EUREKA STREET

Philip Wilson's dead letter day

- Frank Brennan
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The show trial of Archbishop Philip Wilson has backfired badly causing hurt to many people, most especially victims of child sexual abuse who thought the law was being rightly applied to put an errant Catholic bishop in the frame.

Philip Wilson, pictured prior to his resignation as Archbishop of Adelaide

Wilson was charged under a provision of the New South Wales Crimes Act, section 316, which has hardly ever been used. It's a provision which was introduced in 1990. It was reviewed by the New South Wales Law Reform Commission in 1999 and comprehensively trashed. Some commissioners thought the provision should be abolished. Others thought it should be retained. But even they said, 'It must be accepted that the present provision is seriously flawed; to be brutal about it, it is in several crucial respects virtually meaningless. In our view, the essential problem is not that the section's underlying philosophy is mistaken but that it breaches the fundamental rule that the criminal law be unambiguous.' For all practical purposes, the provision has now been replaced by a much more sensible and workable provision, section 316A, which is designed to deal with failures to report child sexual abuse.
Robert Stone, the magistrate who tried Wilson's case, failed to apply the cumbersome section 316 appropriately. But it's hard to blame Stone too much as the provision is so badly drafted that even a bench of Supreme Court judges would have trouble making sense of it. And Philip Wilson was always the wrong test case for this cumbersome, unworkable legislative provision.

The New South Wales Director of Public Prosecutions decided to charge Wilson with a very convoluted offence under section 316. The charge related to the Archbishop's alleged failure to report information more than 33 years after an alleged child sexual assault by a priest Fr Fletcher, and 28 years after it was alleged that the victim Peter Creigh had told Wilson about the assault. This was the charge:

'Between 12:01 am on 22/04/2004 and 11:59 pm on 07/01/2006 at East Maitland. Whereas James Fletcher in 1971 committed a serious indictable offence, namely, indecent assault of a male, aged 10 years old, Philip Edward WILSON between 22 April 2004 and 7 January 2006 at MAITLAND and elsewhere in the State of New South Wales, believing that Fletcher committed that offence and knowing that he had information which might be of material assistance in securing the prosecution of Fletcher for that offence, without reasonable excuse, failed to bring that information to the attention of a member of the New South Wales Police Force.' By 22 April 2004, Fletcher was already before the courts, having been convicted of historic child sex offences. He was in jail until his death on 7 January 2006.

All these years later, Wilson had no recollection of any such conversation with Creigh, saying that he thought he would have recalled such a graphic conversation if it had occurred. Wilson had legal advice from an expert in the law on child sexual abuse that any information he had would not have been of material assistance to the police all these years later. After all, the police had already detained and charged Fletcher with offences for which they had more than hearsay evidence. Wilson argued that he had reasonable excuse for failing to bring any information to the attention of police.

"Everyone, including the victims of abuse and church officials like Wilson, is entitled to be governed by laws which are clear, sensible and practical. Section 316 is not, and never has been."

The magistrate delivered a 59-page judgment. He messed up the law, and did not even consider some of the key legal questions necessary to secure a conviction. And he took a very dim view of Wilson's credibility. It was the magistrate's adverse findings on Wilson's credibility together with Wilson's earlier refusal to assist with police inquiries and the unpublished adverse findings against him by Commissioner Margaret Cunneen which convinced me that Wilson's continued role as Archbishop of Adelaide was unsustainable.

The magistrate was very favourably impressed by the credibility of Peter Creigh. He was also impressed by the credibility of some other witnesses who said they had told Wilson similar things all those years ago. For example, the magistrate was convinced beyond reasonable doubt that a witness who was another of Fletcher's victims had told Wilson in confession in 1976 about the abuse he suffered.

This penitent was sure it was Wilson in the confessional because he could see his big red lips behind the confessional grille and he recognised Wilson as the priest with the booming voice. In relation to this witness, the magistrate said, 'I find that he gave reliable evidence. This is despite his evidence being contradicted by Mr Creigh's evidence that the accused did not have a distinctive voice or very red lips.' The magistrate resolved this conflict of evidence by observing that the penitent witness said Wilson 'wasn't using a "booming voice" in the confessional'. The magistrate was convinced beyond reasonable doubt saying, 'I find that a conversation occurred in the confession box in late 1976 as recounted by (the witness) in his testimony in the court and the accused heard the account.'

The magistrate's decision was riddled with these sorts of errors.

Members of the public have generally been unable to assess the magistrate's judgment because the court made it available only at the Newcastle court registry. The only way you could read it was to travel to Newcastle and you were not permitted to copy any part of it. You could only take notes. I did that and wrote to the New South Wales Attorney General more than four months ago with a couple of suggested reforms:

First, when the court delivers a judgment which contains material which might identify particular persons entitled not to have their identities published, the court should provide a means whereby

interested persons might gain access to a redacted copy of the judgment in the same way as they would have access to any other judgment of the Magistrates Court, while ensuring the anonymity of all persons entitled to a suppression order.

Second, when the court delivers a judgment (especially when outside Sydney) which is said to be a 'world first' and 'of international significance', the court should ensure that the judgment is accessible not just to those media outlets and interest groups with the resources or proximity to the local court where the decision is delivered. At the very least, a copy of the judgment should be made available in Sydney.

My letter did not even warrant an acknowledgment from the Hon. Mark Speakman SC MP. The reforms have not been instituted.

Like Stone, the appeal judge, Judge Roy Ellis found: 'Creigh was an honest witness doing his best to recall events in 1976'. Wilson received a much more sympathetic hearing on his appeal to Ellis of the District Court. Unlike Stone, Ellis said, 'I have closely considered the evidence of the Appellant (Wilson) and concluded that there is no legitimate basis to reject his evidence. In conjunction with the other evidence in the case the evidence of the appellant raises a reasonable doubt in my mind that in 2004-6 the appellant had a memory of a conversation in 1976 in which Mr Peter Creigh told him that James Fletcher had indecently assaulted him.' In relation to any 1976 conversation between Creigh and Wilson, Ellis concluded, 'I am not satisfied beyond reasonable doubt that Philip Wilson had a memory of it in 2004-6'. Even if such a conversation had taken place and even if Wilson did have a memory of it three decades later, Ellis also had 'a reasonable doubt as to whether (Wilson) formed any belief, be it belief or disbelief, as to the truth or otherwise of the allegation'.

There is already talk of further appeals. But no appeal court hereafter has any power to interfere with Ellis' findings on the credibility of the witnesses including Wilson. Let's hope emotions can settle. Law reformers should do their work. Section 316 should be repealed or comprehensively overhauled. Wilson has done the right thing and resigned as Archbishop of Adelaide. He should be left in peace. As I said almost two years ago in my address to the Australian Lawyers Alliance, the charge was unwarranted and unlikely to be proved. Everyone, including the victims of abuse and church officials like Wilson, is entitled to be governed by laws which are clear, sensible and practical. Section 316 is not, and never has been.
The DPP would be well advised to leave section 316 out of all future proceedings. The Wilson show trial on section 316 should not be repeated. And I would see little point in the DPP appealing the District Court decision. Section 316 is a dead letter, and it causes nothing but trouble to everyone involved. The road to truth, justice and healing will not be found via any more prosecutions under the derelict section 316. I hope and pray that Peter Creigh and Philip Wilson might one day be reconciled. In this instance, the processes of the criminal law have inflicted great harm on each of them.

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