

- homosexual anomalies – whereby the age of consent is 16 years for heterosexuals and 18 years for male homosexuals;
- penalty guidelines on offences of wide definition;
- reorganisation and reclassification of offences;
- offences in company;
- accelerated prosecution;
- victim issues: reasons for no bill, involvement in ‘plea bargaining’;
- judicial control on cross-examination;
- anatomical dolls (as evidential aid in child victims’ testimony); and
- private prosecutions.

## high court rules in favour of closed worship

In the recent decision of *The Council of the Municipality of Canterbury v The Moslem Alawy Society Limited* the High Court spoke out strongly in favour of freedom of worship.

*place of worship.* The Society, a small Islam sect with Syrian origins, converted a dwelling house in the Sydney suburb of Punchbowl for use by the neighbourhood congregation as a place of worship. The premises are open only to members of the Society, all males, and their sons over the age of 13 years. The Society has approximately 65 members.

The Society had to obtain permission from the local Council to use the premises as a ‘place of public worship’, defined in the Ordinance as ‘a church, chapel or other place of public worship or religious instruction or place used for the purpose of religious training’. As the Court observed, that definition is partly circular.

*interpretation.* Canterbury Council had refused to consent, taking the view that places of public worship have to be

open to the public generally. It was the Council’s submission that ‘place of public worship’ was not practically different from ‘public place of worship’.

The court rejected the Council’s restrictive interpretation, taking what it regarded as an ordinary commonsense approach. ‘Public worship’ was to be distinguished from private or domestic worship ‘in the sense of not being within the privacy of “the closet” or within the confines of close family’. This distinction between congressional and private or domestic worship could be traced back as early as a 1593 English statute and the later Conventicle Acts of 1664.

*wider meaning.* The Court was undeterred by arguments that this same term had been given a more restricted interpretation in other legislation, most notably exemption provisions in rating statutes. The court quite firmly disposed of any argument from analogy with the view that ‘the considerations of context and policy which might be relevant . . . in an exemption clause in rating legislation are plainly different from those which are relevant in determining the meaning of the phrase in planning legislation.’

It was thus, in the view of the High Court, irrelevant for the purposes of a planning scheme Ordinance that the Society restricted attendance to their members.

To follow the Council’s interpretation, the Court said, would lead to the absurd result that the use of premises as an open cathedral in a residential area would be permitted notwithstanding the ‘regular attendance of thousands of worshippers, while use of premises as a closed church or chapel to which the members of a small local congregation came to worship together was absolutely prohibited.’

The court concluded with a stern rebuke that the effect of the Council’s con-

struction of the terms 'would be give to the Ordinance an operation which discriminated against any group or sect whose rights of worship are 'for any of a variety of possible reasons, closed to the general public . . . and reflected an approach that would lie ill with currently accepted standards of religious equality and tolerance in this country'.

*history.* The right of the Society to continue its religious practices has now been upheld for the third time: first by Justice Cripps in the Land and Environment Court, then by a majority of the New South Wales Court of Appeal and lastly by the High Court.

## the peter wright book

Them that asks no questions isn't told a lie.

Watch the wall, my darling, while the Gentlemen go by!

Laces for a lady, letters for a spy,  
Watch the wall, my darling, while the Gentlemen go by!

Kipling, *A Smuggler's Song*

The long running battle by former British spy Peter Wright to publish his memoirs continues. On 13 March 1987 Justice Powell in the NSW Supreme Court delivered a 286 page judgment which lifted the injunction preventing the publication of Wright's memoirs. But shortly after this, the British Government announced it would lodge an appeal against the decision of Justice Powell. This appeal will be heard in the NSW Court of Appeal. Ultimately the case may have to be resolved in the High Court so it may be some time yet before the matter is finalised.

As noted in the last edition of *Reform* ([1987] *Reform* 19) the case attracted widespread publicity both in Australia and in the United Kingdom, a factor which no doubt will do the book no harm if it is

ever published. The question that has intrigued many commentators was why the British Government chose this book on which to run a test case given that much of the material found in Wright's book had previously been published in 3 books on the British intelligence services: Chapman Pincher's *Their Trade is Treachery* (1981), Nigel West's *A Matter of Trust: M15 1945-1972* (1982) and Chapman Pincher's *Top Secret Too Long* (1984). Was it the details in the book that they wanted kept secret or was it simply that it had been written by Peter Wright?

Added to this was the difficulty of showing why the book should not be published in Australia.

*justice powell's judgment.* In his long judgment Justice Powell dealt exhaustively with the background to the case setting out details of previous publications on the secret services (including a useful Appendix for readers of spy books) and particularly the work of Peter Wright in M15. He outlined the arguments put to him by the British Government and the defendants (the publisher Heinemann and the author Peter Wright) being at times critical of the tactics employed by the British Government in the presentation of its case.

In the last 50 pages of his judgment Justice Powell discussed the relevant legal principles.

*was there a contract?* Justice Powell after reviewing the authorities concluded that the relationship between the British Government and Peter Wright was not one of contract although he conceded that the position was less clear with respect to non-military personnel than with military personnel. However the fact that there was no contractual relationship did not mean that an obligation of confidentiality did not exist.