FEDERAL COURT OF AUSTRALIA

SZJRI v Minister for Immigration & Citizenship [2008] FCA 1090

CORRIGENDUM

SZJRI v MINISTER FOR IMMIGRATION AND CITIZENSHIP and REFUGEE REVIEW TRIBUNAL
NSD 58 OF 2008

GILMOUR J
24 JULY 2008 (CORRIGENDUM 30 JULY 2008)
PERTH (HEARD IN SYDNEY)

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY **NSD 58 OF 2008**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZJRI** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**
JUDGE:	**GILMOUR J**
DATE OF ORDER:	**24 JULY 2008 (CORRIGENDUM 30 JULY 2008)**
WHERE MADE:	**PERTH (HEARD IN SYDNEY)**

CORRIGENDUM

1. Order 3 of the Reasons for Judgment be amended as follows:

"3. In lieu thereof there be orders that:

(a) The decision of the Refugee Review Tribunal dated 29 September 2006 be quashed.

(b) The matter be remitted to the Refugee Review Tribunal, differently constituted, to be heard and determined according to law.

(c) The first respondent pay the applicant's costs to be taxed if not agreed.

I certify that the preceding one (1) numbered paragraph is a true copy of the Corrigendum to the Reasons for Judgment of the Honourable Justice Gilmour.

Associate:

Dated: 13 June 2007

FEDERAL COURT OF AUSTRALIA

SZJRI v Minister for Immigration & Citizenship [2008] FCA 1090

MIGRATION – Tribunal found that sole or dominant motivation for threatened harm was for revenge and therefore for satisfaction of a personal grudge – finding was unreasonable on the available evidence – whether threatened revenge giving rise to alleged fear of persecution was for the reason of the appellants membership of the Nepalese police force or by reason of his actual or imputed political opinion – Tribunal implicitly found that revenge and political motive were incompatible – Tribunal failed to consider relevant evidence to find whether revenge threatened was for a Convention reason - appeal allowed.

Applicant S v MIMA (2004) 206 ALR 242 cited
Buultjens v Minister for Immigration & Multicultural Affairs [2001] FCA 1058 cited
Minister for Immigration and Multicultural Affairs v Singh [2002] 209 CLR 533 applied
NAAH of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCAFC 354 cited
NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2) [2004] FCAFC 263 cited
NATC v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCAFC 52 cited
Peiris v Minister for Immigration and Multicultural Affairs (1999) 58 ALD 413 cited
S395/2002 v Minister for Immigration and Multicultural Affairs (2003) 203 ALR 112 cited

SZJRI v MINISTER FOR IMMIGRATION AND CITIZENSHIP and REFUGEE REVIEW TRIBUNAL
NSD 58 OF 2008

GILMOUR J
24 JULY 2008
PERTH (HEARD IN SYDNEY)

CATCHWORDS

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 58 OF 2008**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZJRI** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**

JUDGE:	**GILMOUR J**
DATE OF ORDER:	**24 JULY 2008**
WHERE MADE:	**PERTH (HEARD IN SYDNEY)**

THE COURT ORDERS THAT:

1. The appeal be allowed.

2. The orders of the Federal Magistrates Court made on 14 December 2007 be set aside.

3. In lieu thereof there be orders that:

   (a) The matter be remitted to the Refugee Review Tribunal, differently constituted, to be heard and determined according to law.

   (b) The first respondent pay the applicant's costs to be taxed if not agreed.

4. The first respondent pay the appellant's costs of the appeal to be taxed if not agreed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

CATCHWORDS

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY NSD 58 OF 2008

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZJRI** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**
JUDGE:	**GILMOUR J**
DATE:	**24 JULY 2008**
PLACE:	**PERTH (HEARD IN SYDNEY)**

REASONS FOR JUDGMENT

1 The appellant is a citizen of Nepal. His appeal is from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal ("the Tribunal"). The Tribunal had affirmed a decision of a delegate of the Minister for Immigration and Citizenship to refuse to grant a protection visa to the appellant.

BACKGROUND

2 Before the Tribunal, the appellant claimed to fear persecution by Maoists as well as the police force in Nepal should he return there. Prior to departing the country, the appellant was a sub-inspector of police who had joined the police force in 1991. He was sent to the town of Sindhupalchak for three months in 1998 as the officer commanding 17 police officers stationed there. He was involved in a number of armed confrontations with local Maoists, during one of which his men injured and, it seems, killed a number of Maoist insurgents. Four insurgents were captured. Despite a number of death threats from unidentified Maoists, the appellant handed the detainees to the District Police Office for further action before he returned to Kathmandu. They were each imprisoned and were still in prison at the time of the Tribunal hearing.

3 In 2005 the appellant was ordered to return to the posting in Sindhupalchak. During the intervening period, when he had been posted to other locations, he received death threats, in phone calls, from Maoists from Sindhupalchak. These threats were expressly linked to the injuries, deaths and imprisonment of their fellow Maoists during and after the 1998 encounter. They were tied to demands for the release of those imprisoned.

4 The threats began to take an emotional toll on the appellant. The Police Department sent him to join the Dili Police, in East Timor, under United Nations command, as a means of providing him some relief from these threats and their adverse affect upon his mental health.

5 Insurgent activity in the area of Sindhupalchak had increased considerably since his prior posting. The Police Department refused to rescind his posting. Because of his fears of revenge by the Maoists, he decided to absent himself from the police force and seek asylum in Australia. He said that if he were to return to Nepal, he would be arrested for failing to take up his assigned post. He said that the Nepalese police were searching for him and had advised his wife that they would arrest him as soon as they found him.

THE TRIBUNAL DECISION

6 The Tribunal accepted that the appellant had been employed as a police officer and that his arrest of several Maoists had resulted in his coming to the adverse attention of the insurgents. It made no express finding concerning the appellant's claims that during the armed confrontation which led to those arrests, some of the Maoists had been injured and killed. There was however no express rejection of this evidence.

7 The Tribunal accepted that Nepalese police officers could be considered to be members of a class of persons who possess a uniting feature or attribute, and that persons in that class are cognisable as a particular social group: *Applicant S v MIMA* (2004) 206 ALR 242 at [69]. However, it was not satisfied that there was a real chance that an essential or significant reason for persecution directed towards the appellant was because he was a member of the Nepalese police force or by reason of his imputed political opinion. This was, the Tribunal found, because the sole or dominant motive for the Maoists' targeting of the appellant was the satisfaction of a personal grudge against him and implicitly therefore not by reason of his imputed political opinion.

THE COURT BELOW

8 Before the Federal Magistrate the appellant raised three grounds:

> 1. The second respondent (the Tribunal) committed jurisdictional error by failing to ask itself the correct question, those being:
>
> (a) Whether the underlying cause of any revenge sought by the Maoists against the applicant was an opinion held by the appellant or imputed to him by his Maoist foes, that he had an ideological opposition to them.
>
> (b) Whether in light of all the facts and evidence that the Tribunal did accept or did not reject, the appellant had a well-founded fear of persecution for a Convention reason.
>
> (c) Whether, applying common sense to all the facts of the particular case, the appellant had a well-founded fear of persecution for a Convention reason.
>
> 2. The Tribunal committed jurisdictional error in taking an irrelevant consideration into account that being that officers of the state, charged with protecting the state and its people are outside the protection of the Refugees Convention.
>
> 3. The Tribunal committed jurisdictional error in its consideration of the issue of state protection in that it failed to consider how effective such protection may be.

9 The Court below held that the first and second grounds were not made out although the third ground was made out. However, the Court refused relief in its discretion based on the finding that the earlier findings regarding the absence of Convention nexus were independent of the findings in respect to state protection and otherwise sustained the decision.

THE APPEAL

10 The sole ground of appeal is that the Federal Magistrate erred in law by refusing or otherwise failing to find that the Tribunal was in jurisdictional error when it concluded that the appellant's fear of harm was not Convention related.

11 The ground of appeal was relevantly particularised in this way:

> Her Honour erred in law by upholding the Tribunal's finding that the sole or dominant motivation for harming the appellant in Sindhupalchak would be for

> the satisfaction merely of a person grudge against him by the Maoists no matter that the appellant had been a police officer in Nepal engaged in anti-Maoist activities, and in armed combat with them had apprehended a number of their members and had turned them over to the authorities to be dealt with and by so doing failed to apply the reasoning in *MIMA v Singh* (2002) 209 CLR 533 encapsulated in the dictum of McHugh J that *"A decision-maker makes an error of law by assuming that the fact that an act was one of "revenge or retribution" necessarily makes it a "non-political". There is no such dichotomy."*

12 In *Minister for Immigration and Multicultural Affairs v Singh* [2002] 209 CLR 533 the High Court of Australia considered the matter of revenge and whether it may sit within a political context. That case concerned a Sikh of Indian nationality who entered Australia and applied for a protection visa. His application was refused. On an application for review, the Administrative Appeals Tribunal concluded that the applicant was excluded from protection by virtue of Art 1F(b) of the Convention because he had been implicated in serious non-political crimes in India. The applicant gave evidence that he had participated as a member of a political organisation in the killing of a police officer by supplying information and intelligence about the officer's movements to facilitate his killing by other members of the organisation. The Tribunal considered that the crime was non-political because it had been committed by the applicant as an act of revenge or retribution for the torture of a member of the organisation. On appeal, the Full Court held that the Tribunal had erred in law in determining that the suspected crimes were "non-political". It concluded that the Tribunal had proceeded from an artificial antithesis between political action and revenge. That finding was upheld by the majority in the High Court, (Gleeson CJ, with Kirby and Gaudron JJ).

13 In some respects, *Singh* is analogous to the present matter. Like Singh, on one interpretation, "there was no real suggestion of private purposes or of a personal motivation" on the part of the appellant in his conflict with Maoists in 1998: *Singh* at [138]. In *Singh*, the issue was how to characterise whether a crime that targeted a police officer for reasons of revenge was personal or political. In the present case, there is an issue as to how to characterise persecution that targets a police officer for reasons of revenge: personal or political. For the appellant, if the motivation for the persecution was political, and not based on a private grudge, then there is a strong argument that he was targeted for reasons of his actual or imputed political opinion, or for reasons of his membership of a particular social group under Art 1A(2) of the Convention.

14 The crucial link between the two cases is the analysis of motive. In *Singh*, analysis of motive (including revenge, and the political objectives of an organisation) was essential in characterising a crime. In the present matter, analysis of motive is key, as Art 1A(2) of the Convention requires persecution "for reasons of race, religion, nationality, membership of a particular social group or political opinion".

15 The Federal Magistrate sought to distinguish *Singh* on the grounds that it concerned perpetrators of "serious non-political crimes" under Art 1F(b) of the Convention. Her Honour, referring to *Singh* stated at [54]:

> That case was not concerned with whether a person met the definition of refugee in Article 1A(2), but rather with whether the Administrative Appeals Tribunal had erred in finding that a person was excluded from protection by virtue of Article 1F(b) of the Convention on the basis that there were serious reasons for considering that he had committed "**a serious non-political crime**". The High Court was not addressing the notion "**for reasons of**" in the context of Art 1A(2). [Emphasis added]

16 I do not, for my part, consider that the principles of analysis and characterisation of motives in *Singh* should be read so as to confine their application only to cases involving consideration of Art 1F(b) of the Convention. In its Statement of Decision and Reasons, the Tribunal recognised that *Singh* was not directly on point, but cited its authority going to the existence of multiple motives for feared harm:

> Though [*Singh*] is not directly on point to the matter at hand, the Tribunal accepts that in cases where a significant and essential reason for feared harm is based on at least one of the grounds provided in the Refugees Convention, protection obligations may arise notwithstanding that another significant and essential reason for the harm may have been non-Convention related.

17 I note too that the *Guide to Refugee Law in Australia* developed and used by the Refugee Review Tribunal and Migration Review Tribunal recognises the relevance of *Singh* to discussions of refugee status under Art 1A(2) of the Convention: Legal Services, Refugee Review Tribunal, *A Guide to Refugee Law in Australia*, at 10-33, note 177, http://www.mrt-rrt.gov.au viewed 22 July 2008.

> While [*Singh*] involved consideration of the concept of "non-political crime" in Article 1F of the Convention, the discussion of "revenge" is equally relevant to the questions of motivation that arise under Article 1A(2).

18 In my opinion, the principles governing the analysis and characterisation of motive, articulated in *Singh* are an apt analogue in the present case.

19 The question of motive, objectively viewed, should be considered against all the relevant circumstances. These will include, in this context, the objectives and methods of the Maoist insurgents as an organisation: *Singh* at [22], [46]-[47] and [141]. The Tribunal did not do this.

20 At first blush it might be thought that the Tribunal specifically considered the relevant law, and instructed itself that "revenge is not the antithesis of political struggle, it is one of the most common features": see *Singh* at [18].

21 The Tribunal referred to *Singh* in its reasons in this way:

> …the High Court in *MIMA v Singh* [2002] HCA 7 (7 March 2002), Gleeson CJ, Gaudron, McHugh, Kirby & Callinan JJ, stated inter alia, 'even if a killing occurs in the course of a political struggle, it will not be regarded as an incident of the struggle if the sole or dominant motive is the satisfaction of a personal grudge against the victim; however revenge is not the antithesis of political struggle, it is one of the most common features' (per Gleeson CJ para 18; see also Gaudron J para 44) … even if the Tribunal accepts the applicant may be targeted for harm in Sindhupalchok by Maoists for reasons of his having been responsible for the arrest (and possible mistreatment) of a number of their colleagues after the abovementioned 1998 incident; **based on the evidence provided, the Tribunal is satisfied the sole or dominant motive for harming the applicant in Sindhupalchok would be for the satisfaction of a personal grudge against him.** (Emphasis added)

22 The evidence before it, without more, did not support a conclusion that the Maoists had a 'personal grudge' against the appellant. True it was that the Maoists threatened revenge against the appellant as an individual but it was in the context of the longstanding armed struggle between the Maoist insurgents and the State of Nepal. The police force was an agency of the State. The deaths, injuries and subsequent imprisonment of insurgents were the result of a fire fight initiated by a group of Maoists against a group of police officers commanded by the appellant. None of the insurgents was known to the appellant and there is no evidence, apart from his position as the officer in command at the time of the fire fight, that he was known to them. The death threats made against him arose out of that armed clash and its aftermath. Indeed the threats were accompanied by demands that he arrange for the

release of the four imprisoned insurgents. Counsel for the first respondent conceded that there was no evidence to warrant a conclusion that the appellant was threatened for reasons of personal animus or private retribution.

23 On its face it is difficult, with respect, to see how these threats could, in the circumstances, be characterised as the result of a personal grudge held against the appellant. Apart from other considerations the threats carried with them a demand for the release of the imprisoned Maoists. Counsel for the first respondent, did not identify any basis in the evidence for such a finding. No rationale exists beyond the fact that the appellant acknowledged in evidence that his fear was related to possible revenge by Maoists.

24 Two things immediately may be said about that. First, the appellant's view of the motives of the Maoists who made the threats could hardly be determinative. Ultimately, it was no more than a matter of inference on his part. The actual motive may not have been revenge. In any event as is obvious and as was conceded by counsel for the first respondent revenge could be politically motivated**.** Second the Tribunal, in its reasons, in fact noted that the appellant feared revenge from the Maoists "… because of his involvement with (the Maoists) as a police officer in 1998" and "for reasons of his having been responsible for the arrest (and possible mistreatment) of a number of their colleagues after the abovementioned 1998 incident". The Tribunal evidently accepted this explanation. Accordingly the Tribunal itself linked the threat back to what had occurred in 1998. The Tribunal, in its reasons was prepared to accept that the appellant may be targeted in Sindhupalchok by Maoists because he had been responsible for the arrest and possible mistreatment of a number of their colleagues after the abovementioned 1998 incident. However it seems, in the absence of any other relevant evidence that the Tribunal concluded, on the basis of the appellant's evidence, that the motive of revenge against him as an individual must necessarily be characterised as 'personal'. 'Revenge', in this case, apparently, inevitably equated to a 'personal grudge'.

25 It was unreasonable on the evidence before it for the Tribunal to conclude that the motive of revenge, if indeed that is what it was, was equivalent to a personal grudge.

26 The Tribunal, as the first respondent correctly says, considered whether the feared persecution of the appellant was for reason of his political opinion or membership of a particular social group. It acknowledged that in appropriate circumstances Nepalese police

officers may invoke refugee protection obligations. However, the first respondent submits that there was insufficient evidence to satisfy the Tribunal that the motivations were Convention based. There was, the first respondent contends, no direct evidence before the Tribunal going to the motivations of the Maoists. These submissions merely highlight the error of the Tribunal and in turn the Court below. The appellant's oral testimony was that the Maoists were motivated by revenge for the events of 1998. This evidence alone is said to justify the relevant finding of the Tribunal that the revenge was of a personal and not political nature. I do not accept this last submission. It is the case however that there was a deficit of relevant evidence before the Tribunal on these questions.

27 The Federal Magistrate at [75] analysed the Tribunal's reasoning in the following way:

> [W]hile recognising in some cases multiple motivations may exist, in this case**, on the evidence before it,** the Tribunal was satisfied that the sole or dominant motivation for harming the applicant in S would be for satisfaction of a personal grudge against him. … there was no claim by the applicant that he was or could be perceived as having engaged in politically significant acts. **There was no direct evidence as to the motivations of the Maoists vis-à-vis the applicant for the Tribunal to consider, other than the applicant's testimony that the Maoists were motivated by "revenge" for the events of 1998**. In particular, there was an absence of evidence that compelled an inquiry as to whether the Maoists in question wanted to harm the applicant because he was a policeman, an agent of the state, to whom a political opinion of ideological opposition to the Maoists may be imputed. (Emphasis added)

28 This analysis, it seems to me, points up two things. First, it accords with my own view that the Tribunal's conclusion that the Maoists were motivated by a personal grudge against the appellant was based solely on the appellant's evidence that the motive was revenge for his involvement in the events of 1998. However, that evidence poses but does not answer the question: was the threatened revenge, and the asserted fear of persecution generated by it, by reason of the appellant's membership of the Nepalese police force and/or as a result of actual or imputed political opinion. To admit that revenge was likely to have been the motive does not amount to a concession that the motivation was for the satisfaction of a personal grudge against the appellant. Second, the analysis actually highlights the failure of the Tribunal to consider the methods and objectives of Maoists on the significant question of motive: cf *Singh* at 546 [22] per Gleeson CJ; at 552 [47] per Gaudron J; at 578-579 [141] per Kirby J. There is no specific consideration in the decision record of the methods used by the Maoists or whether targeting police officers were part of their accepted *modus operandi*. The

Tribunal did not make findings as to whether the Maoists' objective of freeing their imprisoned comrades was consistent with threatening or killing the appellant. The proper characterisation of revenge will depend on the evidence as to the activities of the Maoists and their aims and attitudes toward the State of Nepal involving, in this case, the police force as one of its agencies. That genre of evidence was all but absent in this case.

29 The finding of the Tribunal that the sole or predominant reason for his being targeted by the Maoists was the satisfaction of a personal grudge against him was, so submits the first respondent, a finding of fact which cannot be reviewed: *Peiris v Minister for Immigration and Multicultural Affairs* (1999) 58 ALD 413 at [18]-[23]; *Buultjens v Minister for Immigration & Multicultural Affairs* [2001] FCA 1058 at [12] and [13]. The first respondent further submits that the Court should not too readily find error in such a finding of non-satisfaction: *NAAH of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs* [2002] FCAFC 354 at [27]; *NATC v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 52 at [27]. To do so, it submits, would involve the Court transgressing into merits review or finding that there was only one reasonable finding open to the Tribunal, being Convention related persecution for reason of political opinion or membership of a particular social group, notwithstanding the lack of evidence to support such an inference. Finally, it contends that there was no evidence that the Maoists in question wanted to harm the appellant because he was an agent of the state and the Court should not reconstruct those claims in a different or more articulate manner than they were put to the Tribunal: *S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 203 ALR 112 at [1]; *NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* [2004] FCAFC 263 at [58].

30 I do not agree. What was said by Gleeson CJ at [19] in *Singh* on this point is apt:

> The Tribunal found it unnecessary "to enquire into the political nature . . . of the KLF". The Tribunal said that the political objectives of the KLF had no bearing because this particular killing of a government agent was done "out of retribution". I agree with the conclusion of all four judges of the Federal Court. The reasoning of the Tribunal was legally erroneous, and cannot be explained upon the basis suggested by the appellant. **It was not merely a finding of fact related to the particular circumstances of the case. There was no evidence to warrant a conclusion that the police officer was killed for reasons of personal animus or private retribution**. On the respondent's account, which the Tribunal evidently accepted, the police officer became a

> "target" because he had tortured a KLF member. That can be described as a form of vengeance or retribution, but, if it were accepted that one of the political objectives of the KLF was to resist oppression of Sikhs, it is not vengeance or retribution of a kind that is necessarily inconsistent with political action in the circumstances which the respondent claimed existed in India. For the Tribunal to say, even by reference to the facts of the case, that such retribution cannot be political, was wrong. (Emphasis added)

31 Although it acknowledged, by setting out the passage from *Singh* set out above, that revenge is not the antithesis of political struggle, the Tribunal failed to consider all of the relevant evidence necessary to enable it to find whether indeed the revenge threatened arose from one or both of the Convention reasons relied upon. That failure was, in my opinion, a relevant error of law. I do not consider that the Tribunal properly instructed itself as to the law, that even where revenge is the immediate purpose or motive, that it can nevertheless sit within a political context, sufficient to attract the protection of the Convention. As Kirby J pointed out in connection with the political/personal dichotomy, revenge and personal hatred may be the expression, in a particular case, of a political motive: *Singh* at [141]. There was an impermissible short-cut in the Tribunal's reasoning, consistent with the observations of Gleeson CJ at [22] and Kirby J at [141]. In substance, the Tribunal implicitly concluded, as occurred in *Singh*, that vengeance was incompatible with a political motive. This in turn, it appears, led the Tribunal to side-step the question of the political nature of the Maoist insurgents operating in Nepal. In so doing it erred. The conclusion of the Federal Magistrate which is, in effect, to the contrary, at [69], is in my respectful opinion incorrect. Again, contrary to the finding of the Federal Magistrate [71], I do not consider that the Tribunal discharged the necessary evaluation in relation to the reasons why the appellant was targeted and claimed to have a well-founded fear of persecution: *Chen Shi Hai v Minister for Immigration and Multicultural Affairs* (2000) 201 CLR 293 per Kirby J at [69].

32 I will make orders that:

1. The appeal be allowed.

2. The orders of the Federal Magistrates Court made on 14 December 2007 be set aside.

3. In lieu thereof there be orders that:

   (a) The matter be remitted to the Refugee Review Tribunal, differently constituted, to be heard and determined according to law.

(b) The first respondent pay the applicant's costs to be taxed if not agreed.

4. The first respondent pay the appellant's costs of the appeal to be taxed if not agreed.

I certify that the preceding thirty-two (32) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gilmour.

Associate:

Dated: 24 July 2008

Counsel for the Appellant:	Mr M Newman
Solicitor for the Appellant:	Newman & Associates
Counsel for the First Respondent:	Mr J Mitchell
Solicitor for the First Respondent:	Australian Government Solicitor
Date of Hearing:	6 May 2008
Date of Judgment:	24 July 2008