



A follow up to Carolyn Ford's Article LIV 01 March 2017

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Unquestionably we as the peak body for Justices in the State of Victoria feel a very deep and sincere sorrow for the victims, their families and all of the people of Victoria who have been touched by the terrible Bourke Street tragedy.

There is no disagreement that the current review of the Justice system in this State is far overdue and it is a very sad state of affairs that a tragedy of this magnitude had to be the catalyst for the Government to do something about it. Carolyn Ford's article however, appears to lay the blame at the Bail Justice without any real justification, nor investigative and balanced research.

Notwithstanding, a Bail Justice did in fact Bail the alleged perpetrator of this heinous act, all be it 6 days beforehand, however no one other than those present knows the real story as to why the accused was released on bail, and if any conditions were attached.

Let us just for a moment ponder the very real possibility that there were a number of conditions attached to the granting of bail to the accused, the conclusion being drawn, that if there were conditions, none of those conditions were breached during that 6 day window, and if they were breached they were not acted upon. Is this a possibility or maybe a reality? Unfortunately some people are quick to condemn with only a superficial understanding of the facts. In the passage of time however, the coronial inquest will give the complete story as to exactly what happened, and maybe beforehand his Honour may shed some light on this issue during his undertaking of the Bail Review.

Currently the position of Bail Justice is being maligned and unfairly criticised on the basis that they are volunteers and not professional nor legally trained. It is absurd that anyone in the profession has to be reminded as to who bailed Jill Meagher's murderer or which body made the decision to parole Sarah Cafferkey's killer. It appears to me that at the moment the Bail Justice and by implication Bail Justices are being held solely accountable for the Bourke Street tragedy as, 'scape goats' and being 'hung out to dry'.

Just a few observations regarding 'professionalism' - the 39th Battalion World War II, formed in haste from a disparate militia force, boys of age 18 to 20 years with their officers of only World War I experience; the most undertrained, least experienced personnel ever sent to war, in addition they were only armed with World War I weaponry, and although being totally undermanned they held off for a month the very experienced Japanese Army numbering 1,500 at Kokoda in Papua New Guinea. Rod Laver the best men's tennis player ever known was an amateur. Since when are Juries legally trained? My point being you don't have to be a legally trained professional, intelligence, integrity, honesty and good old common sense goes a long way to do 'bloody good job' in any endeavour.

It is true that the previous Victorian Law Reform Commission Final Report highlighted a number of shortcomings with aspects of the State's reliance on Bail Justices. Of particular interest though, it concluded inter alia that the system should continue:

Recommendation 42. The bail justice system should be retained and reformed in accordance with the recommendations in this report. The Department of Justice should commission an independent review of the bail justice program in three years to determine whether it is working well, or whether another system should be instituted. In the long term, an after-hours bail court should be considered.
http://www.lawreform.vic.gov.au/sites/default/files/Final_Report_Preface_Summary_and_Recommendations.pdf

The review pointed out 93% of all bail granted in the State is granted by the Police, 5% by Magistrates & 2% by Bail Justices.

Last year Bail Justices presided over 11,000 out of hours hearings, with figures showing Bail Justices remanded 86% of cases appearing before them while Magistrates remanded 18% of cases before them.

Notwithstanding the above, many of that Final Report's related recommendations were ignored including:

“Department of Justice should commission an independent review of the bail justice program in three years to determine whether it is working well, or whether another system should be instituted. In the long term, an after-hours bail court should be considered”

Had this re-evaluation taken place, as with so many of the recommended outcomes of the subject report, maybe the current problems being faced by the community would have been addressed well before the situation deteriorated to its present state of affairs.

Although the Bail Justice system is unique to Victoria other jurisdictions in fact have only slight variations and actually all do not have on-call magistrates, most States rely on Justices of the Peace with different levels of status.

There is absolutely no question that the Legal system within Victoria needs a major overhaul to ensure all Victorians feel and are actually safe in going about their daily or nightly business but it should be done in such a way as to ensure that the outcome does not include throwing the good out with the bad.

In fact the main thrust of this review should be on the actual legal system as a whole and not just the issue of bail. Why are there so many delays in getting an accused to Court, this seems to be one of the major road blocks in the system? For example, why do we have committal hearings, do we actually have to test the evidence twice? If the DPP are convinced they have sufficient evidence to convict, why not go directly to hearing, and if they get it wrong award costs against them.

Whatever the outcome of the Honourable Paul Coughlan's report is, and the recommendations flowing from it, the members of the Royal Association of Honorary Justices shall continue to serve the people of Victoria as it has done voluntarily for the last one hundred and seven years. NWW