

12th April 2007 – Notice of Motion re Mr Wisniewski

Mr MARTIN (Elwick) - First of all I would like to commend the honourable member for Mersey for bringing forward this notice of motion for debate but more importantly I would also like to commend her for her persistent and passionate dedication to helping a man who without any doubt has been to hell and back.

My initial reaction to this issue was to try to imagine how I would feel if I was in the same position as Mr **Wisniewski**. It is an understatement to say that I would feel very, very hard done by and I suppose incredibly let down by the system. So I started off preparing to speak on this motion last week by researching with the intent of speaking in favour of the motion. Accordingly I spoke to several lawyers, senior police, academics, researchers and some senior media representatives. I also read a great deal of material provided by the honourable member for Mersey, some from academics and also from parliamentary research. Following all of this I came to the conclusion that as tragic as the situation is for Mr **Wisniewski** and the enormous sympathy I have for him and his family, unfortunately when I considered the ramifications that implementation of parts of this motion would have on law enforcement in the future, the legal system and also to a lesser extent the impact on the media's ability to inform the public of matters of public interest I find that I cannot support the motion in its present form.

In considering the motion part by part, first of all that this House -

- '(1) Is gravely concerned at the devastating consequences suffered by Mr Peter **Wisniewski** as a result of him being charged with the crime of rape of which he was totally innocent.' -

of course I agree with that without any doubt. In saying that, though, I must stress that I did not in any way blame the police for the actions that they took. Should the police have laid charges? Well the test is when it is a prima facie case. Certainly with a seemingly clear and unambiguous identification by the victim it would be difficult to sustain an argument that the police did not have a prima facie case.

Should they have waited for the DNA results? Mr President, I think given the seriousness of the case and the unambiguous identification, clearly not. I think we can only be thankful that DNA technology is available and accordingly cleared an obviously innocent man.

In relation to part (2) (a) that the Government -

'provides Mr **Wisniewski** with a clean and unambiguous acknowledgment that he was proven to be innocent of all charges and that a miscarriage of justice had regrettably occurred;' -

again, Mr President, I have no problem with this part of the motion. I think with hindsight someone from the Government whether it be Minister for Justice or the Government generally, someone should have expressed regret from day one and if it has not been done someone from the Government should do so and I do not really care who it is but someone should do so.

In relation to (2)(b) and (d), (b) being that the Government -

'compensates Mr **Wisniewski** for the damage and loss he has suffered and incurred including for loss of earnings and clothing over the period he was remanded in custody and on bail;' -

and also part (d) that the Government -

'accords a high priority to amending the victims of crime legislation to enable unique cases such as this to be judged on merit;' -

Mr President, following research I have concluded that a systematic program of compensation to people who are victims of incorrect arrests would potentially undermine the work of police in bringing guilty criminals, including murderers and rapists, to justice. At the very least it would encourage police to potentially delay the arrest of criminals guilty of serious crimes and from a public interest point of view we simply cannot allow this to happen.

I am in two minds as to whether an ex gratia payment should be made as is the case in some jurisdictions - for example, in the United Kingdom. In relation to 2(c) of the motion and that is that the Government 'puts in train a policy which ensures an individual's name is suppressed until after scientific and DNA results have been fully assessed', again I have some difficulty with this one. Looking at the pros of suppressing names, first of all the risk of irreparable damage to the defendant's reputation if they are ultimately acquitted or charges are dropped, no doubt about that. The public generally regards sexual offences as the worst type of crime and premature publication

can be detrimental to the reputation of an accused who is ultimately found not guilty or where charges are subsequently dropped.

There is also the risk of jurors allowing recollection of media reports to affect the perception of the accused's guilt or innocence although judges routinely warn jurors to put media reports out of their mind and a further pro is that the criminal justice system has made a number of changes over the past decade to improve the operation of the system in response to victims of sexual offences and some balance needs to be accorded to the rights of the accused.

Arguments about the cons of suppressing names: adults accused of sexual offences should be treated the same as adults accused of other serious offences such as murder. Publication of the name of an alleged sexual offender can encourage other victims to report their experiences to the police and therefore strengthen the case and publicity can lead to undiscovered witnesses coming forward either in support or condemning the accused.

Mr President, I think the courts need to be open to the public as they are, as the Leader has already said, and they need to be open for public transparency reasons. Generally I would always support the role of the media to report factual news. In this case the media did just that at the time. It was factual at the time: Mr **Wisniewski** had been charged with committing what, without any doubt, is an abhorrent crime. Did the public have the right to know? I believe yes they did.

Fortunately Mr **Wisniewski** was cleared by the DNA results. Tragically, as the honourable member for Mersey very articulately put, the impact of the media coverage on Mr **Wisniewski** and his family must have been devastating. I cannot imagine what the family have been through. To the credit of the media though, I think the coverage of his innocence has been extensive. Whilst I know that mud sticks, and in this case I think with the extent of the media coverage of his innocence, I simply find it difficult to imagine that anyone on the north-west coast would not know that Mr **Wisniewski** is indeed innocent.

In summary, I feel very sorry for Mr **Wisniewski**. I think any one of us imagining ourselves in his position would, without any doubt, feel very hard done by but taking into account the greater good for the best interests of the community I simply cannot support this motion in its present form. That said, once again I applaud the member for Mersey for bringing forward the motion.