BRIEFS

Kontinnen v R is a welcome initiative in the domestic violence context, it may be that many of those for whose benefit syndrome evidence might be led would be better served by its exclusion.

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2. See Freckelton, I., *The Trial of the Expert*, Oxford University Press, Melbourne, 1987; Freckelton, I., 'Novel psychological evidence', in Freckelton I. and Selby, H., Expert *Evidence: Practice and Advocacy*, Law Book Co., Sydney, 1992 (forthcoming).
3. See, for instance, Massaro, T.M., 'Experts, Psychology, Credibility and Rape: the Rape Trauma Syndrome Issue and its Implications for Expert Psychological testimony', (1985) 69 *Minnesota Law Review* 395; Bristow, A., '*State v Marks*: An Analysis of Expert Testimony on Rape Trauma Syndrome', (1984) 9 *Victimology* 273.
4. See, for instance, R Brown, 'Limitations on Expert Testimony on the Battered Woman Syndrome in Homicide Cases: The Return of the Ultimate Issue Rule', (1990) 32 *Arizona Law Review* 665; Ensign, D.J., 'Links Between the Battered Woman Syndrome and the Battered Child Syndrome: An Argument for Consistent Standards in the Admissibility of Expert Evidence in Family Abuse Cases', (1990) 36 *Wayne law Review* 1619; McCord, D., 'Syndromes, Profiles and Other Mental Exotica: A New Approach to the Admissibility of Nontraditional Psychological Evidence in Criminal Cases', (1987) 66 *Oregon Law Review* 19; McCrord, D., 'Expert Psychological Testimony about Child Complainants in Sexual Abuse Prosecutions: A Foray into the Admissibility Novel Psychological Evidence', (1986) 77 *Journal of Criminal Law and Criminology*1.

PROSTITUTION

'Regulating morality'?

LINDA BANACH reports on the fate of proposals to decriminalise some forms of prostitution in Queensland.

Prostitution law reform is slow to come in Queensland, and although public support for decriminalisation is high following the revelations of the Inquiry into Official Corruption (Fitzgerald Report) government opposition to progressive reform is strong. The three major political party leaders have all aligned to publicly express opposition to decriminalisation or legalisation of the sex industry.

The Fitzgerald Inquiry provided the impetus for prostitution law reform following revelations of police corruption and control of the sex industry. The newly established Criminal Justice Commission (CJC) was given the task of conducting research into the industry and providing a report to the Parliamentary Criminal Justice Committee with recommendations for legislative reform. The newly elected Labor Government made a commitment to uphold CJC findings and act swiftly on reports — a position it now distances itself from increasingly by reaching for the 'elected governments should not be dictated to by independent, non-elected commissions' cliche.

In February 1991 the CJC released an issues paper for public comment. Sex worker and other community organisations became increasingly worried at the CJC process. The sex worker organisation in Queensland, Self-Health for Queensland Workers in the Sex Industry (SQWISI), was highly critical of both the CJC process and quality of research. The paper failed to identify relevant issues or outline potential legal models, reflecting its lack of research and consultation with sex workers.

It was imperative that if reform was to be relevant in Queensland then legislation needed to be framed around the needs of workers in the industry. It was frustrating that under-resourced agencies had to spend limited funds on resourcing a well-funded commission which did not consult with worker representatives and consequently failed to identify relevant issues.

Meanwhile the policing of prostitution had become a nightmare. Remaining quiet about prostitution policing policy and referring all matters to the CJC, the Government repeatedly refused any requests for an amnesty on prosecution for prostitution-related offences. The old system of prearranged arrests by police was being challenged by workers through the courts. The media, obsessed with exposing prostitution as evidence of continued police corruption, demanded police crackdowns as proof that they were no longer corrupt. They consistently failed to recognise that forcing the industry further underground by persistent calls for police raids set the conditions for the re-emergence of police corruption.

Internal police policy was confused, and varied month by month from crackdowns to low priority. Between 25 and 30 October 1991, Brisbane papers reported a 'police vice blitz . . . as part of a major war against prostitution' (*Sun* 25.10.91) whilst the Commissioner of Police considered 'life threatening crimes . . . must take a higher priority' (*Courier-Mail* 30.10.91) and was allocating resources accordingly. The then Police Minister, Mr Terry MacEnroth, repeatedly stated the law had not changed and demanded prostitution continue to be policed. He seemed oblivious to the difficulties of policing the industry legally when this had never been tried before.

Gradually police refused to vigorously police prostitution, and maintained that they should not have to set policy or enforce unworkable laws. The Police Commissioner, Mr

BRIEFS

Newnham, publicly stated the police position that they 'should not be used to drive prostitution underground . . . if prostitution as an activity cannot be stamped out, particularly if the community does not view it as a criminal offence, then the law should not aim to do so' (*Courier-Mail* 30.10.91).

The Premier, Wayne Goss's, personal opposition to progressive legislative change in favour of stricter enforcement of criminal options was backed by his ominously silent 'no comment' colleagues. The legalisation or decriminalisation of prostitution 'exploited women' although sex workers' criminal status under present laws was apparently not exploitative. Furthermore, the potential creation of an illegal industry alongside a legal one was more problematic for the Premier than the re-establishment of one large illegal industry controlled by the police. Workers were silenced from the debate as the Premier refused to engage in dialogue with 'pimps or madams'.

The CJC final report was released in September 1991.[1] The major problem was the familiar path taken in Victoria, that street work remain illegal. The report claimed to approach reform, with the aim of ensuring sex workers maintain control of their labour whilst minimising the risk of exploitation, by examining systems of control which addressed violence and health risks in the industry. Accordingly the prevention of the involvement of minors and coercion of women into the industry was recommended.

The CJC proposed a regulatory framework which established two categories of workers. The first category was for two to ten workers who were to be legally regulated and located in small establishments. The other category was exempt from regulation and comprised private workers who worked alone from home. Sex workers who worked from streets or bars, referred work, or small groups of workers operating premises were to remain criminalised. No distinction was made between escort and parlour work, or independent or waged workers; therefore the CJC was unable to fulfil claims of maximising worker control. One worker commented that the 'CJC vision for the sex industry was to establish a series of grubby little parlours in industrial estates' (Michelle, October 1991).

Heavy penalties for working outside the regulatory framework were recommended. A regulatory board was to be established with minimal worker representation. The registration board was to have responsibility for licensing premises. Licences were to be granted to 'appropriate persons' who were without past criminal histories. A register of workers in the sex industry was to be compiled.

It was clear that the proposed framework would rapidly see the emergence of an illegal industry and markedly differed from sex industry calls for the decriminalisation of all forms of adult prostitution. However, public opposition by the Premier and the apparent threat to any reform made it difficult to raise these serious concerns publicly without contributing to the anti-reform case. Following consultations with sex workers, SQWISI and Women's Legal Service decided to publicly support the CJC report as providing a base for legislative reform whilst continuing to reiterate their concerns with the framework. The prospect of heavy police enforcement mobilised supporters of progressive legislative reform who disregarded differences within positions.

SQWISI representatives spoke extensively on behalf of the industry to the media, and the public support for reform was encouraging. Following consultations, women's organisations — such as Women's Legal Service, Women's Health Centre, Women's Electoral Lobby and from within the Labor party, Labor Women — pressed for debate of the recommendations in Parliament with a view to decriminalisation. The anti-reform perspective is presented by Professor Eileen Byrne, whose expertise in prostitution derives from claimed extensive involvement with street prostitutes in the south of London 20 years ago. Her commitment is to under-aged workers and publicly she presents the CJC as 'soft on child prostitution' (*Courier-Mail* 1.2.92) although this is demonstrably incorrect.

The position of those against decriminalisation is heavy enforcement of unworkable laws. It is remarkable that Queensland police corruption is dismissed and instead calls for heavy enforcement and eradication of the industry through increased police powers recommended. One hopes that health concerns are not dealt with by seizing condoms as evidence in prosecution.

The Parliamentary Committee retired to consider the report and prepare its own submission to Parliament amid intense political pressure. The Parliamentary Criminal Justice Committee chairperson, Mr Beattie, repeatedly fought for decriminalisation, publicly opposing the Premier. The Parliamentary Committee delivered a minority report on 12 November 1991.[2] The bi-partisan committee, comprising two National, four Labor, and one Liberal member, rejected the CJC report four to three.

The decision was taken by the Premier as a definitive conclusion, despite the facts that: the sex industry had been the subject of intense investigation, research and review for two years; primary research of the views of sex workers had been undertaken; and an 1800-person poll of Queensland opinion had found that 88% favoured decriminalisation. Mr Goss rejected claims that the Government manipulated parliamentary votes as 'typical, cowardly moaning' (*Courier-Mail* 13.11.91).

Dismayed by the minority report, Mr Beattie warned that the industry could not be regulated through enforcement and Queensland would need another corruption inquiry if heavy criminalisation was pursued. The Premier dismissed these observations saying 'a democratically elected committee' had rejected the CJC report. Party agenda had been adhered

to by utilising persuasive tactics to manipulate this 'democratic decision'. To describe four members of a committee determining law reform, in spite of public support for decriminalisation, as democratic was laughable. This is especially so when one of the National Party members, Mr, Harper, based his position on an abhorrence of the inclusion of male homosexual prostitutes in the proposed regulatory framework (Parliamentary Report, 1992).

The next round of lobbying began. Letters were sent to every MLA by various organisations calling for debate in Parliament. The hopes for decriminalisation appear slim as a poll of the 89 members of the Legislative Assembly reported in the *Sun* newspaper showed only 11 MLAs supported decriminalisation. Fifteen Cabinet Ministers refused to comment on their position, two were undecided and the Premier reiterated his 'no' position (*Sun*, 15.11.91). Further, the then Police Minister, Mr MacEnroth, said 'It is now up to the Government to produce workable [anti-prostitution] laws. These are expected to be in place by February' (*Gold Coast Bulletin* 16.11.91).

Well, it is now February and the Government appears to be retreating from its position to have laws operational this month and instead will debate the issue in Parliament some time in March. Meanwhile, the interests of sex workers in their own industry have been ignored amidst the political fighting and the rise of 'expert' opinions from self-appointed guardians of public morality. Silenced from directly speaking on their own behalf with the prospect of increased police powers and heavy enforcement of archaic laws, the prospect of decriminalisation is receding.

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TRIALS

Juries going public

GRAHAM JEFFERSON discusses the role of juries in criminal trials following comments to the media by a juror in the Northern Territory.

'jury . . . the stupidity of one brain multiplied by twelve'

Frank McKinney Hubbard, The Roycroft Dictionary, 1923.

The recent drama over the Joh Bjelke-Petersen trial appears to have reopened the debate on the jury system. Unfortunately, like events following the Chamberlain and Murphy trials, much spleen has been vented, but, so far, little has been resolved. It seems there will be an investigation into the conduct of the Joh jury. There is also talk of adopting majority verdicts in Queensland and possibly introducing the American process of juror selection. With so much discussion of the jury system it is surprising that there is so little empirical evidence on precisely what effect juries have on our criminal justice system.[1]

A radio broadcast in Darwin of a telephone conversation between an ABC journalist and a person claiming to be a juror in a recent murder trial has presented some timely insights into the machinations within the jury room. The interview went to air on the day that the convicted man, Scott Aaron Breedon, was sentenced. The most interesting of the comments was the claim that the alleged juror felt 'trapped' into returning a verdict of murder. It was said that as many as five of the 12 jurors did not consider Breedon to be a murderer.

Breedon pleaded not guilty to charges of murdering Stephen Clive Sargent and robbing him of $3800 while armed with a knife. Breedon admitted that Sargent had died as a result of injuries received during a fight between the two. However, he claimed he killed Sargent in self defence. If the jury believed Breedon's claim about self defence they could have found him guilty of manslaughter rather than murder. Murder carries a mandatory life sentence in the Northern Territory[2] so the distinction was particularly significant. It is clear from the interview that the jury considered self defence but eventually rejected it: '[t]here was a possibility that he picked up a knife to defend himself but we felt that that was undue force. Because it was undue force we couldn't actually say it was self defence'.[3] Breedon also denied robbing Sargent but the jury 'ended up all agreeing it was a robbery'.[4]

In the event that the jury found Breedon had robbed Sargent and that self defence could not apply they had been instructed by the judge to return a verdict of guilty of murder. Section 1262(1)(b) of the NT *Criminal Code* is a statutory form of the felony-murder rule. A person is guilty of murder if they kill another in the course of a robbery or other serious crime. The felony-murder rule has been criticised on many occasions.[5] Its application in this case caused the jury much concern. The alleged juror said: '[W]e got very heated over the fact that we were trapped into murder. We got very angry. We felt that we were trapped. That it wasn't right. People were talking about conscience'.[6] At another stage in the interview the alleged juror said '[W]e felt like protesting, but then the foreman said that we weren't allowed to protest because the law's the law'.[7]

A verdict of guilty of murder was eventually returned. However, it is interesting that the five jurors who allegedly felt that Breedon was not a murderer did not take the law into their own hands. The NT *Criminal Code* provides for majority verdicts after six hours of deliberation. Where there are 12 jurors at least 10 must agree on a particular verdict.[8] All that was required to escape the 'trap' of the felony-murder rule was for three