

## **Evidence of children in criminal matters - removing the mythical assumptions cont...**

has been slow to filter into the criminal jurisdiction. There have, however been some movements in that regard.

The High Court of Australia in *The Queen v Robinson*<sup>3</sup> has cited with approval the Canadian decision in *The Queen -v- Ewanchuk*<sup>4</sup> which dealt with mythical assumptions and stereotypes in court proceedings.

In *Ewanchuk* the appellate court was concerned with the issue of implied consent, where a woman had submitted to sexual advances through fear. L'Heureux-Dubé and Gonthier JJ made the following observations:

*"This case is not about consent, since none was given. It is about myths and stereotypes. The trial judge believed the complainant and accepted her testimony that she was afraid and he acknowledged her unwillingness to engage in any sexual activity. However, he gave no legal effect to his conclusion that the complainant submitted to sexual activity out of fear that the accused would apply force to her. The application of s. 265(3) requires an entirely subjective test. As irrational as a complainant's motive might be, if she subjectively felt fear, it must lead to a legal finding of absence of consent.*

*The question of implied consent should not have arisen. The trial judge's conclusion that the complainant implicitly consented and that the Crown failed to prove lack of consent was a fundamental error given that he found the complainant credible, and accepted her evidence that she said "no" on three occasions and was afraid. This error does not derive from the findings of fact but from mythical assumptions. It denies women's sexual autonomy and implies that women are in a state of constant consent*

*to sexual activity.*

*The majority of the Court of Appeal also relied on inappropriate myths and stereotypes. Complainants should be able to rely on a system free from such myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions."*

*Ewanchuk* was also cited with approval by the Queensland Court of Appeal in *R -v- Crooks*<sup>5</sup> where it was footnoted that:

*"The emphasis on corroboration in a rape case may be misguided since the amendment of s. 632 of the Criminal Code by Act No. 3 of 1997 which removed any requirement that a judge must warn a jury that it is unsafe to convict the accused on the uncorroborated testimony of a witness. Subsection (3) specifically provides that a judge must not warn or suggest in any way to the jury that the law regards any class of complainants as unreliable witnesses: as to which see R v Ewanchuk (Supreme Court of Canada, 25 February 1999)."*

These assertions apply equally to the mythological assumption that children have a general propensity to imagining and fantasy when reporting observed facts.

In any event, we should all be vigilant to ensure that mythological assumptions, urban myths, and stereotypes do not enter the realm of the courtroom.<sup>①</sup>

### **Footnotes**

<sup>1</sup> Timber Creek sittings NT CSJ 15/4/03

<sup>2</sup> s4(5) - Sexual Offences (Evidence & Procedure) Act NT

<sup>3</sup> [1999] HCA 42

<sup>4</sup> [1999] 1 SCR 330

<sup>5</sup> R v Crooks [1999] QCA 194

## **Congratulations to NT's new silks**

Congratulations to Mr Peter Barr, Ms Suzan Cox and Ms Raelene Webb who were recently sworn-in as the Territory's newest Queen's Counsel.

The successful candidates were required to apply to the Chief Justice, who made his recommendations to the Attorney-General.

The nominees were approved by Cabinet before being sworn-in by the Administrator.

Law Society NT President Merran Short said congratulated the new appointees on their achievement.

Attorney-General Dr Peter Toyne congratulated the three new Queen's Counsel for reaching a major milestone in their legal careers.

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# Pamela Tregear - Hunt and Hunt (Darwin)

## Brief career history:

I started my working life as a nurse, training at the Geelong Hospital. I completed an anthropology degree and worked for five years at the Aboriginal Areas Protection Authority, working alongside the Registrar of Sacred Sites. It was during this period that I studied law and in 2001 I completed my articles with Ward Keller. I stayed on at Ward Keller until August 2003 when I moved to the litigation section of Hunt and Hunt.

## What motivated you to start working in the legal profession?

When I was a teenager I decided law would be an interesting career. Being easily distracted I was side tracked for about 20 years until finally enrolling in law in 1994.

## How long have you been in the Territory and what brought you up here?

I arrived in April 1985, the day after Cyclone Gretel. A girlfriend and I were recruited by the Department of Health to work at the Royal Darwin Hospital on short-term contracts. My friend stayed for three months.

## What is the best, and worst, thing about living and working in the Territory?

Best - warm weather, smallish city,

know lots of people.

Worst - warm weather, smallish city, know lots of people.

## If you had the power to change one thing in the world, what would it be?

Geelong beats Brisbane and goes on to win the AFL Grand Final.

## What is your greatest achievement?

My family.

## What are your hobbies?

Wrestling the garden for a little control, beating nature away from the door. Then I plant more things for the next round.

## Describe your perfect weekend.

Skiing Whistler, Blackcomb with a trip to Bariff or Jasper on the side, the Canadian Rockies. I'll send a postcard if I ever get there. And it will be a very long weekend.

## What are you most passionate about?

Haigh's chocolates.

## What was the last book you read?

*The Lost German Cleave Girl* by John Bailey.

## What is your favourite movie?

My family has graduated from *Shrek*



to *Terminator 3*. Personally, I loved *The Dish*.

## What was the last CD you bought?

*The Women at the Well* by Paul Kelly.

## What is your favourite holiday destination and why?

The snow. I get to visit my family in Melbourne and hit the Victorian alps with my husband and three children.

## Describe your perfect meal.

Makan Padang at those restaurants in Bali with layers of plates balanced on top of each other in the front window.

## After a long week at work it is finally Friday, you walk up to the bar and order a...

Glass of dry white.①

## Congratulations to the Territory's new silks cont...

"It's one of the highest honours in the legal profession to be appointed a Queen's Counsel and they should be extremely proud.

"Taking silk carries both respect and responsibility and I'm sure these new appointees will live up to the high stands expected from our QCs.

"They are experienced advocates with a collective experience ranging

from administrative law and native title to criminal and family law.

"It is a pleasure to recognise their contributions thus far to the Northern Territory and their ongoing work here.

"They will play an integral role in the facilitation of justice in the Northern Territory and I wish them well," Dr Toyne said.①

## Balance contributions

The Law Society NT encourages members to contribute to Balance. If you have an article, photos, a letter to the editor, or items for Muster Room, please send them through to Zoe at [publicrelations@lawsocnt.asn.au](mailto:publicrelations@lawsocnt.asn.au) or fax to (08) 8941 1623.