SUPREME COURT OF QUEENSLAND

CITATION:	***Long v R* [2002] QSC 054**
PARTIES:	**ROBERT PAUL LONG** (Applicant) v **THE QUEEN** (Respondent)
FILE NO:	518/01
DIVISION:	Trial Division
DELIVERED ON:	18 February 2002
DELIVERED AT:	Brisbane
HEARING DATE:	13 February 2002
JUDGE:	Dutney J
ORDERS:	**Application refused**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – FAIR TRIAL - Accused indicted as a result of hostel fire where 15 people perished – Accused the subject of negative publicity originating from private and government sources - whether accused able to receive a fair trial. STAY OF PROCEEDINGS – Power to stay proceedings permanently – whether pre-trial publicity sufficiently extreme to warrant permanent stay – whether publicity from government sources so deliberately engineered. DIRECTIONS TO JURY – whether directions of trial judge would sufficiently diminish prejudicial impact of publicity. *Murphy v R* (1989) 167 CLR 94 – CON. *R v Glennon* (1992) 173 CLR 592 – CON. *R v Lewis* [1992] 1 QD R 613 – APP. *Tuckiar v R* (1934) 52 CLR 335 – DIST.

COUNSEL:	T Martin S.C. and C Chowdhury for the Applicant D Meridith and R Martin for the Respondent
SOLICITORS:	Legal Aid Queensland for the Applicant DPP for the Respondent

[1] The accused, Robert Paul Long, has applied to stay the indictment for murder and arson now before the court permanently. The application is based on the negative impact of extensive pre-trial publicity on the applicant's prospects of a fair trial.

[2] The charges against the applicant arise out of a fire which destroyed the Palace backpackers hostel in Childers on 23 June 2000. 15 residents of the hostel perished as a result of the fire.

[3] The event was attended by massive publicity not only in the local region but throughout Queensland, other States and internationally. This is hardly surprising given the extent of the loss of life and the fact that the majority of the deceased were international backpackers.

[4] Some media outlets drew comparisons between the Childers fire and the fire at the "Whisky Au Go Go" nightclub in Fortitude Valley in the early 1970's. This comparison was not in my view unfair or unwarranted. I do not recall a fire resulting in such loss of life in Queensland in the intervening years.

[5] This indictment has some history that I should outline. It was originally presented in the circuit court at Bundaberg and a trial listed to commence on 15 October 2001. This followed a committal proceeding in Brisbane in January 2001. An application was made to transfer the trial from Bundaberg to Brisbane on the basis, in part, at least, that the attendant publicity of the fire rendered a fair trial in that locality impossible. The application failed. In relation to the publicity argument it did so on the basis that the publicity was so widespread that the venue was on that count irrelevant. Ultimately the Chief Justice agreed to the presentation of a fresh indictment in Brisbane. I mention these matters to demonstrate that the application for change of venue

is irrelevant to this application. Nothing I said in dismissing that application has any relevance to the present application.

[6] In the course of the hearing of the application I was taken to newspaper and television articles from a wide variety of sources, not only from Brisbane but also from interstate and regional areas. In the end it seems to me that only the Brisbane material has any real relevance. The pool from which any jury is to be drawn will be from persons giving a Brisbane address on the electoral roll. The circulation figures provided suggest that the likelihood of potential Brisbane jurors reading articles in interstate newspapers is low. Likewise the prospects of a potential juror watching a regional news service not broadcast in Brisbane is low. In any case there is nothing significant to this application which did not also appear either in the Courier mail or on Brisbane television except for the unfortunate headline "Got Him!" which dominated the front page of the Bundaberg local newspaper on the morning following the applicant's apprehension.

[7] The fire occurred on 23 June 2000. By 25 June the Courier Mail was reporting that the police were searching for the applicant. The applicant was apprehended on 28 June. Between those dates the applicant was subjected to systematic denigration with headlines such as "Scrounging drifter now nation's most wanted", "Fugitive has violent past" and "De facto's life of fear".

[8] By way of illustration of the tenor of the prejudicial publicity in the articles and on television news reports during the period is the following from the front page of the Courier Mail of 26 June 2000:

> "A foot chase down Childer's main street over unpaid rent may have precipitated the torching of a hostel that killed 15 young backpackers.
> Robert Paul Long, a 37-year-old itinerant fruit picker is Australia's most wanted man, sought by police in connection with last Friday's horror blaze in the town south of Bundaberg.
> Two days before the fatal fire, hostel operators Christian Atkinson and John Dobe , both 28, pursued Long on foot down the Bruce Highway after challenging him to pay outstanding rent of about $200.
> Long is also believed to have threatened the pair.
> It also emerged yesterday that Long had an extensive criminal history of violence, including convictions and charges for the attempted murder of a former de facto's six-year-old daughter, serious assault, assault occasioning bodily harm, burglary, and fraud. He is also alleged to have torched a caravan while his de facto was asleep inside."

[9] The same edition of the Courier Mail on page 5 carried this report under the headline "Wanted drifter may have a record for attempted arson":

> Police sources have confirmed inquiries were being made interstate about allegations Robert Paul Long had tried to torch a caravan which contained a female companion.
> The 37 year old itinerant has no convictions for arson but a lengthy history of violence, including charges for attempted murder, break and enter, fraud and burglary, according to prison sources.
> …
> In May 1993, Long appeared in the Southport Magistrates Court after he abducted his de facto's six-year-old daughter from her Gold Coast home and then attempted to strangle her.
> The court was told Long had forced his way into the Tugun home after he saw his defacto with another man. He then allegedly assaulted the man and abducted the girl from her bed. He was charged with attempted murder, child stealing, assault, assault occasioning bodily harm, serious assault and wilful damage.
> Later that year he was believed to have been sentenced to four years' jail for attempted murder, the assault charges and burglary.
> He also has a conviction for absconding after he escaped from Brisbane's Dutton Park Community Corrections centre in July 1995 where he was serving out the remainder of his four-year term."

[10] The same article also records the comment of a former neighbour that, "I'm not surprised at what happened".

[11] On 27 June 2000 the lead article on the front page of the Courier Mail carried the headline "De facto's life of fear" and contained an interview with a woman claiming to be the applicant's former de facto which contained the following passages damaging to the applicant:

> The former de facto wife of Australia's most wanted man yesterday told of a sadist who had tried to murder her and her children.
> Christine Campbell said her estranged partner Robert Paul Long, the man police are seeking over the Childers hostel inferno had torched a caravan in which she was sleeping with their five-year-old daughter and her two young daughters from a previous relationship. He had then silently watched.
> …
> Ms Campbell who claimed Long had attempted to strangle her and her children, said she had no doubt he was capable of torching the Childers Palace Backpackers Hostel and that he would feel no remorse."

[12] I have concentrated on the newspaper reports because they are more conducive to closer reading. Similar material was shown on television including a featured interview with Ms Campbell on Today Tonight on Channel 7 on 26 or 27 June which repeated much the same allegations as were contained in the newspaper article.

[13] It should be noted that Mr Long's criminal history as tendered on the application does not disclose any conviction for attempted murder. It should also be noted that the author of the article from which the extracts above were taken was subpoenaed and indicated that her sources were articles in the Courier Mail and Sunday Mail from 1993, 1995 and 25 June 2000 and an unnamed confidential source within the prison service. The author of an article in the Daily Telegraph from Sydney which purported to set out (inaccurately) the applicant's criminal history disclosed her source as a police officer in Childers. The name of the police officer was unknown to the journalist but, on the evidence, he may have been with the Queensland, New South Wales or Federal Police. All services were apparently represented in Childers at that stage of the investigation.

[14] The submission for the applicant may be summarised as follows. The information concerning the applicant's criminal past, partly accurate and partly inaccurate, and opinions of his character from lay persons is of such a prejudicial nature that its disclosure to potential jurors could deprive the applicant of a fair trial. Although the disclosures and allegations were confined to a period of a few days between 24 June and 29 June 2000, now about 20 months ago, the context in which they were published, in the heat of passion following a major human disaster, made it more likely they would be read and absorbed by potential jurors. While they have not been repeated the continuing reporting of and references to the fire and the progress of the prosecution are likely to revive memories of the damaging publications whenever a trial is held. It was submitted that no direction from the trial judge could be expected to diminish the impact of the publications and a fair trial at any time is impossible.

[15] The power to stay an indictment permanently is not doubted. Among other references it was recognised by the High Court in *Glennon v R* (1992) 173 CLR 592 and the Court of Appeal in Queensland in *R v Lewis* [1992] 1 QD R 613. Despite this counsel have been able to find only one Australian authority in which the power has been exercised in favour of the applicant. In *Tuckiar v R* (1934) 52 CLR 335 the power was exercised in favour of what was

described as a completely uncivilised aboriginal native charged with the murder of a police constable in the Northern Territory. The appellant was convicted. After the conviction his counsel announced in open court that his client had admitted that evidence of a confession given by him of the murder was correct. The verdict was set aside for other reasons. The statement by counsel in open court was of such damning prejudice to the fairness of any retrial that a verdict of acquittal was substituted. As can be seen the facts were extraordinary.

[16] Of more recent application are the remarks of Pincus JA in *R v Lewis* [1992] 1 Qd R 613 at 636 where after referring to *Murphy v R* (1989) 167 CLR 94 he added:

> The High Court's remarks support the view that, at least in some circumstances, an accused must be content with a trial in which the court does the best it can for him by way of directions, without producing any certainty that preconceptions derived from media treatment of the facts of the case will be utterly dispelled by the time the jury comes to consider its verdict. Were that not so, then it might be impossible lawfully to try a person such as Jack Ruby, whose crime was witnessed by millions on television. It may be that if adverse publicity is deliberately generated by persons for whom the Crown should properly be held responsible, then justice would require that a permanent stay be granted; otherwise, it is not easy to imagine circumstances in which publicity before or during a trial could entirely prevent the pursuit and eventual completion of a prosecution."

[17] After setting out passages from *R v Glennon* (1992) 173 CLR 592 Pincus JA went on at 639:

> "In my opinion it is not necessarily enough, in order to justify a permanent stay, to show that the offences alleged against the appellant have been thoroughly canvassed in the media and a great deal of material prejudicial to the appellant has been published. If it is the law that, in extreme circumstances, the only proper exercise of discretion would be to grant a permanent stay, it does not appear that the circumstances of the present case are sufficiently extreme. The matter was argued in this court as if it was the worst conceivable case of pre-trial publicity, but plainly it was not. One would expect the worst case to be one in which the crime alleged was one of horrendous kind, inciting universal revulsion (as in *Murphy*) and where the published material, perhaps pictorial evidence, was such as to be virtually conclusive of guilt. Even in circumstances of that kind, in which it might be difficult to induce a jury to take arguments on behalf of the accused seriously, it is not clear that the accused would be entitled to a permanent stay."

[18] Senior counsel for the applicant relied heavily on these passages. The present case is, he submitted, a crime of an horrendous kind, involving the death by fire of 15 young people. It is thus distinguishable from *Lewis* and *Glennon* on this score where the crimes, although serious, did not invoke revulsion or horror. Further, he submits, the publication of the criminal history and the

comments of lay people about the applicant's propensity to commit this type of crime when passions had been already aroused and inflamed by the sensational nature of the reporting of the event satisfies the second requirement of an extreme case. In this respect the case differs from *Murphy* in that, while the crime was horrendous, the particular adverse reporting complained of did not relate to the specific appellants but to their co-accused. The nature of the accusation, that Michael Murphy was an escaped prisoner, falls far short of what was said of this applicant.

[19] The case here is made worse, it is submitted, by the fact that the source of some at least of the allegations of prior criminal conduct against the applicant was prison staff or police officers. They must have known the purpose for which the information being released would be used and the Crown should thus be held responsible for deliberate dissemination of the information.

[20] I am not convinced that Pincus JA's second element of a possible extreme case is satisfied here. His earlier reference to the televised shooting by Jack Ruby of Lee Oswald suggests he may have had in mind publication of something more directly incriminating than allegations of prior bad conduct, callous behaviour or even lay comment that the applicant was the sort of person who would have lit the fire. In any case even in the passages relied on his honour recognised the balancing exercise involved. For example, his honour refers at 635 to the passage from the judgement of Brennan J in *Murphy* at 122:

> "There is a legitimate public interest in knowing of the solving of serious crime as well as a legitimate public interest in having the trial of alleged criminals conducted free from prejudice. There may be a tension between the two interests of the public which has to be resolved…"

[21] In *Glennon* at 613 Brennan and Dawson JJ expressed the exercise this way:

> …pre trial publicity prejudicial to an accused is stimulated by the notoriety of the accused and the heinousness of the crime. Yet it would undermine the criminal law's protection of society and its members to refuse to allow the law to take its ordinary course in thses cases. The administration of criminal justice by the courts, which proceeds inexorably to its conclusion in each case, would be adventitious if trials could be halted by a punishable contempt"

[22] Mason CJ and Toohey J in *Murphy* expressed much the same view when (at 99) they said:

> The importance of a fair trial to an accused must not be underestimated. But it is not the only consideration. It is important that anyone charged with a criminal offence be brought to trial expeditiously."

[23] In a case such as this there is strong public interest in having the trial proceed. Is the potential for prejudice against the applicant so great that the trial must inevitably miscarry? It is now 20 months since the prejudicial material was published. While the Childers fire has been the subject of many reports in the intervening period they have in my view in all or almost all cases been restrained and balanced. References to the applicant other than as the person charged in relation to the fire have been absent since his arrest with the possible exception of an article in Sydney on 30 June 2000 which few potential jurors are likely to have accessed. Plainly careful warnings and directions to the jury will be required if the trial proceeds. I do not think the evidence supports a finding that the leaking of information about the applicant from within government sources was sufficiently condoned or authorised by those in authority in the investigation that the publicity can be said to have been so deliberately engineered as to require a stay.

[24] It would be foolish to deny the possibility of prejudice to the applicant by what has happened in the media. The possibility of such occurring is acknowledged in all the cases to which I have referred. Nonetheless I am not satisfied that with the lapse of time and proper directions that that risk is so great as to amount to a "significant and unacceptable likelihood that [the trial] would be vitiated by impermissible prejudice and prejudgement."[1]

[25] The bar is set very high for an applicant in an application like this. Weighing up the competing interests as best I am able I am not satisfied the applicant has crossed it. I refuse the application.

[1] *Glennon,* page 623,624.