

Legislative Council

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ATTORNEY-GENERAL

The Hon. A. BRESSINGTON (15:05): I seek leave to make a brief explanation before asking the minister representing the Attorney-General questions regarding the responsibility of the A-G, as the first law officer of South Australia.

Leave granted.

The Hon. A. BRESSINGTON: On 3 April, on Radio FIVEaa's Leon Byner program, the Attorney-General said:

At any time people campaigning for Henry Keogh can approach the Supreme Court and seek to reopen the case, they don't need me.

In the ruling of the Supreme Court in *R v Keogh* (2007) No. 226 made on 22 June 2007 by Doyle, Bleby and Sulan JJ, it was determined that the Supreme Court had no legal power to reopen an appeal. That decision was subsequently affirmed by the High Court. The only way that the Keogh case can now be reconsidered by the Supreme Court is if the Attorney-General refers the whole case to the Full Court pursuant to section 369 of the Criminal Law Consolidation Act 1935.

It is quite clear from the transcript of evidence to the Medical Board of South Australia that both Dr Manock and Dr James have stated on oath that the true situation regarding the evidence in relation to the Keogh case is not consistent with the evidence which they gave at his trial. Dr James has explained that he withheld important evidence in relation to the purported grip mark on the leg of the deceased on the basis that he did not think it to be relevant. Dr Manock explained that he failed to disclose similar evidence because 'it did not come up in conversation'. The situation cannot be changed or undone by any determination of any appeal or of any tribunal proceedings.

In *Gipp v The Queen* (1998), the High Court of Australia made it clear that a conviction is unsafe if it is established that the jury was misled on a relevant issue. In his final address to the jury at the trial of Henry Keogh, the Director of Public Prosecutions stated in reference to Dr Manock's evidence:

Whereas to murder I suggest the bruising on the lower left leg, if that is a grip mark, is almost in itself conclusive, providing you accept that it was applied at or about the time of death.

He referred to 'one positive indication of murder, namely the grip mark on the bottom of the leg'. It seems clearly inappropriate for the prosecutor to tell the jury that certain evidence was conclusive evidence of murder and for the Attorney-General to proclaim when that evidence is found to be wanting that it was not relevant to the verdict of the jury. I also make the point that this is not about whether Keogh is guilty or innocent; it is about a citizen's right to have a fair trial with due process. My questions are:

1. Is the Attorney-General aware of the ruling of the Supreme Court in *R v Keogh* (2007) SASC given on 22 June 2007 by Doyle, Bleby and Sulan JJ?

2. Will the Attorney-General correct his misleading statement broadcast to the public of South Australia, and take steps to ensure that the matter is, in fact, referred back to the court by him, if he has been acting in ignorance of the true legal situation?

3. If the Attorney-General still refuses to take any action to ensure Keogh's right to a fair trial, will he please explain why to this council?

4. And, if the Attorney-General is unable or unwilling to fulfil his statutory and constitutional duty in accordance with the law, will he consider resigning so that due process can be restored to the state of South Australia?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:09): What an extraordinary question, given there is probably no case in the recent history of this state which has been so investigated and re-examined. As I have previously said, this was a case that began under the previous government. It began years ago under the previous government. It is not as though this government has taken any action in any way that it should apologise for, but the issues that have been raised here have been gone over and over again. If there is any additional information that the Attorney can provide to this case, then I will get him to do so.

The issues raised by the honourable member about bruises, and so on, in relation to this trial have been examined many times and have been through courts of appeal in the past. If there is any additional information the Attorney-General wishes to provide, I will provide it. Again, I make the point that few cases have had such an exhausting examination as this case—and just because one particular television program repeats something over and over does not make it true.