NH v THE DIRECTOR OF PUBLIC PROSECUTIONS (A14/2016);
JAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS (A15/2016);
ZEFI v THE DIRECTOR OF PUBLIC PROSECUTIONS (A16/2016);
STAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS (A19/2016)

Court appealed from:	Full Court, Supreme Court of South Australia [2015] SASFC 139
Date of judgment:	25 September 2015
Date special leave granted:	11 March 2016

The appellants were charged with murder. Following a trial in the Supreme Court of South Australia, on 22nd September 2014, the jury returned to deliver its verdict. In response to questions from the judge's associate, the foreperson of the jury announced that the jury found the appellants not guilty of murder and guilty of manslaughter. In answer to a further question by the associate, the foreperson affirmed that the verdict of not guilty to murder was the verdict of ten or more of the jury. The questions were repeated in relation to each of the appellants, and the same answers were given. Each of them was found not guilty of murder and guilty of manslaughter.

Later that day, the foreperson telephoned the Court and asked to see the Jury Manager. In the next few days, the Sheriff met with the foreperson and each of the other jurors and obtained signed statements from them regarding the accuracy of the verdicts. The statements indicated that there was an irregularity in the announcement of the verdict, in that the foreperson responded ‘yes’ to the question as to whether each of the not guilty verdicts on the charge of murder was the verdict of ten or more of the jury, when the correct response was 'no'.

Stakaj and NH lodged applications for permission to appeal against the convictions of manslaughter. On 16 January 2015, the respondent filed a cross-application, seeking that the Court exercise its inherent jurisdiction to expunge or quash all verdicts and order new trials. On 5 March 2015, the respondent filed a further application, requesting that the trial Judge refer to the Full Court five questions of law for its consideration and determination.

The Full Court (Kourakis CJ dissenting, Gray and Sulan JJ,) granted the respondent's application and ordered that the jury verdicts of not guilty of murder and the convictions of manslaughter be quashed, that the sentences be set aside and there be a retrial on the charge of murder.

The majority first considered whether strict compliance with s 57 of the *Juries Act 1927 (SA)* was required. They accepted the respondent’s submission that departures from the requirements of s 57 result in unauthorised verdicts and verdicts that do not accord with law.

The majority then noted that they could not determine the application without understanding the issue with the verdicts, and to do this the respondent had to convince the Court to admit the evidence of the jurors. If the respondent was successful in admitting the evidence and the Court determined it had jurisdiction to hear the application, the question became whether the Court had a power,

inherent or otherwise, to expunge or quash a jury acquittal that had been entered onto the Court record.

With respect to the admissibility of the affidavits of the jurors, the majority noted that it is a general rule of the administration of criminal justice that once a trial has been determined upon the verdict of a jury, and the jury discharged, evidence of a juror or jurors as to the deliberations of the jury is not admissible to impugn the verdict. However, in this case the respondent was not asking the Court to inquire into the reasons for verdict. The affidavits tendered did not reveal anything of the jury's deliberative processes. The questioning of the jury, when the foreperson delivered the verdict of the jury, took place in open court. It was the response to those questions that was the subject of the evidence sought to be led. A verdict delivered in open court is the public pronouncement of the results of the jury's deliberations. The Court found that if that pronouncement did not reflect the true verdict, the Court could have regard to evidence which established that fact.

In considering whether the Court had jurisdiction to hear the respondent's application and to declare the acquittal of each accused void and order a retrial, the majority noted that a verdict of acquittal by a jury has long been considered as sacrosanct. However, they also noted that the inherent jurisdiction of the Court was not restricted to closed and defined categories. As a superior court of record, the Court had an inherent jurisdiction to review an order entered that was infected by error and, in particular, was noncompliant with the mandatory requirements of s 57 of the *Juries Act*. The Court had power to ensure that jury verdicts were delivered in compliance with the statutorily mandated legal provisions. The issue of the appellants receiving the full benefit of jury acquittals was not to the point, as there had been no valid jury acquittals. The powers relating to protection of abuse of process extended to precluding the undermining of confidence in courts generally. Allowing a verdict which was arrived at other than by strict compliance with mandated legal requirements would undermine this confidence.

Kourakis CJ dissented on the issue of the power of the Court to set aside a judgment of acquittal based on a jury verdict of not guilty. He noted that there was no statutory grant of jurisdiction or power to do so. He held that the Court should not delve into its inherent powers and fashion a never before contemplated power to set aside judgments of acquittal, notwithstanding the centuries old principles and procedures of the common law which have accorded such judgments, subject to certain presently immaterial exceptions, inviolability.

The grounds of appeal include:

- The Full Court erred in holding that it had jurisdiction to hear and determine the application of the respondent and to 'quash' or set aside the jury verdicts of not guilty for murder, in circumstances where the jury had dispersed, the orders were perfected, there is no avenue of appeal, and rights of appeal and review are exhaustively regulated by statute.