

IN THE HIGH COURT OF AUSTRALIA

No: A14 of 2016

ADELAIDE REGISTRY

BETWEEN:



NH  
Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS  
Respondent

APPELLANT'S AMENDED REPLY

CERTIFICATION

The appellant certifies that this submission is in a form suitable for publication on the internet.

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1. In respect to paragraphs 53 and 54 of the respondent's submissions, the appellant refers to paragraphs 6.7.8. and 6.7.9 of his submissions. It is evident from the restrictions Parliament has seen fit to place on the ability of appeals to be brought following acquittals as compared with those following guilty verdicts, that it has seen fit to limit the Crown's rights of appeal to a greater extent than those of an accused. ~~While it is accepted that the inherent jurisdiction of the Court might in some circumstances allow a Court to quash an acquittal, the inherent jurisdiction of a Court cannot have any operation where Parliament has seen fit to impose limitations on the availability of a remedy such as to circumvent those limitations.~~ In these circumstances the so-called inherent jurisdiction of a Court cannot have any operation where Parliament has seen fit to impose limitations on a right of appeal.
  2. In relation to paragraphs 55 to 62 of the respondent's submissions, the appellant submits that the so called inherent power of the Supreme Court cannot be utilized as a parallel remedy to an appeal so as to enable both the prosecution, and presumably the defence to apply to the Court to set aside verdicts of a jury whenever there is some evidence that the jury have failed in any way to comply with the provisions of the Juries Act 1927 (SA).

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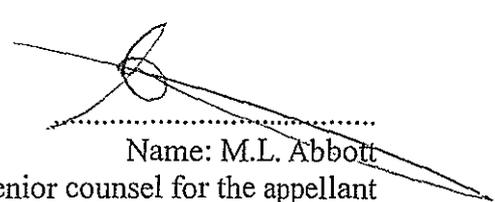
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3. In other words the respondent, by invoking the so-called inherent power of the Court, is unable to delineate any limits on that power as it might apply to Trials by juries in South Australia. In fact the respondent's case appears to be that there is no limit, or fetter on such inherent power.
4. In respect to paragraphs 67 to 71 of the respondent's submissions, the appellant disputes that what has occurred would denigrate public confidence in the administration of justice, bring it into disrepute or otherwise unacceptably compromise the Court's integrity. What has occurred (accepting for this purpose the statements of the jury) has come about as a result of a *mistake*.
5. In circumstances such as this, it is submitted that the public would recognize that institutions are not perfect and that fairness to all parties, including an accused person, must be considered when considering whether the law provides any remedy for such a mistake, and in particular whether exposing him to a new trial on the charge of murder is an appropriate outcome.
6. The appellant maintains his submission at 6.8.3 that the consequences of what has happened should not fall on him.

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Dated: 23 May 2016



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