

## **WILLIAMS v UNITED STATES OF AMERICA & ANOR (S410/2007)**

Court appealed from: Full Court of the Federal Court of Australia

Date of judgment: 3 August 2007

Mr Williams is a United States citizen who was arrested at Sydney Airport, at the request of the United States Government, shortly after his arrival on 20 May 2006. He was granted conditional bail on 23 May 2006. On 13 July 2006 the Australian Government received an extradition request from the United States concerning Mr Williams. The United States wishes to prosecute Mr Williams on an indictment alleging offences of wilful attempts to avoid federal income tax.

On 17 July 2006 the Minister for Justice and Customs ("the Minister") issued a Notice of Receipt of Extradition Request under section 16 of the *Extradition Act 1988* (Cth) ("the Extradition Act"). Mr Williams however successfully sought the judicial review of that decision before the Full Federal Court. On 29 March 2007 the Minister issued a fresh Notice of Receipt of Extradition Request and as a consequence, proceedings under section 19 of the Extradition Act were commenced before a New South Wales Magistrate.

While the matter before the Magistrate remained pending, Mr Williams filed an application in the Federal Court challenging the validity of sections 19(1) and 46(1)(a) of the Extradition Act. That application was brought pursuant to section 39(1A) of the *Judiciary Act 1903* (Cth) ("the Judiciary Act"). In it Mr Williams sought to restrain the Respondents from taking any further steps before the Magistrate to determine whether he is eligible for surrender to the United States. He also sought a declaration that sections 19(1) and 46(1)(a) of the Extradition Act did not authorise or permit the conduct of such proceedings. The Attorneys-General for both the Commonwealth and the State of New South Wales subsequently intervened.

On 3 August 2007 the Full Federal Court (Branson, Tamberlin & Allsop JJ) unanimously dismissed Mr Williams' application. Justice Tamberlin, with whom the other Justices broadly agreed, noted that section 46 of the Extradition Act continued the established Australian practice of extradition proceedings being carried out by State Magistrates. His Honour went onto find that, on a proper construction of the meaning and operation of section 23 of the *Local Courts Act 1982* (NSW), the State of New South Wales gave statutory approval to its Magistrates to perform the duty required of them under section 19 of the Extradition Act. The application for special leave to appeal from this decision has been referred to the Full Court for hearing concurrently with *O'Donoghue v Ireland & Anor* and *Zentai v Republic of Hungary & Ors*.

On 22 October 2007 the Applicant filed a notice pursuant to section 78B of the Judiciary Act. The Attorneys-General for the Commonwealth, New South Wales, Western Australia and South Australia and Victoria have all indicated that they are intervening in this matter.

The questions of law said to justify the grant of special leave to appeal are:

- Is it an implication from the federal structure of the Constitution that the Commonwealth Parliament cannot impose an administrative duty on the holder of a State statutory office without State legislative approval?
- Is the administrative duty imposed by section 19 of the Extradition Act imposed on a Magistrate as the holder of a State statutory office?
- Is the imposition of that duty approved by any legislation of the Parliament of New South Wales?