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Law Ministers and Attorneys General of Small Commonwealth Jurisdictions Meeting, Jersey, Channel Islands, 15 to 17 May 2000.

Law Ministers and Attorneys General of Small Commonwealth Jurisdictions held their seventh meeting in Jersey, Channel Islands from the 15th to the 17th of May 2000. Among the issues of interest discussed at the meeting were the following:

“Harmful” tax competition

The Meeting critically discussed the ongoing work of the OECD Forum on “Harmful” Tax Competition. Law Ministers and Attorneys-General stressed the importance of their financial services sectors to their economic independence and survival and described in detail the frameworks they had put in place to regulate the provision of financial services and to assist foreign jurisdictions in the investigation and prosecution of offences including tax evasion.

They shared their personal experience of the unsatisfactory way in which the OECD is progressing in its work on “harmful tax competition”. They all felt that the OECD blurring of the distinction between tax evasion and tax avoidance was designed to facilitate “fishing expeditions” and to seek to require financial centers located in small and developing countries and jurisdictions to disclose information in cases where there was no evidence of criminality. They questioned the motivation of the OECD countries in this exercise and noted the decision to seek to criminalise in their jurisdictions previously legal tax planning minimisation techniques.

Law Ministers and Attorneys-General requested the Secretariat to facilitate the expression of their collective concerns. The Secretariat was asked to convene a meeting in London to enable interested small jurisdictions to discuss these issues further with a view to ensuring their concerns be recorded in the Secretariat's report on the subject to Commonwealth Finance Ministers in September 2000. Furthermore, they decided to issue a special statement on this issue, a copy of which is annexed to their communiqué, in order to bring their concerns to the attention of Finance Ministers and Commonwealth Heads of Government.

Money laundering: non co-operative countries and territories

Law Ministers and Attorneys-General acknowledged the importance of fighting money laundering by ensuring that their jurisdictions are not used as a safe haven for the proceeds of crime.

The meeting expressed great concern over the Financial Action Task Force's (FATF) list of Non Co-operative Countries and Territories of which small Commonwealth countries form the majority.

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They considered that the initial compilation of a list of “non co-operating” countries and jurisdictions was defective and that the whole process was fundamentally flawed as it breached all known principles of natural justice because, *inter alia*, countries which named other countries as suitable for investigation also participated in judging the process. In the light of past and ongoing mutual evaluation exercises to which many of the countries listed are subject, there was little justification for the FATF to continue its exercise. Concern was also expressed at the lack of an even-handed approach by failing to evaluate and report on all named jurisdictions contemporaneously.

They called upon the Commonwealth to support small jurisdictions which offer financial services to obtain appropriate dialogue with the OECD and to work towards a consistent and even-handed approach to the evaluation of the effectiveness of anti-money laundering regimes in both OECD and non-OECD countries. They sought assistance from the Secretariat in their efforts and those of their regional anti-money laundering groups to seek a solution to this problem.

Combating corruption

Law Ministers and Attorneys-General were of the opinion that corruption can undermine the whole fabric of a nation if it is allowed to thrive unchecked.

Anti-corruption strategies must be tailored to meet national needs and circumstances. One strategy which could be used in appropriate cases and which was of interest to many member countries was the adoption of codes of conduct for public officials. Accordingly, they asked the Secretariat to finalise the draft Integrity Code taking into account the work of the Commonwealth Expert Group on Corruption and the issues raised in the Framework of Principles for the Commonwealth. They also recognised that while the Code alone could not solve the problem of active and passive corruption it could contribute to the fight against corruption.

They considered that the definition of public officials should be as wide as possible to encompass all those who provide essential and other privatised services to the public. Ministers and Attorneys-General believed that codes of conduct should apply to judicial officers and to those levels of officials whose decision-making powers affected the public or which had potential economic consequences. They saw merit in codes of conduct (whether incorporated in statute or otherwise) being administered by an independent and credible body and believed that breach of a code should be capable of remedy in a variety of ways suitable to the specific nature of the breach.

C A S E N O T E S

Evidence – evidence obtained as result of warrant-authorised search – inconsistencies between matters contained in information and facts – whether renders search invalid – Charter of Rights and Freedoms s. 8 & 24 - (Canada)

K was charged with the offence of unlawful cultivation of marijuana. The evidence against him was obtained during a warrant-authorised search of his house. During trial, K complained that the search was illegal, because of deficiencies in the warrant application material, and thus it contravened the Canadian Charter of Rights and Freedoms, specifically section 8. He asked that the evidence obtained as a result of the search be excluded under section 24 of the Charter.

The argument was based on the nature and sufficiency of the information presented to obtain the warrant. In this case, the police had received a tip from an anonymous informant through a

“Crime stoppers” program and thus it was impossible to determine whether he or she was credible, except by reference to the subsequent police investigation. The subsequent investigation involved observations of the appellant’s house and a review of hydro records. The results of these police inquiries were included in the sworn material presented to the judge who issued the warrant.

However, there were inaccurate statements in the data contained in the sworn information, about the actual consumption of electricity in the appellant’s house. The errors were corrected by evidence introduced by the appellant at the *voir dire* to review the legality of the warrant. On the *voir dire*, the appellant also introduced evidence regarding the electricity consumption of other houses on the same street as the appellant’s house.

The trial judge rejected K’s challenge to the warrant, allowing the evidence obtained through the search to be admitted at the trial proceedings. K was subsequently convicted and sentenced.

H appealed to the Ontario Court of Appeal, again raising the validity of the warrant. He argued that:

1. there was insufficient information to constitute reasonable grounds for issuing the warrant; and
2. the information sworn in support of the warrant contained misstatements of fact.

● **Held:** dismissing the appeal;

1. It is well-settled that a court reviewing the sufficiency of the information in support of a search warrant should do so on the basis of the corrected and the amplified record: *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161 (S.C.C.); *R. v. Plant* [1993] 84 C.C.C. (3d) 203. In this case, even though there was some uncertainty about the evidence adduced to show comparative hydro records, it still had evidentiary value. That evidence showed a marked and sustained increase in hydro consumption from 1994 to 1995 and through 1996. Moreover, although the details of the house on the street chosen as the comparable were unclear, the difference in electricity use was significant. Electricity use in the house in question was two to three times higher than was that of the comparable house.

2. Although the comparison evidence in this case was not as clear or as cogent as that in *Plant*, where the electricity use in the house was four times higher than in the two comparables, it was the court's view, that the significantly elevated hydro usage, together with the two observations of condensation on the second floor window and boarded up windows in the basement, provided information which, taken as a whole, corroborated the informant's tip.

The Court was satisfied that the information supporting the issuance of the warrant was at least as strong as that in *Plant* and that it therefore met the reasonable grounds threshold.

3. On the question of the inaccuracies, the issue for the court's determination was whether their inclusion in the sworn information rendered the otherwise validly obtained warrant invalid.

A search warrant must be quashed if it is shown that the police in applying for the warrant engaged in a deliberate deception: *R. v. Donaldson* (1990), 58 C.C.C. (3d) 294 (B.C.C.A.). There was no deliberate attempt to deceive. On the contrary, the trial judge found that the police officers acted in good faith based on the information they had received. Viewed in the worst light, the appellant's complaints demonstrated a lack of care and precision on the

part of the police in collecting the hydro data and information as to the appellant's criminal record and in describing it in the sworn information. There may be cases where a lack of care will be sufficiently serious that an otherwise valid warrant should be set aside. Police officers should attempt to be scrupulously accurate in preparing and swearing information used to obtain warrants. However, not all errors in an information in support of an application for a search warrant will render the warrant invalid on review: *R. v. Plant* at p. 216.

Although a lack of care was regrettable, the complaints made by the appellant were not sufficiently serious to justify setting aside the warrant. These matters did not seriously mislead the authorizing Justice of the Peace, nor was there any indication that the police officer proceeded in an offhanded or cavalier manner. The deficiencies in this case did not raise concerns regarding the officers' good faith

Her Majesty the Queen v. Alan Carl Kesselring, Ontario Court of Appeal, 2/5/2000 [Internet cite: <http://www.ontariocourts.on.ca/appeal.htm>]

Proceeds of crime – Tax evasion – Confiscation Order – Whether evasion or deferral of debt capable of constituting pecuniary advantage – Criminal Justice Act 1988, section 71 (5) – (UK)

A was convicted of 13 counts of cheating the public revenue and D of conspiracy to cheat the public revenue. A confiscation order was also made against A, in the sum of £3,137,165, with seven years imprisonment in default of payment. The default imprisonment term was to be served consecutively with the term of seven years imprisonment imposed for the 13 offences of cheating for which A was convicted.

A appealed against the confiscation order and the substantive sentence of seven years. Both appellants also asked the court to certify a point of law of general importance.

In relation to the appeal against the confiscation order, A argued that it was a precondition for a confiscation order to be made for the accused person to have gained a pecuniary advantage from his fraudulent activity. In this case A had not obtained a pecuniary advantage by his fraudulent failure to pay or declare tax, and definitely not in the sum of £4m. The tax remained due and payable to the Revenue. Had he gained interest on

the principal sum of the tax due between the time of committing the offence and its discovery, that would have amounted to a pecuniary advantage but he did not gain such interest and did not therefore obtain any pecuniary advantage. In relation to the evasion of tax by his companies, A argued that the tax liability was that of offshore companies and that the only pecuniary advantage that he could have gained would have been an increase in the value of their shares arising out of non payment of the tax, which did not in fact happen. For these reasons, the confiscation order was unlawfully made.

● **Held:** dismissing the appeals

1 The power to make confiscation orders was essentially contained in section 71 of the Criminal Justice Act 1988 which provides:

“(4) ... a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.

(5) where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this part of this Act as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage”

Section 71 (1B) and (6) require the court to make an order in the sum equal to the benefit derived by the offender from his offence or his realisable assets, which ever is the less.

2. Pecuniary advantage is not defined by the Act, and should therefore be accorded its ordinary meaning. The phrase had been defined to include the case where a debt is evaded or deferred. ‘An obligation is evaded if by some contrivance the debtor avoids or gets out of fulfilling or performing his obligation’; per Lord Reid in *D.P.P. v. Turner*. [1973] 3 All E. R 124, at 127. In effect, the fact that tax remains due and payable did not mean that its evasion did not confer a pecuniary advantage. The appellant criminally evaded the payment of tax to the tune of £4m and that sum constituted the proceeds of his criminal conduct. The fact that he remained in law liable to pay the tax and that the Revenue could at any time recover it, did not mean that the proceeds of his crime were less than the amount of tax evaded. Had the fraud remained undetected, A would have been enriched to the tune of £4m and that amount represented the measure of the pecuniary advantage.

3. There was a difference between a compensation order and a confiscation order. Whereas a confiscation order was referable to the appellant’s benefit that arose from the commission of a crime, a compensation order was referable to the compensation of the victim of the crime. ‘A confiscation order is made to deprive the offender of the proceeds of his crime. A compensation order is made to compensate the victim of the crime.’

4. On the question of the liability of the offshore companies, the corporate veil could be lifted where it is discovered that it was being used as a vehicle for fraud. In this case the said companies were A’s alter ego.

R. v. Dimsey and R. v. Allen [2000] 2 All ER 142

Proceeds of Crime - Acquisition, possession or use of proceeds of criminal conduct- Whether for defence to prove or prosecution to disprove defence of adequate consideration - Criminal Justice Act 1988, s 93B(2) (as inserted by the Criminal Justice Act 1993, s 30)- (UK)

A third party (now deceased) had paid a total of £75,000 into secret bank accounts in order to evade tax. The defendant was suspected of being involved in a conspiracy to conceal the existence of the accounts. He made a statement that the third party had lent him £28,000 which he had repaid in cash with the addition of £500 by way of interest.

He was charged with acquiring, possessing or using the proceeds of criminal conduct, contrary to section 93B of the Criminal Justice Act 1988. At the trial he submitted that as the prosecution had failed to disprove the defence open to him, that he had acquired or used or had possession of the sum of £28,000 for adequate consideration, there was no case to answer.

The trial judge rejected this submission and convicted him. He appealed to the Court of Appeal.

● **Held:** dismissing the appeal;

1. The prosecution was not required to prove that no or inadequate consideration had been given. It was for the accused to raise the defence that he had acquired the property for adequate consideration and to show on the balance of probability that the defence applied.

2. The question as to where the burden of proof lay in s 93B(2) depended on the intention of the enactment. The legislative history of S 93B of the Criminal Justice Act 1988 (as amended) shows that it was one of three "money laundering" offences introduced by the Criminal Justice Act 1993 in order to deal with the problem of concealment of the proceeds of crime. It was clearly modelled on s 14(3) of the Criminal Justice (International Co-operation) Act 1990 which created an offence of acquiring property knowing or suspecting that it represented the proceeds of drug trafficking. The section took out the provisions concerning the giving of adequate consideration from the statement of offence, to provide for a defence if adequate consideration had been given. Whether Parliament by implication intended to place any burden on a defendant to raise a defence might also be revealed by the practical consequences of holding where the burden of proof should rest. In these cases, it was impossible for the prosecution to know or discover if any consideration had been paid at all, whereas the accused would know whether he had given consideration and its nature and extent. Thus, the practical analysis supported this interpretation.

Regina v. Gibson 23/02/00, Court of Appeal
Internet cite: http://www.lawreports.co.uk/crim_feb0.6.htm

Sentence – Principles involved in imposing preventive detention – whether substantial detention expedient for protection of the public – exercise of discretion in imposing preventive detention – Criminal Procedure Code, section 12 – (Singapore)

P was charged with two counts of voluntarily causing hurt with a dangerous weapon and consuming drugs, to which he pleaded guilty. He was convicted and sentenced to three years imprisonment and six strokes of the cane on the assault charge and four years on the drugs charge, both sentences to run consecutively. P had a series of previous convictions spanning from 1979 and had been in and out of prison. These convictions were in respect of various offences involving the use of force including one for culpable homicide not amounting to murder.

The judge noted that P's previous convictions show him to be a man of violence and a menace to society. He therefore called for a preventive detention report which confirmed P's suitability

for preventive detention. In his renewed mitigation P's counsel urged the court to consider the fact that P was a married man with two young children who would suffer if he were incarcerated for too long. The judge declined to impose a preventive detention, holding that he had discretion not to impose a preventive detention, especially where he felt that the protective purpose of a preventive detention would be served by the imposition of a substantial term of imprisonment.

The prosecution appealed, contending that the sentence was manifestly inadequate. They argued that the judge failed to give due weight to P's previous convictions and the seriousness of the present case. The judge also failed to give adequate consideration to the need to protect the public and wrongly exercised his discretion in declining to impose preventive detention.

☉ **Held:** allowing the appeal and substituting preventive detention;

1. In view of P's criminal record, this was a case of potential preventive detention. The court's power to impose preventive detention is governed by section 12(2) of the Criminal Procedure Code which provides:

Where a person who is less than 30 years of age –

- (a) is convicted before the High Court or a district Court of an offence punishable with a term of 2 years or upwards, and has been convicted on at least 3 previous occasions since he attained the age of 16 years, of offences punishable with such a sentence, and was on at least two of those occasions sentenced to imprisonment or corrective training; or
- (b) ...

then if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiration of the sentence, the Court, unless it has special reasons for not so doing, shall pass, in lieu of any sentence of imprisonment, a sentence of preventive detention of such term of not less than 7 or more than 20 years as the Court may determine.

Preventive detention is a fitting punishment when an offender is a 'menace to society': *Kua Hoon Chua v. PP* [1995] 2SLR 385, at 389.

In view of P's long criminal history involving violent crimes and drug offences, and the circumstances of the present offence, there was an obvious indication of P's propensity for violence. He had proven to be unrepentant and incapable of reform. The use of a dangerous weapon in this case revealed a disconcerting escalation in the degree of danger, which he posed to the public. He ought therefore to have been incarcerated for a substantial period of time for the protection of the public.

2. When the criteria in section 12 (2) are met and the court is satisfied that the offender poses such danger to society that it is expedient to detain him in custody for a substantial period of time, it must sentence him to preventive detention. It was not open to the judge below, in the absence of special reasons, to explore alternative sentences.

3. The concept of preventive detention must not be confused with imprisonment. They are different sentences underpinned by different objectives and rationales. Preventive detention is aimed essentially at the protection of the public while imprisonment reflects the traditional policies of prevention, deterrence, rehabilitation and retribution. They are different in duration, character and implementation. As such it would be wrong to view them as fungible sentences.

4. Although 'special reason' is not defined by the Code, the court was inclined to accept that this refers to the offender's physical and mental suitability for preventive detention. Lack of remission could hardly be said to constitute a special reason in the case of P. "Corrective training and preventive detention are meant to supplant a sentence of imprisonment which would otherwise be ordered and should be passed in lieu of the aggregate sentence of imprisonment which the court would otherwise have been minded to impose": *Yusoff bin Hassan & Ors. v. PP* [1992] 2SLR 1032, at 1034I - 1035A.

Public Prosecutor v. Perumal s/o Suppiah [2000] 3 SLR 308.

Sentence – life imprisonment – whether policy of imposing whole life tariffs in principle unlawful – whether there is a legitimate expectation of a term of years – The Murder (Abolition of the Death Penalty) Act 1965 - (UK)

The appellant, Myra Hindley is serving mandatory sentences of life imprisonment for the murder of two children, having already served thirty-four

years. On 3 February 1997 the Secretary of State for the Home Department decided, that she needed to serve a whole life, i.e. detention for the whole of her natural life, to satisfy the requirements of retribution and deterrence. By a letter dated 19 November 1997, another Home Secretary indicated that, subject to consideration of whether it might be appropriate to reduce Hindley's tariff because of exceptional progress she might have made in prison he "[saw] no reason to depart from the conclusion of his predecessor that a whole life tariff [was] appropriate in all the circumstances of the case".

In the meantime Hindley had commenced judicial review proceedings seeking an order quashing the decision of the Secretary of State for the Home Department to impose on her a "whole life" tariff. This application was dismissed by the Divisional Court and her appeal to the Court of Appeal was also dismissed. She then appealed to the House of Lords.

The issues before their Lordships were two-fold:

- 1) Whether the Secretary of State's policy of imposing whole life tariffs on some mandatory life sentence prisoners is in principle unlawful
- 2) Whether the imposition of the whole life tariff on Hindley was unlawful on public law grounds.

Hindley argued that the policy of the Secretary of State fetters his discretion, excludes consideration of such cases by the Parole Board, and is inconsistent with the tariff system, which is said to require expression of the tariff in a term of years. When in 1965 Parliament enacted section 1(1) of the Murder (Abolition of Death Penalty) Act 1965, which in the case of murder replaced the sentence of death by a mandatory sentence of life imprisonment, the substitute sentence did not mean a lifelong period of imprisonment. It contemplated that, if the prisoner were not a risk to others, he or she would be released after a finite period of imprisonment.

● **Held:** dismissing the appeal;

Unlawfulness of whole life tariffs

1. Counsel's submissions must be tested against the language of the statutory provisions. When the Murder (Abolition of the Death Penalty) Act was passed in 1965, Parliament was legislating against the background of a tolerably clear meaning of "life imprisonment". Section 1(1) of the 1965 Act read with section 27 of the Prisons Act 1952 (as repealed and amended in the Criminal Justice Acts), did not exclude the

possibility that life sometimes might mean life. Section 27 shows that as a matter of law a sentence of life imprisonment was understood to authorise the detention of a person sentenced to life imprisonment for an indeterminate period, which is only brought to an end by death or if the Secretary of State, in the exercise of discretion, decides to release him or her. It is therefore impossible to conclude that life imprisonment in the statute meant a finite period short of the natural life of the prisoner. Looking at the matter more broadly there is therefore no reason to give to the concept of life imprisonment anything but the contextual meaning of the legislation.

2. On the question that the Home Secretary had unlawfully fettered his discretion, the submissions of Counsel for the Home Secretary indicated that the Home Secretary envisages the possibility of release in the event of exceptional progress in prison and, even in absence of such progress, he is prepared to reconsider any whole life tariff decision from time to time. Therefore, it was impossible to say that the Secretary of State had unlawfully fettered his discretion.

3. As regards the issue of the consideration of the Parole Board, the Secretary of State had given directions to the Parole Board in 1993, to the effect that its role was to advise on risk, and not on tariff. The lawfulness of that direction was not challenged. The Secretary of State was not obliged to refer cases involving whole life tariffs to the Parole Board. In any event, in this case the Parole Board had advised in 1997 that Hindley be transferred to open prison conditions with a further review two years later. This recommendation, which was the most favourable that Hindley could have hoped for, was rejected by the Secretary of State and it was within his power to do so. Therefore it was not possible to say that the Secretary of State acted unlawfully by not referring the case to the Parole Board.

4. On the submission that the policy of imposing a whole life tariff was inconsistent with the notion of a tariff, this was an appeal to logic. There was nothing logically inconsistent with the concept of a tariff by saying that there are cases where the crimes are so wicked that even if the prisoner is detained until he or she dies, it will not exhaust the requirements of retribution and deterrence.

Unlawful treatment of Hindley.

5. Referring to an internal decision made by the former Secretary of State in 1985, counsel had argued that the imposition on Hindley of a whole life tariff amounted to "an increase in the 1985

tariff". Relying on statements of the law enunciated by LJ Hope of Craighead and Brown-Wilkinson in *Reg. v. Secretary of State for the Home Department, Ex parte Pierson* [1998] A.C. 539 that it is contrary to principle for the Secretary of State to increase retrospectively a tariff fixed by himself (or a predecessor) and communicated to a prisoner, counsel had argued that the decision was contrary to legal principle and unlawful.

The court noted that there was no consensus among their Lordships on that point in the cited case. Moreover, the decision made by the Secretary of State in March 1985 had been expressed to be "provisional" and was neither directly nor indirectly communicated to Hindley. She was unaware of it until 1994. The argument based on observations in *Pierson* therefore failed at the threshold and there was no basis to extend it so as to apply to a provisional and uncommunicated decision. As well, the view of the Secretary of State in 1985 was based on an incomplete knowledge of the role of Hindley in the three murders for which she faced trial and in ignorance of her involvement in two other murders. Until 1987 Hindley concealed her role. In that year she made confessions about her greater involvement in the course of police interviews. Through her advisers she asked the Secretary of State to consider her account of her involvement in the five murders under the influence and intimidation of Brady. In this context the Secretary of State was entitled to look at the whole of the available evidence. In deciding on her tariff the Secretary of State was not entitled to increase it as retribution and deterrence for murders of which she had not been convicted. But in deciding what was proper retribution and deterrence for the murders of which she had been convicted he was entitled to take into account that she committed them knowing the fate of Brady's earlier victims. Even if a tariff had been fixed and communicated in 1985, fairness in a public law sense would not have entitled Hindley to rely on the earlier decision taken in ignorance of material facts.

6. Counsel also argued that Hindley had a legitimate expectation of a finite time to her tariff

In the Court's view, there was no scope for applying the doctrine of legitimate expectation, since Hindley did not know her tariff date until after 1994. She was never given any assurance about her tariff. She was told to make no assumption one way or the other about when she might be released. She had no reasonable basis for any expectation that she would be released at any particular time.

7. It was contended on behalf of Hindley that the imposition of the whole life tariff was conditioned by an increase in tariffs from 1988 onwards. Although the Court accepted that there had been an increase in tariffs since that date and 1988 certainly marks the first imposition of the whole life tariff, the wisdom of this shift in penal policy was not a matter that arose for decision. The adoption of a more severe policy was within the statutory powers granted to the Home Secretaries by Parliament.

8. Counsel for Hindley finally argued that in the light of her age at the time of the murders (22 to 23 years), the dominance of Brady over her and the fact that she had already spent 34 years in prison, there was no justifiable basis for maintaining a whole life tariff in her case. The imposition of a whole life tariff was therefore disproportionate.

In the Court's view, "even in the sordid history of crimes against children the murders committed by Hindley, jointly with Ian Brady, were uniquely evil... The Secretary of State was therefore entitled to take into account that the two murders of which she had been convicted in 1965 were the culmination of a series of five murders committed by her and Brady. "They abducted, terrified, tortured and killed their victims before burying their bodies on Saddleworth Moor. Hindley was a woman of competent understanding. The argument that she was not the "actual killer" must be put in perspective. Her role in the murders was pivotal. Without her active participation the five children would probably still be alive today. The pitiless and depraved ordeal of the victims, and the torment of their families, place these crimes in terms of comparative wickedness in an exceptional category. If it be right, as I have held it to be, that life long incarceration for the purposes of punishment is competent where the crime or crimes are sufficiently heinous, it is difficult to argue that this case is not in that category. In my view the decision of the Secretary of State to maintain a whole life tariff in the case of Hindley is lawful"

Regina v. Secretary for State for the Home Department, Ex Parte Hindley House of Lords Decision, dated 20 March 2000 [internet cite: <http://courtservice.gov.uk/judgements.htm>]

Criminal Law – Criteria for judge to accept retraction of admission – inferences as to conspiracy – Distinction between contract and illegal agreement – (UK)

K was charged and convicted of conspiracy to supply heroin to the UK from Turkey. A car in which a large quantity of heroin was found, was traced to K. The prosecution relied on computer printouts that showed him making journeys to and from Romania in a car associated with the conspiracy, as well as passport stamps. K initially confessed to the journeys reflected in the computer printouts, but later retracted.

At trial, the judge admitted the confession into evidence. K appealed arguing that it should not have been admitted and also that from the printouts inferences drawn by the judge could not have been made under section 69 of the Police and Criminal Evidence Act, (PACE). Section 69 of PACE sets out the inferences that may be drawn from available evidence in cases of conspiracy.

● **Held:** dismissing the appeal;

1. Admissions made with the benefit of legal advice were important evidence. If the appellant sought to resile from them, he must seek the judge's permission. The judge should only grant permission if convinced that the admission had been made due to mistake or misunderstanding.
2. The printouts were rightly admitted under section 69 and it was clearly open to the judge to draw the inference that the computers from which the printouts came, were operating correctly.
3. The comparison between the conspiracy to supply the drugs and a contractual arrangement was misplaced, because "as the evidence showed when the roles were more confused and there was no distinct role of wholesaler or retailer, as in an unlawful conspiracy, it was simply a matter of fact as to whether the first supplier or the person who brought the goods into the UK was a party to an agreement that there would be onward supply".

R. v. Kolton [2000] Criminal Law Review p.761.