

In The Weekend Australian, December 15-16, 2018, page 20, Gerard Henderson writes, “One of the most important legal judgments this year was that handed down by Judge Roy Ellis in the NSW District Court in Newcastle in December. In Regina v Philip Edward Wilson, the judge upheld an appeal and quashed the conviction of Wilson ... The importance of R v Wilson turns on the judge's comments with respect to the media, the concept of collective guilt and memory ...”

In his judgment, Judge Ellis said, “the potential for media pressure to impact judicial independence may be subtle or indeed subversive in the sense that it is the elephant in the room that no one sees or acknowledges or wants to acknowledge”.

The judge expressed his concern that large numbers of national and international media “may amount to to perceived pressure for a court to reach a conclusion which seems to be consistent with the direction of public opinion rather than consistent with the rule of law that requires a court to hand down individual justice in its decision-making process.”

Henderson believes: “This is an important legal point. The role of journalists in advocating for what they perceive to be the public interest has been enhanced by the increasing prevalence of social media.

Richard Kemp was called as an expert witness. His evidence was unchallenged and accepted by the court. Henderson notes: “Kemp made the following points among others: delay will reduce the chances of accurate recall; a person typically forgets details of a conversation rather than that it took place; there is a tendency to have a memory of what was intended to be said but not said; and it is not possible to reliably distinguish between accurate, false or distorted memories in the absence of evidence.

Similarly, The West Australian reports the case and Judge Ellis's comments on how the media can influence the courts. As Judge Ellis found: “Intended or not, the mere presence of large amounts of media from all around Australia and world carries with it a certain amount of pressure on the court.”

The media interest, Judge Ellis said, “may amount to perceived pressure for a court to reach a conclusion which seems to be consistent with the direction of public opinion, rather than being consistent with the rule or law that requires a court to hand down individual justice.

“The potential for media pressure to impact judicial independence may be subtle or indeed subversive in the sense that it is the elephant in the room that no one sees or acknowledges or wants to see or acknowledge.”

Judge Ellis also accepted the evidence of a memory expert that even “entirely honest individuals” could form “false memories” and “then present these memories confidentially”.

References:

Henderson, Gerard 2018 “Wilson Case Offers A Study In Contrasting Coverage”, The Weekend Australian, 15-16 December, 2018, page 20.

Bolt, Andrew 2018 “Catholic witch-hunt”, The West Australian, 10 December, 2018, page 10.