

### **Sentencing in Commonwealth drug cases**

Two recent decisions of the New South Wales Court of Criminal Appeal have provided guidance for the appropriate range of sentences in large Commonwealth drug importations.

*Regina v To Si Thanh* [2007] NSWCCA 200 was a Crown appeal against the sentence imposed in the District Court after the respondent was convicted of involvement in a large methylamphetamine importation. The trial judge found that *To* had a managerial role in the importation and should be sentenced as the Australian principal. The offender was originally sentenced to imprisonment for 17 years with a non-parole period of 10½ years. This was increased on appeal to 25 years imprisonment with a non-parole period of 15 years.

The case is instructive because of the detailed examination of sentencing history and considerations in this type of offence.

Hulme J analysed many earlier decisions from paragraph 17 onwards. Hall J who disagreed a little with the majority regarding the ultimate non-parole period to be fixed, also considered many earlier decisions in particular in the part of his judgment headed 'Sentence Patterns' beginning at paragraph 112. The court was of the view that a head sentence of 25 years imprisonment was appropriate given that there were no particular discounts for a guilty plea or for other matters apart from some general subjective factors.

*R v Lee* [2007] NSWCCA 234 contains an even more detailed, Australia-wide schedule of comparative cases following the court's request to the Commonwealth director of public prosecutions for a summary of sentences imposed in drug importation cases by courts in New South Wales and the other states.

A handy table containing this information is set out in paragraph 36 of the judgment of McClellan CJ at CL following his Honour's consideration of the relevant principles involved which commences at paragraph 23.

Lee was convicted at trial in the District Court of involvement in an importation of over 76kgs pure of heroin. The sentence imposed by the trial judge was complicated a little because of time spent by the offender in prison in Hong Kong awaiting extradition to Australia. Effectively he was imprisoned for 18 years with a non-parole period of 11 years.

The Court of Criminal Appeal, after considering the sentencing patterns and other matters, found that the sentence imposed was quite inadequate for a person who played a senior role in a very large drug importation. On appeal Lee was sentenced to a non-parole period of 18 years and 11 months with an additional term of eight years and six months.

As with *To*, the ultimate sentence imposed by the Court of Criminal Appeal followed a successful Crown appeal. But for that fact, the Court was of the view that a non-parole period significantly in excess of 20 years was appropriate. The objective criminality and amount of drugs involved warranted a heavy sentence, toward the top of the range but not life imprisonment (following *R v Stanbouli*: (2003) 141 A Crim R 531).

**By Keith Chapple SC**