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Citizen wants answers

Alyssa Betts

A FORMER Baptist minister is refusing to accept the double standards of Queensland's justice system after being convicted of a crime for which others were excused.

Douglas Ensbey, whose conviction meant he lost his job as pastor of the Sandgate Baptist Church, is seeking answers about his treatment after being charged and convicted of destroying evidence.

Mr Ensbey says he wants an explanation from the state government as to why a group of politicians and senior bureaucrats – who shredded child abuse evidence gathered for an inquiry knowing it was required for a potential court action – haven't been charged with the same offence.

"I have been to my local member for Glasshouse – Carolyn Male – I've been to her office, and I've asked twice now for an appointment with her and I keep getting fobbed off," Mr Ensbey said.

"Carolyn Male is a Labor member, and I think that she and Mr Beattie hope that I will just go away," he said.

Mr Ensbey was convicted in March last year for guillotining four pages of a teenage sexual assault victim's notebook which contained some details of abuse by a family friend.

The guillotining occurred in 1996 – five years before the girl decided to initiate charges against her abuser – a parishioner in Mr Ensbey's church.

Until Mr Ensbey's trial, the state's legal authorities had, for over a decade, maintained that the offence of destroying evidence could only be prosecuted if the documents had been destroyed whilst a judicial proceeding was on foot.

This argument was used by various authorities, including Department of Public Prosecutions (DPP) and the Criminal Justice Commission, to excuse the actions of the 1990 Labor cabinet which shredded over 100 hours of evidence given to the Heiner Inquiry.

The destruction of evidence was authorised and carried out after the Goss Cabinet had been notified the documents were required for a legal proceeding.

Yet not only was Mr Ensbey given a six-month suspended sentence for an offence the Crown had previously argued was not a crime, but the Crown then appealed the sentence on the grounds that it was "manifestly inadequate".

Attorney-General Rod Welford's appeal was based on an assertion that the offence struck at the heart of the criminal justice system and therefore the suspended sentence was not a sufficient deterrent.

Mr Ensbey said he was not able to begin to fathom what Mr Welford's motives were in "having a double go" in trying to put him in jail.

"That annoyed me in the light of the Heiner stuff," he said.

"I thought, he's got a gall to actually turn a complete blind eye to this with all these – what I would call bogus – excuses for why

Douglas Ensbey ... unable to work as a minister, now drives a truck

[the Heiner affair] was different."

"Because I am understanding that the DPP told the Goss Government that their interpretation was because there was not a case on foot, it was not destruction of evidence," Mr Ensbey said.

"Now I know firsthand that that is not right, because when my barrister tried to argue that case with me, he was told that that is not legal," he said.

The Heiner Inquiry was set up in 1989 to investigate the infamous John Oxley Youth Detention Centre, and some of the evidence it had gathered concerned child abuse that was occurring in the institution.

The Independent Monthly has reported numerous stories of such incidents of abuse at the centre, in particular that of the pack rape of a 14-year-old girl whilst on a supervised excursion.

No one has ever been charged for child abuse at John Oxley or for the shredding of the Heiner documents.

Since the sentencing in March last year, Mr Ensbey's life has undergone considerable change.

Before the trial Mr Ensbey had recently accepted a position in the Baptist church in Maleny.

He said he had been enjoying the challenge of the new position and described life at that point as being "fairly busy but fairly buoyant – fairly content all round".

However, as Mr Ensbey now has a conviction recorded against him, he has been issued with a negative notice for a blue card and is therefore unable to continue as a pastor or return to his previous profession of teaching.

The blue card system, set up by the Queensland government, requires any individual who works with children to undergo a screening and have their criminal history assessed.

"When it [all first began] you had to have a blue card to be working with children, I do not work directly with children, I had a man on staff who looked after children's ministry," Mr Ensbey said.

"But Peter Beattie has increased the powers of the Children's Commission, so that even if you are a leader, or an influential person in the church, you have to have a blue card," he said.

"That's the thing that has most affected my life, because really, I have lost my employment," he said.

Mr Ensbey is now driving trucks for a living and has to live in Brisbane throughout the week, travelling back up to Maleny on the weekends.

"So my wife and I have been separated in a form since that happened," he said.

"[And] certainly my wage now is way less than what we've been living on."

"Truck driving pays about $16 an hour, so sometimes I'm working 12-hour days," Mr Ensbey said.

However, no matter how much his life had altered since the trial, he said he was remaining calm about the lack of impartiality in Queensland's justice system.

Mr Ensbey said he regretted how he had handled matters in 1996 and that he would "live with the conviction", but that there was injustice inherent in the system whilst figures in authority remained unaccountable for their actions.

"We will never benefit as a community if we have politicians who flagrantly break the law like they have, and then excuse themselves," he said.

"I will continue to pursue, if that means writing letters to Mr Beattie, if that means writing a letter to the Governor, I will continue to just steadily plod away and pester at whatever level I can."

What the DPP said

Re: R v Douglas Roy [sic] ENSBEY

I refer to your facsimile dated 13 October 2003.

After careful consideration of your submissions and all of the evidence, I am satisfied that there is sufficient evidence to warrant the continuation of the prosecution and further, that such a prosecution is in the public interest ...

... In my view, there is a sound argument that the ambit of Section 129 of the Criminal Code does extend to those facts [involved in the case].

I note that the indictment form for Section 129 refers to an accused's knowledge that the document "*was or **might** be*" required in evidence in a judicial proceeding.

If the allegations against your client do not constitute the destruction of evidence, they must at least amount to an attempt to pervert the course of justice. You have already been referred to R v Rogerson (1992) 174 CLR 268. In that case, Mason CJ observed:

"The necessity of proving that an act has a tendency to pervert the course of justice by frustrating or deflecting a possible criminal prosecution and that the act was intended to have that effect does not require evidence that a prosecution for a particular or identifiable offence was in contemplation either by the accused or by investigating officers."

I trust this clarifies matters for you.

Yours faithfully

LJ Clare
Director Of Public Prosecutions

"Please don't think that I'm a martyr when I say this, but, if that girl who was gang-raped can get justice simply because I have a conviction against my name, that is a small price to pay," he said.

"I mean to be raped is bad enough, but to be gang-raped is horrific – and then to have it denied all down the track so other people can save face is horrific."

Mr Ensbey said in some ways he felt sorry for the politicians, "because they've covered it up for so long that I think they've got more to lose".

"And frankly, I hope Rod Welford – if it does come to court – if they get a suspended sentence I hope Rod Welford goes back and has a second crack at putting them in jail," Mr Ensbey said.

"Not that I think jail will fix them, but I think our society has got to see that our governments are accountable to us."

Prosecution for destroying evidence was 'in the public interest' – DPP

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In his judgment, one member of the court, Mr Justice Davies, said: "It was not necessary that the appellant knew that the diary notes would be used in a legal proceeding … "

"It was sufficient that the appellant believed that the diary notes might be required in evidence in a possible future proceeding against B, that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose."

In his appeal, Mr Welford said Mr Ensbey's original sentence was "manifestly inadequate", and that it did not provide an effective deterrent for such a serious crime.

However, the Attorney-General is resisting proposals by Opposition Leader Lawrence Springborg to reopen investigation into matters surrounding the Heiner Affair.

"Correspondence with the Attorney-General seeking to advance the issue has not met with a positive reaction," Mr Springborg said.

Ms Clare's interpretation of s 129 of the Criminal Code directly contradicts the arguments of Mr Miller, and various other state legal authorities – including the Criminal Justice Commission, the now State Coroner, and a serving magistrate – who have repeatedly avoided setting up an inquiry into the now infamous Heiner Affair.

In advice to the-then shadow Attorney in 1995 Mr Miller cited Form No 83 of the Practice Rules to read down the words of s 129 to reach a view that there must be a legal proceeding on foot before the section became applicable.

According to long-term Heiner Affair campaigner Kevin Lindeberg, Mr Miller used that same argument in advice to the Borbidge Government in 1997.

After receiving Mr Miller's advice, the Borbidge government abandoned the recommendations of two Brisbane barristers that a public inquiry be held into the Heiner shredding matter.

Mr Lindeberg said Mr Miller's advice was significant because it undermined the barristers' report.

"Now arguably, had Miller reached the same view of the law as Morris and Howard [the two barristers] – which is the correct view – well then, what was recommended in their report should have occurred," Mr Lindberg said.

"At least a public inquiry, possibly people being charged there and then," he said.

Mr Miller's advice is contained in a Cabinet document and would have to be tabled by the government in parliament for it to become publicly available.

"The 1997 DPP's advice is the smoking gun in this entire scandal … and it must be made publicly available and the Governor should be entitled to see it," Mr Lindeberg said.