

Wednesday, 8 April 2020

Comments on the High Court judgment *Pell v The Queen*, from the Law Council of Australia President, Ms Pauline Wright

All comments to be attributed to Law Council of Australia President, Ms Pauline Wright.

We are mindful that the High Court judgment in the matter of *Pell v The Queen* has caused significant media interest and community discussion. The Law Council respects the determination of the High Court in the matter of *Pell v The Queen*.

The High Court is the ultimate decision-maker within our judicial system in Australia and its job is to impartially scrutinise decisions made in lower courts to determine whether the law has been properly applied.

In criminal trials, the prosecution bears the burden of proof and must prove every element of their case to the jury beyond a reasonable doubt. While the High Court proceeded on the basis that the jury had found the complainant to be a credible and reliable witness and did not need to make an adverse or different finding about the complainant's credibility, the decisive issue in the appeal was the existence and treatment of **other evidence** that was inconsistent with the complainant's account of the incidents, and which was largely unchallenged by the Crown at trial.

The onus was on the prosecution to negate the possibility that the complainant's account was **not correct** beyond reasonable doubt, which it could not do in the face of the other evidence. In other words, although the testimony of the complainant was capable of being considered truthful and reliable when taken **by itself**, there was other contradictory evidence before the court that was unchallenged by the Crown and which therefore also had to be considered truthful and reliable. When considered together, a reasonable doubt must have arisen as to which account was correct.

Therefore, it was the unanimous decision of the High Court that the totality of the evidence ought to have caused a jury, acting rationally, to entertain a reasonable doubt as to essential elements of the prosecution case, thus leading to the High Court quashing both convictions and entered acquittals.

There has been much criticism and commentary within the media as whether this decision highlights problems in legal system.

On the contrary, nothing in the *Pell* case has overturned or diminished the crucial and primary responsibility of juries, not judges, to determine whether an accused person is guilty of an offence.

Rather, the appeal has illustrated that there may be exceptional cases in which it appears that a jury has fallen into error because it has reached a verdict that was not reasonably open on the evidence. If a convicted person lodges an appeal against their conviction on that basis, it is the responsibility of the appellate court to apply a technical legal test to determine whether the verdict was 'unsafe'. That is what the High Court did in this case.

It is our hope that the decision will not deter victims of sexual abuse from coming forward to tell their stories and seek justice for past wrongs they have suffered.

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.

In relation to reports that the Commonwealth Attorney-General is considering whether some redacted portions of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse that are relevant to Cardinal Pell could be released, the Law Council welcomes the prompt review of the redacted portions of the report, and supports the timely completion of that review as a matter of priority.

If there is no longer a valid reason for the material to remain secret, then it is important that it is released as soon as that decision is made.

Given the prolonged adjournment of Parliament due to the COVID-19 pandemic, we hope that the Australian Government will not wait until the resumption of Parliamentary sittings to table an unredacted report and will arrange for tabling to occur out-of-session.

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