

CRIMEWATCH

Issue No. 12, June/July 1996

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FINANCIAL ACTION TASK FORCE ANNUAL MEETING

FATF VII concluded with its annual meeting in Washington in the final week of June. That meeting saw the completion of a stocktaking of the 40 FATF Recommendations with the consequent revision of a number of recommendations which involved some reconfiguration of the original documents. The new recommendations (still the "40 Recommendations") and consequentially amended interpretative notes appear as annexes to the Annual Report as does the Task Force Report on Money Laundering Typologies.

Of particular interest in the typologies report is note of the emerging threat in the banking sector of new payment technologies (often known as cyberpayments) including the use of so called "smart cards". In the non banking sector the use of casinos, insurance business and the securities industry poses challenges for those seeking to ensure that money laundering is curtailed.

The most significant changes to the 40 Recommendations deal with:

- (a) the scope of the offence of money laundering (now recommended to extend to the proceeds of serious offences);
- (b) the extension of application of the recommendations to financial activities of businesses which are not financial institutions;
- (c) the potential for abuse of shell corporations by money launderers;
- (d) the introduction of mandatory (rather than discretionary) reporting of suspicious transactions;
- (e) the possible use of "controlled delivery" techniques in investigating money laundering offences; and
- (f) enhancement of the obligation relating to the monitoring of cross-border movements of cash and bearer negotiable instruments;

The new standards adopted by the Financial Action Task Force have always been reflected in the Commonwealth Model Law for the Prohibition of Money Laundering.

FATF VIII continues under the Presidency of Mr Fernando Carpentieri, Director-General of the Ministry of the Treasury of Italy.

RECENT PUBLICATIONS

TRANSFORMING CRIMINAL POLICY: Andrew Rutherford

This is a first work in a new criminal policy series. The volumes aim to address important issues in criminal policy. The writer insists on the need for an integrated criminal policy as a means of protecting those values which are fundamental to a liberal democracy. The concept of criminal policy as a framework with core aspects addressing the limits of the criminal law, measures to combat crime at every stage of the criminal justice process, protection of the individual, provision of fair, just and decent treatment after arrest and evenhandedness in the administration of the criminal law is discussed in the book.

Published by Waterside Press, UK, the ISBN Paperback reference is 1 872 870 317.

CAPITAL PUNISHMENT - GLOBAL ISSUES AND PROSPECTS: Editors: Peter Hodgkinson and Andrew Rutherford

This book is the second volume in the Criminal Policy Series. It considers the resurgence of the death penalty as a method of punishment and its various chapters deal with different regions of the world. Significant material on Commonwealth countries including the Commonwealth Caribbean and Commonwealth Africa together with the United Kingdom and Europe is included. Other chapters cover other major countries and legal systems.

In dealing with the death penalty as an instrument of public policy, international law and human rights and the politics of abolition versus retention, the book will be of interest to those concerned about the continuance of a practice which has been rejected by some countries, but remains resilient in certain other parts of the world.

Published by Waterside Press, the ISBN Paperback reference is 1 872870 325.

DISCUSSION PAPER - MODEL CRIMINAL CODE - CONSPIRACY TO DEFRAUD: Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Australia, June 1996

Australia is a federal state with a constitution which vests only enumerated legislative powers in the federal government. The power to make general criminal laws vests in the states and not centrally and has resulted over time in divergence between the criminal laws of different states and territories. Since 1990 the Attorneys-General of all jurisdictions have been considering the development of uniform criminal codes for Australian jurisdictions. As part of this ongoing process their advisory committee on this question has published a discussion paper on the topic of conspiracy to defraud. This topic was considered to warrant special treatment outside the subject of theft, fraud, bribery and related offences which was the last area finalised by the committee.

The Discussion Paper deals with the existing law, the need for an offence of conspiracy to defraud, whether such an offence should be restricted to economic gain and the need (or otherwise) for a general dishonesty offence. In the result the officers recommend the inclusion of an offence of conspiracy to defraud extending only to economic gains or losses except in the case of influencing the exercise of public duty and that there should be no general dishonesty offence. The document provides a very useful discussion of the issues.

Held (appeal dismissed) :

That the contract between the bank and its customer includes an implied term preventing the bank from disclosing information concerning the customer's dealings with it. One of the exceptions to the implied duty is where there is a duty to the public to disclose and such duty to the public arises where disclosure is necessary to prevent fraud or crime.

While the authorities have not exhaustively defined all of the exceptions, there must be one in the case of misrepresentation of the sort involved in this case, whether or not it involved fraud. If the purpose and effect of disclosure is to prevent the other party from being misled by the customer the case cannot come within the scope of the bank's implied covenant of confidentiality.

Canadian Imperial Bank of Commerce v Sayani, Canada, [1994] 2 WWR 260 (British Columbia Court of Appeal)

Defendant convicted following not-guilty plea - admission by defence counsel in mitigation - not to be taken into account in determining application for leave to appeal against conviction

The defendant and co-defendant pleaded not guilty at their trial. The prosecution's case against each of them was the same and both were convicted. In mitigation before sentence, the appellant's counsel relied on a probation report on the defendant which referred to admissions made by him to the probation officer and reasons for committing the offence.

The appellant had filed his own notice of application for leave to appeal against sentence but had ultimately abandoned it. The co-defendant had applied for leave to appeal against both conviction and sentence. His appeal was heard and upheld. Subsequently the appellant applied for leave to appeal against conviction out of time. One of the grounds was identical with the same ground in the successful appeal of the co-defendant.

The Court of Appeal refused to grant leave to appeal out of time and dismissed the application stating that the defendant had admitted (through his counsel in the plea in mitigation) committing the offence and that it was entitled to take this into account when considering whether there had been a miscarriage of justice. He appealed to the judicial committee.

Held (allowing the appeal):

When counsel mitigated in a trial at the start of which the accused had pleaded not guilty, counsel had to do so in the knowledge that the jury had convicted his client and attempt to mitigate the consequences. It would be unjust to attribute to the appellant from that mitigation, an admission that he had committed the offence.

Leave to appeal against conviction out of time would be granted and the case would be remitted to the Court of Appeal.

Wu Chun-piu v The Queen, Privy Council (appeal from the Court of Appeal in Hong Kong) The Times Law Report, May 17 1996.

Habeas Corpus - availability - appropriateness - judicial review.

Three applicants aged under 21 were committed to prison following summary conviction. They applied for writs of *habeas corpus* to secure their release.

In each case the warrant of commitment was defective in failing to comply with an obligation imposed under the Magistrates Courts Act to describe the justices' grounds for not placing an applicant under 21 under supervision and in failing to state the reason, as required by the Criminal Justice Act 1982, why no method other than imprisonment was suitable. In addition, in the first two cases the warrants also failed to specify, as required by the Magistrates Courts Act 1980, the grounds upon which they were issued.

Held : (dismissing the applications)

A warrant of commitment which was defective for failure to comply with statutory requirements was not void merely by reason of a defect in the warrant and the detention was not unlawful unless and until the warrant was quashed.

In judicial review proceedings the court has wider powers of disposal whereas in *habeas corpus* the detention is either held lawful or not and the applicant freed or not. On judicial review the challenge is directed where it should be - at the justices - rather than at the prison authorities whose involvement is immaterial. *Habeas corpus* was not a necessary, recognised or appropriate means by which a defective warrant of commitment could be challenged. Judicial review is the appropriate remedy in a case seeking to challenge the lawfulness of a decision to commit a person to prison or of the warrant of commitment.

R v Oldham Justices and another, ex parte Cawley; R v Governor of Risley Prison and another, ex parte Ryan; R v Governor of Risley Prison and another, ex parte Healey [1996] 2 WLR 681 (QBD)

Confiscation Orders - appeal against - death of appellant before hearing of matter.

The convicted appellant was imprisoned and a confiscation order was made. Appeals ultimately resulted in a quashing of convictions on three of four counts and remission of the matter on the fourth count to determine whether the confiscation order should stand. The appellant died before hearing of the matter. Both the Court of Appeal and the House of Lords held that they had no jurisdiction in the matter because the appeal had been abated by death. The Secretary of State then referred the matter to the Court of Appeal pursuant to his special reference powers under the Criminal Appeal Act 1968 (UK).

Held that because the appellant had died he could not contest the prosecution case of challenge any new material that was put forward. The confiscation order should be set aside to avoid the possibility of injustice.

R. v. Kearley (deceased), Times 16 May 1996.

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