

## **PATEL v. THE QUEEN (B11/2012) & (B25/2011)**

Court appealed from: Court of Appeal of the Supreme Court of  
Queensland  
[2011] QCA 81

Date of judgment: 21 April 2011

Date of grant of special leave: 10 February 2012

On 29 June 2010, after a 58 day trial in the Supreme Court at Brisbane, a jury found the appellant guilty of the manslaughter of three people and of unlawfully doing grievous bodily harm to one person. The charges arose out of surgical operations which the appellant conducted on those people whilst he was employed as a surgeon at the Bundaberg Hospital between May 2003 and December 2004. On 1 July 2010, the trial judge sentenced the appellant to concurrent terms of seven years imprisonment for each of the manslaughter offences and three years imprisonment for the grievous bodily harm offence.

The appellant was convicted in each case on the basis that his decision to operate was criminal.

The appellant appealed against his convictions and also applied for leave to appeal against sentence. The Attorney-General also appealed against the sentence. A number of grounds were relied upon in particular the proper construction of section 288 of the *Criminal Code* 1899 (Qld) ("the Code").

The Court of Appeal (McMurdo P, Muir and Fraser JJA) gave a joint judgment upholding the convictions and dismissing the appeal on the basis that the appellant's decision to operate in each case was so thoroughly reprehensible that the decision was criminal and deserved criminal punishment. In relation to s 288 of the Code the Court found that the section applied both in relation to criminally negligent acts or omissions in the course of performing surgery and criminally negligent acts or omissions in performing surgery at all. The Court affirmed the trial judge's construction of s 288. The other grounds of appeal were dismissed.

In relation to the sentence imposed the Court found that competing factors made the sentencing of the appellant a novel and difficult exercise. The Court concluded that the sentence imposed properly balanced the exacerbating and mitigating features of the case and that the trial judge had made no error. The Attorney-General's appeal against sentence was dismissed and the appellant's application for leave to appeal against sentence was refused.

The ground of appeal is:

- The Court of Appeal erred in law in finding that the convictions of the appellant concerning each of the four patients could be supported on the basis that the appellant had breached a duty under s 288 of the *Criminal Code* 1899 (Qld). This section did not apply to the offences of which the appellant was convicted.

The following ground was referred to a Full Court for argument as on an appeal:

- The Court of Appeal erred in failing to find that in all the circumstances of the case there had been a miscarriage of justice.