and that that unfitness is of a permanent nature' under s 270 and s 271 Mental Health Act 2000 (Qld) – Attorney-General referred the appellant's case to the Court of Appeal under s 672A(a) Criminal Code 1899 (Qld) – whether the appellant was unfit to plead at the time she pleaded guilty to and was sentenced for the 2001-2003 offences - The Director of Public Prosecutions cannot refer a patient who is charged only with simple offences to the Mental Health Court (s 240(3) and s 247(2) Mental Health Act) –the laws of this State make no provision for the determination of the question of fitness to plead to summary offences – the legislature may wish to consider whether law reform is needed to correct this hiatus in the existing criminal justice system – whether a miscarriage of justice has occurred – whether convictions should be set aside.

***RG Munro Futures Pty Ltd* [2010] QSC 435** - CORPORATIONS – WINDING UP – GENERALLY – OTHER MATTERS – where the director of a company was ordered to surrender his passport pending investigation – where the Commonwealth Director of

Public Prosecutions subsequently determined there was no reasonable prospect of conviction on material briefed – whether the passport should be returned.

R v Lacey; ex parte Attorney General of Queensland (2009) 197 A Crim R 397 - PRINCIPLES APPLIED BY APPELLATE COURT TO CROWN APPEALS – STATUTORY CONSTRUCTION - where s 669A of the Code confers "unfettered discretion" on Court of Appeal upon appeal against sentence by Crown – where respondent argued Crown must demonstrate error by sentencing judge to enliven appellate discretion – where respondent argued that appellant discretion, once enlivened, must be exercised by imposing a sentence towards the bottom end of the available range – whether appellate discretion conferred by s 669A fettered by those propositions. Statutory construction of the words "appeal" and "unfettered discretion".

R v Watson; ex parte A-G (Qld) [2009] QCA 279 - CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEALS BY THE CROWN – STATUTORY CONSTRUCTION - where the respondent was convicted on own plea of manslaughter on the basis of criminal negligence pursuant to s 290 of the *Criminal Code* – the respondent had been charged with the murder of his wife whilst diving – where the respondent was sentenced at first instance to four and a half years imprisonment suspended after 12 months – whether the sentence imposed was so inadequate as to warrant the court's intervention – the reason to impose a longer period of imprisonment was that 12 months custody was an insufficient denunciation of the respondent's abandonment of his wife – the respondent should have done something to effect a rescue and his failure in that regard deserved stronger censure.

Legal Services Commissioner v Richardson [2009] LPT 17 - PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent charged with dishonestly or improperly obtaining his clients' certificates of title – where respondent appointed as power of attorney under enduring power of attorney of his clients – where respondent lodged the enduring powers of attorney with the Department of Natural Resources and made an application for certificates of title without authority – where respondent refused to deliver the certificates of title and claimed a possessory lien – whether respondent guilty of professional misconduct – where respondent charged with acting deceitfully – where respondent acted for clients in a conveyance – where clients removed certain equipment allegedly on the advice of the respondent – where purchaser claimed the equipment was fixture – where respondent failed to advise clients that they were required to attend a directions conference – where respondent did not attend directions conference and sent an employee solicitor to seek an adjournment – where judgment was entered against respondent's clients – where respondent made application to have judgment set aside without instructions – whether respondent guilty of professional misconduct –

where respondent charged with breaching professional obligation to co-operate with investigations undertaken by the Queensland Law Society and/or Legal Services Commission – where Commissioner provided twelve examples alleging a breach on behalf of the respondent – whether respondent guilty of professional misconduct.

Legal Services Commissioner v Atkins [2009] LPT 10 - PROFESSIONS AND TRADES – LAWYERS – SOLICITOR AND CLIENT – DUTIES AND LIABILITIES TO CLIENT – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT - where the respondent acted for the vendor in a conveyancing transaction –where the respondent is charged with misleading and deceptive conduct, conflict of interest, failure to maintain standards of competence and diligence, obtaining a benefit, and delay – whether the respondent is guilty of professional misconduct or unsatisfactory professional conduct.