

Garden Chambers

The Chairman,
The Panel on Administration of
Justice and Legal Services,
The Legislative Council.

24th May 1999

Dear Chairman,

**Re : Evidence (Amendment) Ordinance –
Corroboration in Sexual Cases**

I write to express my concern at the proposed abolition of the corroboration warning required at present in certain sexual offences.

The crimes of Rape and Indecent Assault are almost unique in that no physical evidence of the crime need be proved. For example in cases of Theft there is invariably proof that goods were stolen, or in cases involving dangerous drugs that the goods involved were indeed drugs. In every assault except common assault (and of course rape and indecent assault) proof of some injury is required. Experience has also shown, and medical opinion from and before the days of Freud has supported this, that victims can sometimes exaggerate or imagine these crimes.

The common criticism of the need for the warning are these:-

- 1) It is an exception to the general rule that a defendant can be convicted on the uncorroborated evidence of a simple credible witness. In practice, as I have shown above, in nearly every crime physical proof is required to show that the crime was committed.

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- 2) The rules on corroboration are complicated. This is not so. The concept is easy to understand and throughout life we, consciously or unconsciously, look for independent evidence to support a proposition or story. Any jury can grasp this idea. The chapter on 'Corroboration' in any legal text book is usually amongst the shortest.
- 3) The rule is discriminatory against women. Again, this is false – the rule applies to both sexes. By definition the crimes can be said to be discriminatory against men, so this is a sterile argument.
- 4) The rule makes it harder to obtain convictions for sexual offences. In fact a jury who believes a complainant will convict whether there is or is not corroboration. Only if there is some doubt will they be likely, because of the warning, to acquit. The rule therefore makes it harder to convict the innocent.


Among the positive reasons for keeping the rule are:-

- 1) Experience and psychological science, as I have outlined above.
- 2) The rule emphasises that it is the quality, rather than the quantity, of evidence which should count. The quality of evidence is much enhanced if it is corroborated.
- 3) If the rule goes then it will be difficult for someone with a similar previous conviction to get a fair trial. At present, a defendant can emphasize the absence of corroboration. If the rule goes he does so at the risk of putting his previous conviction in evidence, as the emphasis can be taken as a suggestion that the complainant is lying.

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Whenever a similar amendment has been passed in other jurisdictions, it has been urged on by single-issue fanatics whom lawmakers are generally too frightened to resist. I urge your panel not to surrender the wisdom of the ages for the pacification of a group who are inimical^{to} the rights of these defendants and common sense.

Yours sincerely,


Christopher Coghlan