<u>LEACH v. THE QUEEN</u> (D10/2006)

<u>Court appealed from</u>: Court of Criminal Appeal of the Supreme Court of the Northern Territory

<u>Date of judgment</u>: 22 December 2005

<u>Date of grant of special leave</u>: 1 September 2006

On 16 May 1984 the appellant, Martin Leach, was found guilty after a trial of two acts of murder and one of rape. The crimes were particularly brutal. The appellant raped and murdered an 18-year-old woman and murdered her 15-year-old female friend in a recreation area in 1983. The appellant forced the two victims at knifepoint to a secluded area where he cut their clothes from them and used the clothes to bind and gag them. He first stabbed the older victim, leaving the knife in her, and raped her, the stabbing and rape occurring in front of the bound and gagged younger victim. He then murdered the younger victim with a single stab wound, then stabbed the older victim a second time, whose death, according to the pathologist, would have taken five to 10 minutes. The appellant was sentenced to life imprisonment on each count of murder and on the count of rape. At the time of sentencing, the court was not empowered to fix a non-parole period for life sentences. The only possibility of release was executive clemency.

On 11 February 2004 the *Sentencing (Crime of Murder) and Parole Reform Act* 2004 (NT) ("the Act") commenced operation. The Act provided that the Director of Public Prosecutions could, and in this case did, apply to the Supreme Court pursuant to section 19 of the Act for an order to refuse to fix a non-parole period. Pursuant to section 18 of the Act, without such an order a prisoner serving two life sentences for murder is taken to have a non-parole period of 25 years. The Act applies only to life sentences for murder, it has no operation in relation to the appellant's life sentence for rape. The application by the DPP was successful and the appellant appealed to the Court of Criminal Appeal.

The Act provides, in section 19(5):

> The Supreme Court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

As the Court of Criminal Appeal noted, even if the sentencing judge is satisfied that section 19(5) is met, the judge retains a discretion to fix a non-parole period, either greater or less than 25 years, and this discretion is exercised upon consideration of the usual sentencing principles. But the Court noted that this residual discretion is necessarily limited, given that the sentencing judge would already have determined that the community interest "can only be met" by a sentence of life imprisonment without parole.

The Court of Criminal Appeal (Mildren and Riley JJ; Southwood J in dissent) dismissed the appellant's appeal. All three judges agreed that the standard of proof of beyond reasonable doubt does not apply to the determination contemplated by section 19(5) of the Act, which involves a matter of judgment

to the level of satisfaction and is not a finding of fact. Mildren and Riley JJ also held that the sentencing judge from whose decision the appeal was brought (Martin (BR) CJ) correctly addressed himself to the usual sentencing principles after having determined that section 19(5) was engaged. Southwood J would have allowed the appeal on this ground.

The grounds of appeal include:

- Whether the Court erred in not finding that the sentencing judge had failed to give effect to ordinary sentencing considerations when applying section 19(5) of the Act;

- Whether the Court erred in concluding that a sentencing judge, when imposing a sentence of life imprisonment without possibility of parole, is not required to be satisfied beyond reasonable doubt that the offender's culpability was so extreme as to require such a sentence.