

Trial reveals legal double standards

Bruce Grundy

A DECADE of claims by Queensland's legal establishment that it was necessary for a court proceeding to be on foot before a charge of destroying evidence could succeed, were trashed in the Brisbane District Court last month.

A Baptist minister was convicted and given a suspended jail sentence for destroying evidence after he guillotined four pages of the diary of a victim of sexual assault.

No court proceeding related to the diary took place for five years - when the victim, a 13-year-old girl, turned 18 and went to the police.

For over ten years, various chairmen and senior officers of the Criminal Justice Commission (now Crime and Misconduct Commission), a currently serving magistrate, a former Director of Public Prosecutions (and a one-time District Court Judge) and the current State Coroner, have all said no charges could be laid against a group of politicians and bureaucrats who shredded evidence gathered by an inquiry into a Brisbane youth detention centre.

At the time of the shredding those who authorised it were aware the documents were required for a legal proceeding.

On three occasions the judge in the District

Comment

THE SHAM of the last ten years in Queensland has been well and truly nailed, thanks to Mr Justice Samios. As it had to be.

The shame of it all remains, however.

And the blight on the reputation of a state that claims to support the Rule of Law remains.

The excuses that got the politicians and bureaucrats off the hook for so long were spurious.

A Baptist minister guillotines four pages of a diary into strips (as distinct from pulping over 100 hours of evidence) and ultimately returns those strips to the victim's family (as distinct from consigning the

Court case last month rejected the views put by counsel that a legal proceeding had to be on foot before a charge of destroying evidence could succeed.

The High Court had determined the matter many years ago. It ruled in two cases that an offence of destroying evidence or perverting the course of justice could be committed even if a legal proceeding had not commenced at the time a related offence took place.

In the case of the Baptist minister, both the Crown Prosecutor and the Defence Counsel sought rulings from the presiding judge, Mr Justice Samios, on the issue.

On each occasion His Honour indicated there was no ambiguity involved - a legal action did not have to be underway at the time evidence was destroyed for an offence to be committed.

His Honour appeared perplexed that the issue should even have been raised for his determination.

Significantly, he also squashed a suggestion that the wording of a form in the Court Practice Rules should be given more weight than the wording of an Act passed by parliament.

In the mid-1990s former Director Of Public Prosecutions Royce Miller QC told the Shadow Attorney General at the time, that the politicians and bureaucrats involved in the shredding could not be charged

pulped evidence to the local land fill tip), and he gets the book thrown at him.

As he should.

The strips of the girl's diary were reconstructed into their original form by a police officer in 15 hours.

Opening up the land fill at Willawong or Rochedale is hardly likely to achieve the same result in relation to the evidence pulped by politicians and bureaucrats.

And the evidence that was shredded contained information about the pack rape of a girl in the custody of the State.

But nothing happened in this case.

There were convenient excuses.

But those excuses have now been abso-



'Justice' ... what would she be thinking?

lutely nailed and buried by Mr Justice Samios.

As they should have been.

Now, unless we have two systems of law in Queensland, one for politicians and senior bureaucrats, and one for the wretched citizens, there is nothing else except that the time has come to charge the politicians and bureaucrats.

If it is good enough for a Baptist minister to face the courts, why is it not good enough for politicians and bureaucrats? We are waiting for an answer Mr Police Commissioner.

The time has come.

Bruce Grundy

Independent MPs want action over Shreddergate

Matthew Grant

A RECENT court case showed that former Queensland Cabinet Ministers were guilty of criminal activity and the Heiner affair needed to be reopened, an independent member of state parliament said.

Gladstone Independent Liz Cunningham said former members of the Goss government were guilty of shredding evidence relating to the sexual abuse of children in care and that authorities needed to re-examine the matter.

"There has been no dispute of that fact that members of (the Goss) government were guilty of the shredding," Ms Cunningham said.

"It is clear the information shredded related to a crime," she said.

Ms Cunningham said that the recent conviction of Baptist pastor Douglas Ensby for a similar offence set a precedent that should also apply to the Ministers responsible for the shredding that took place in the early 1990s.

"Premier Beattie said that this case has been inquired to death ... this clearly undermines the Labor Government's position on the matter," she said.

"It is reprehensible for the government to continue to talk about child abuse, sexual abuse and the protection of kids when that's exactly what this case (Heiner affair) is about."

Mr Ensby was recently convicted under section 129 of the Queensland Criminal Code for destroying pages of a girl's diary that contained evidence of sexual abuse committed against her by a member of her church.

Section 129 of the Criminal Code states that any person who knows that documents are, or may be required, in a judicial proceeding and wilfully destroys them is guilty of an offence and may be imprisoned for up to 3 years.

Ms Cunningham said that because former members of the Goss government destroyed evidence that related to the sexual abuse of children at the John Oxley Youth Detention Centre, the shredding 1990 matter should be re-opened.

"The case needs to be re-opened by the Department of Public Prosecutions," Ms Cunningham said.

"There has clearly been a double standard... the law should apply equally to everyone," she said.

Fellow Independent Member of Parliament Peter Wellington said that successive Labor government's handling of the Heiner affair was concerning as it appeared there were two laws operating in Queensland; one for members of the government and one for citizens.

"It certainly seems like there are two laws operating in Queensland," Mr Wellington said.

He said because the circumstances of the Ensby case and the Heiner affair were so similar, the DPP needed to review its past legal recommendations to the government.

Ms Cunningham said the finding against the pastor validated the principal concerns of Mr Lindeberg and others involved in the investigations of the Heiner affair.

Bothered and bewildered in courtroom 24

Georgina Robinson

MONDAY morning, March 8, 2004. In the District Court in George Street, Brisbane, Mr Justice Samios was a model of courtesy and consideration - and calm.

But, like some in the public gallery, he did seem perplexed.

Why, he asked the Crown Prosecutor, did he have to give an advisory opinion on the appropriateness of count one in the indictment?

If there were, as he was being told, "real problems" with it, wasn't it the job of the prosecution to work them out, well in advance of the start of the trial?

The "problems" prosecutor Guy Andrew said, involved a view that the charge of destroying evidence (count one) could only be sustained if a legal proceeding was underway at the time of the destruction.

"That might sound strange coming from this end of the Bar Table, your Honour," he said.

"But nonetheless that's what I say."

Mr Andrew proceeded to delve into legal argument about whether such a charge was appropriate, and His Honour proceeded to appear perplexed.

Permitted to interrupt, counsel for the defence, Frank Lippett, offered his opinion as to why, on day one of the trial, they were still discussing the composition of the indictment.

Mr Lippett argued Form 83 of the Practice Rules meant that for an offence to be committed that a legal proceeding had to be underway at the time the destruction of any evidence occurred.

But Justice Samios was not convinced.

His Honour consulted his *Carter's Criminal Law of Queensland* and read out the section relating to count one - s 129.

He said the section on its own was already wide enough to cover the possibility that a legal proceeding did not have to be underway to commit the offence of destroying evidence.

"There's always the potential for a proceeding to arise," His Honour said.

And the matter of Form 83, that had so famously been used a decade ago to excuse some prominent people who had destroyed evidence, was also dealt with.

"... I'm not necessarily persuaded by the argument that the form may have indicated a proceeding on foot," His Honour said.

"The Act would seem to have been wide enough to cover the potential for a proceeding."

To Mr Lippett's reiteration that an accused person must know of a document's potential as evidence, Judge Samios countered:

"Well, that would require ... that no-one could be prosecuted for this offence if they said, 'I'm not a law student or a qualified legal practitioner', or got an advisory opinion from someone."

And as if trying to put the matter to rest, finally and definitively, he said: "As unpopular as it might be, the law is broader than that."

"It says that people commit offences if they render illegible evidence that might be required in a judicial proceeding."

"So I'm against you, Mr Lippett."

It came as no surprise - but it left a dozen high-powered legal reputations of those who had argued otherwise, in tatters.

And thus the indictment could proceed - both counts intact.

Some present in District Court 24 that Monday morning breathed a collective sigh of relief.

Day one of the trial could finally begin.