BRIEFS

will adopt a pragmatic approach where such cases fall into arrears while awaiting review.

CSRO support staff will prioritise applications to ensure valid applications are heard with a minimum of delay. Applications without grounds, or where equity, justice or 'properness' would be compromised will be selected for 'fast-tracking' to final rejection. While an expected efficiency measure, this raises the question whether disadvantaged people with literacy language or expression problems will be rejected without a chance to explain themselves. Will s.98H(2)(a) still operate in these circumstances?

Another concern is the CSA's intention to 'fast track' difficult or complex cases into court. From the legislation, it is not clear how such cases would be processed, though it is likely that 'rejections' under s.98F may be made. While this might mean that cases involving complex financial arrangements to avoid child support liability would receive much closer scrutinising, it could be seen as an inappropriate use of the section. It could be seen as 'ducking the issue', and it could be more appropriate for CSROs to use their investigative powers more widely. While that would protract some cases, it would seem to accord with Parliament's intention: if such 'fast tracking' had been intended, CSROs would probably have been given a specific discretion. Moreover, it might defeat the objective of more just and equitable access to the law.

Administration

Initially CSROs were to be selected from the hundreds of community applicants who responded to national advertisements with many to be employed on a sessional basis. Rumour has it that a small number only will be appointed on a full-time basis from among Tax Office personnel. This may jeopardise their independence; which would undermine the credibility of the process.

Support staff selected from CSA in each State will process and prioritise applications and arrange hearings.

Location of CSROs at time of writing is undecided. Suggestions vary from locating near other tribunals (e.g. SSAT) to emphasise independence from government departments, but would-be neighbours are concerned at the security risks occasioned by the acrimonious nature of some child support disputes. There are also suggestions that rural and regional areas could receive CSROs 'on circuit' at local courts. Residents of those areas would welcome such an improvement of access, though the venues may limit the intended informality of hearings.

At the time of writing there are no available application forms and no receiving point for enquiries. Bewildered enquirers are frequently referred by bewildered CSA staff to agencies such as the funded project where I work. The anticipated delays may be a reality, especially at the inception of the CSRO process.

Like all government initiatives, this one will work better if it is well resourced, and well thought out, before its inception. If well used, the Child Support Review Officer process has the propensity to rebuild community confidence in the Child Support Scheme. If not, it will widen the Scheme's credibility gap in the public's eyes even further.

Anthony Grimes is a Child Support Worker at Springvale Legal Service in Victoria.

CRIMINAL LAW

The confession

PETER WILMSHURST discusses an unusual inquiry involving a confession to a murder 19 years after the event.

Some interesting aspects of human behaviour and the reasoning of juries are raised in a May 1992 Report of an Inquiry held under s.475 of the *Crimes Act* 1900 (NSW) into the 'Pohl affair'; the inquiry being conducted by McInerney J of the NSW Supreme Court.[1]

The background

In November 1973 'Ziggy' Pohl was convicted of the murder by strangulation of Joyce Pohl, his wife, at their home in Queanbeyan on 9 March 1973.

Pohl was sentenced to life imprisonment and an appeal to the Court of Criminal Appeal was dismissed in August 1974. Pohl was released on licence on 25 February 1983 and discharged from this licence on 24 February 1988.

The report noted:

> The Crown case was circumstantial and from the time he was first spoken to by police Pohl denied any involvement with his wife's murder. He continued to assert his innocence whilst in prison and after his release. [p.1]

Much of the original case depended on the reconciliation of accounts of events and the condition of the Pohl's house on the morning of the murder, the resolution of which was left to the jury.

The principal variation was between Pohl and his sister-in-law, Margaret Pohl, who visited the house sometime after the murder but before Pohl's arrival back home when, as he claimed, he discovered his wife's body.

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dence. The report (pp.18-19) speculated on what the jury might have speculated on about Pohl's behaviour. They obviously got it wrong.

There also needs to be a reassessment of what it really means to be a witness who is not shaken under cross-examination. The report made this observation regarding the original trial evidence of Margaret Pohl and that of the doctor about the time of death (pp.16 and 20). As things eventuated it meant nothing.

The report excellently assesses the significance of the original evidence both of the sister-in-law who went through the house at about 11.30 a.m. and of Pohl, in the light of Bawden's evidence. It was noted that she was not shaken in cross-examination but added:

> . . . human observation is notoriously unreliable and even a most careful and confident witness can, and has often proved to be in error, particularly when recalling observations of a happening. [p.55]

This was a case for jury debate akin to that of Henry Fonda and the other 11 just men.

After considering whether Bawden could have found out details of the murder by any other means or if there was collusion with Pohl the inquiry rejected these possibilities.

The aftermath

At the time of writing Pohl had received the pardon recommended by the inquiry and Bawden had been charged with the murder of Joyce Pohl. At Bawden's first appearance in court he pleaded guilty and the matter was adjourned for sentencing. At the time of writing sentencing was expected in mid-July.

Peter Wilmshurst is a Sydney anthropologist and non-practising bureaucrat.

References

1. Report of the Inquiry held under s.475 of the *Crimes Act* 1900 into the conviction of Johann Ernst Siegfried Pohl at Central Criminal Court Sydney on 2 November 1973, by the Hon. Mr Justice McInerney, May 1992.
2. Witrow, G.J., *The Nature of Time*, Pelican, 1975, p.38.

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Such an appointment route does not guarantee anything. Now for some anecdotes: the writer as a New South Wales bureaucrat has been a member of numerous selection committees: he has been told in a handful of these both who the committee should and should not pick. On the other side, most recently, he was the successful applicant for a job which turned it out one of the Committee members had promised to one of the other applicants.

If one really needs convincing about the inadequacy of the Selection Committee process, especially as to the behind-the-scenes activity, then two reported New South Wales cases are illustrative: *McDade v State Rail Authority* (1985) 10 IR 225 (where a committee after reporting its choice was told to go away, think again, and pick the person who came second) and the classic on the appointment of magistrates, *Macrae v Attorney-General* (1987) 9 NSWLR 268.

Looking at the role of ICAC, Commissioner Temby has discussed the proposition that it should spend more time on going after major matters. He has observed:

> I do not decry the importance of major hearings and revelations, but if you view it objectively there has been much done in the three years we have been there. But I, as Committee members know, reject the proposition that that is a sufficient approach. If you do not fix up systems you will get nowhere. All you do is reveal for the public titillation and guarantee a repeat, if not next year then the year after. It is absolutely absurd if you do not fix up the system.[4]

The other parts of the reference in the Metherell matter will enable him to do something to the system.

In the spirit of his observations I have a few quick suggestions:

- All public positions should be advertised and the selections made on merit: be it a tea-maker, judge, ambassador, member of the SES or whatever.
- Government office holders, in the interests of flexibility, should have a discretion to appoint anyone they want to any position on the public payroll as long as reasons are recorded.
- There should be an equally unfettered right of access by any member of the public to all paperwork relating to all such applications for or appointments to positions on the public payroll: be it for a tea-maker, judge, ambassador, member of the SES or whatever.

Writing of the New South Wales public service from 1786-1859 McMartin says:

> The technique of discrediting a government by means of charges of corrupt appointments has a long history and 'jobs for the boys' is a cry that still rings along the corridors of power but the available evidence does not support the contention that efficiency and economy were incompatible with patronage. [p.278]

Governments or departments can face the flak if they want to appoint their mates but I just want to be able to find out about it.

Peter Wilmshurst

Peter Wilmshurst is a Sydney anthropoligist and non-practising bureaucrat.

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1. ICAC Report on Investigation into the Metherell Resignation and Appointment, June 1992 (the 'Report').
2. Chan v Minister for Immigration and Ethnic Affairs (1989) 63 ALJR 561.
3. McMartin, A., Public Servants and Patronage, Sydney University Press, 1983, p.277.
4. Parliament of New South Wales Committee on the ICAC, Collation of Evidence of the Commissioner of th ICAC, Mr Ian Temby QC, on General Aspects of the Commission's Operations, 31.3.92, p.11.