ANNEXURE "B"

R v LAUPAMA

I was asked by the Attorney General to consider this matter specifically as a part of my inquiry.

On 20 April, 2001 Laupama was arraigned before Virginia Bell J on an indictment charging him with the murder of Tayla Lee Parker. To this indictment he pleaded that he was not guilty of murder, but guilty of manslaughter; and the Crown accepted that plea in full discharge of the indictment. The basis of the acceptance of the plea to the lesser count was an acknowledgment by the Crown that at the time of the killing the prisoner was suffering from an abnormality of mind, arising from an underlying condition, such that his responsibility for his act was impaired to a degree so substantial as to warrant his liability for murder being reduced to manslaughter. See ***Crimes Act***, 1900, s 23A.

On 7 December, 2001 Bell J sentenced Laupama to 12 years imprisonment to date from 30 December, 1999 which was the date upon

which he had been arrested and first taken into custody. Her Honour fixed a non-parole period of 8 years so that the first date upon which he was eligible for consideration for release to parole was 29 December, 2007.

The decision of the Crown to accept the plea of manslaughter in discharge of the indictment and the sentence imposed by the judge were the subject of a considerable degree of media attention, which was exacerbated when the Director of Public Prosecutions (DPP) indicated that he did not propose to lodge an appeal.

The facts of this tragic and appalling case, which I take from Bell J's judgment, are shortly these. The prisoner was aged twenty nine years at the date of the offence. The deceased was the five year old daughter of his former de facto wife, Kelly Lee Parker. At around 1.00am on the morning of 30 December, 1999 the prisoner carried Tayla from her bed to a pergola at the rear of the family home. He had placed three lengths of nylon rope over the struts of the pergola. Two had been tried at the end so as to make a noose in each case. He hanged Tayla from one of these. He left her body hanging suspended from the noose until later that morning when her mother got up and asked after her.

The prisoner had met Ms Parker in January 1995, when Tayla was aged about six months. They commenced living together in mid 1995. There were three children, the product of their relationship; Alex, born in March 1996, Kuinita, born in August 1998 and Nakita, born in October 1999.

Kuinita died as a result of sudden infant death syndrome, aged nine weeks in October 1998. It is apparent that her death was the source of great distress, both to her mother and to the prisoner.

It had been intended that the family would travel to Sydney on 30 December. Early that morning Laupama directed Ms Parker to get into the car, she having the baby in her arms and Alex beside her. She saw Tayla lying on the bonnet and at the time believed her to be asleep. She put the baby in the baby's seat, while the prisoner put Alex in the booster seat. Ms Parker got into the driver's seat of the vehicle, while the prisoner went to the front of the car and picked up Tayla. He placed the child's body on the rear seat of the vehicle. Ms Parker put her hand on Tayla's leg and realised that she was dead. The prisoner, holding a knife in his hand, directed Ms Parker to drive the car to Sydney.

Ms Parker did as she was directed and, once again to use the learned judge's words, "commenced the nightmare journey with her baby, infant son and dead daughter together on the back seat". Among Ms Parker's concerns was the anxiety that Alex, then aged three and a half, would come to realise that Tayla was dead beside him. She suggested to the prisoner that they should take Tayla to the hospital so that she could be placed in the morgue. He, however, refused and having instructed Ms Parker to turn off down a side road to an isolated place he moved Tayla's body from the car and carried it to some nearby bushes where he left it. Later they stopped at a service station at Bulahdelah where Ms Parker managed to evade the prisoner and drive away with the children.

The learned judge was asked to take into account in sentencing the prisoner for the manslaughter of Tayla Lee Parker, a charge that he detained Kelly Lee Parker for advantage, pursuant to section 90A of the ***Crimes Act***, 1900. This kidnapping was itself an objectively serious crime. Ms Parker was abducted at knifepoint. The circumstances were terrifying and persisted over the hours between around 4.15am and 12.30pm when she finally made good her escape.

The learned judge quoted a passage from Ms Parker's victim impact statement in which she says:- "… after someone goes through such an ordeal everyone tells you that you are so strong, but deep down inside you don't feel real strong. So many people expect to just because it has been a while since you lost your loved one that you are getting over it. The thing people have to understand is that when tragedy strikes a family you never just get over it, it is there for life". Bell J added:- "Nothing that the court says may serve to comfort Ms Parker in her loss. It is to be observed that her behaviour throughout that terrible trip was all that might be asked of a mother. She put to one side her feelings of grief and terror and acted with presence of mind and control in order to protect the living children. The Court expresses its sympathy to her and acknowledges her courage."

Before the sentence was imposed, Ms Parker wrote to the Director of Public Prosecutions (DPP) complaining about certain aspects of his office's conduct of the proceedings, and after the sentence the Director General of the Attorney General's Department wrote to the DPP seeking information concerning the prosecution and the result. On 10 January, 2002 Ms Parker wrote to the Attorney General's Department, pursuant to

a suggestion I made to a television journalist who had asked me for some comment about the case which at that stage I declined.

Ms Parker challenges the decisions of the DPP to accept the plea of manslaughter and not to appeal against the sentence which she considers unduly lenient, and complains of the office of the DPP (ODPP) failure to keep her informed as the prosecution proceeded. Principally, she feels most affronted by the ODPP failure to consult her before the plea of manslaughter was accepted in discharge of the indictment. I have seen her written complaints and I have interviewed her.

I am concerned with this case only in so far as Ms Parker's complaints touch the matters I must consider pursuant to my terms of reference.

Hence, I will consider:-

> (i) The reason why the prosecution accepted the plea of manslaughter in discharge of the indictment;
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> (ii) The failure of the office of the Director of Public Prosecutions (ODPP) to consult Ms Parker about the contemplated plea of guilty to manslaughter before the plea was formally entered, and to keep her generally informed about the progress of the proceedings.

The DPP acceptance of the plea of manslaughter

The prosecution had before it reports from two senior consultant psychiatrists, both of whom with considerable experience in forensic medicine. They were Dr Robert Delaforce, consulted by the DPP, and Dr Bruce Westmore, consulted by Legal Aid for the accused. They were unanimous that at the time Laupama killed the child he was suffering from a major depressive illness, a serious psychiatric disability which qualified as an abnormality of mind, and, to quote Dr Delaforce, was a "… firm basis for his using the defence of substantial impairment by abnormality of mind".[1] Dr Delaforce's report was founded upon an interview of 4 hours and 54 minutes. The doctor expressly records that he approached the truth of the history furnished by Laupama with considerable reserve, on the footing of material that suggested that Laupama had a reputation for lying. It does not seem to me, however, that his opinion, or indeed that of Dr Westmore, depended upon events which it was impossible for them to verify. There was other material taken into account. The doctors were able to assess the consistency, and thus the plausibility, of a number of Laupama's statements, since he had undergone a series of medical examinations while on remand, and had access to a record of interviews with his probation and parole officer. In

[1] See *Crimes Act*, 1900, s 23A.

any case, the narrative of past events furnished by Laupama as part of his history to the doctors, was evidence of the truth of the events described.[2]

Section 23A of the ***Crimes Act*****,** so far as material, is in the following terms:-

> "(1) A person who would otherwise be guilty of murder is not to be convicted of murder if:
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> (a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and
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> (b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.
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> (2) For the purposes of subsection (1)(b), evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible."

The existence and cause of the abnormality of mind, and the general extent of the impairment, are matters requiring expert medical evidence, which is relevant also to the question of whether the impairment was substantial, but not decisive of it. The existence of the criteria in

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[2] Section 60 *Evidence Act*, 1995 : *Welsh* (1996) 90 A Crim R 364.

section 23A all raise questions of fact, which may however be readily answered by reference to medical opinion. But what has been called the "crucial" question in this defence is whether the impairment of the accused's mental responsibility for the act was so substantial as to warrant liability for murder being reduced to manslaughter; and this is pre-eminently a question for the tribunal of fact, jury or judge, to be determined on the balance of probabilities, and not beyond reasonable doubt.[3]

As I have indicated, the opinions of the two medical experts were firm and to the same effect. Dr Delaforce said:- "the major depressive disorder substantially impaired his capacity to at the time of the killing understand events, or to judge whether his actions were right or wrong, or to control himself." Dr Westmore's conclusion was:- "The abnormality of mind would have substantially deprived him of his capacity to know that he ought not to do the act, that is, that he ought not to kill the child, Tayla."

It is always possible for a prosecutor to reject medical evidence and decline a proffered plea to manslaughter, and to run a trial for murder,

[3] See *R v Byrne* (1960) 1 QB 396 at 403-4 : and *R v Trotter* (1993) 35 NSWLR 428 at 430-1.

leaving it to the jury to determine whether the defence has been established. In the present case such a decision would have entailed the rejection of strong and unanimous expert evidence, and required the prosecutor to repudiate, in effect, the evidence of his own expert, whom he would be bound to call and whom he could not cross-examine.

In the event the Crown Prosecutor, having, as he said in his report, taken into account the community values inherent in section 23A(1)(b) of the ***Crimes Act***, decided that there was no reasonable prospect of a conviction for murder, and accepted a plea of guilty of manslaughter. In my view the decision was justified.

I have set out what seems to have been the reason for accepting the plea. I have done so in order to explore whether the agreed charge of manslaughter adequately reflected the criminality involved. Once the acceptance of the plea to the lesser offence can be justified, as I think it can, then the question answers itself in the affirmative. What I have called the criminality principle was satisfied.

The failure to communicate and to consult

There are some discrepancies between Ms Parker's account of her communication with the ODPP, and that which emerges from the office's file notes and the recollection of Crown Prosecutors and lawyers who were involved in the case. I need make no final determination about which version is the correct one; and, of course, I have no reason to suppose or suggest that either Ms Parker or any of the officers of the ODPP were not endeavouring to provide their honest and candid recollections. The officers of the ODPP have the advantage, in some cases, of being able to refer to contemporary file notes.

During 2000 Laupama remained in custody, and during that year Ms Parker had much contact with the OIC Detective Peter Fox of the police at Lismore where the matter was then listed. Ms Parker was receiving support from the Homicide Victims Support Group (HVSG) with whom she remains in touch. During 2000 she had some contact with the ODPP at Lismore when she phoned to see what was happening in the matter. She does not recollect that the ODPP at Lismore initiated any contact; rather it responded to her. In fact, there appears to have been no activity in the matter until, according to normal procedure, the case was remitted to Sydney for the arraignment hearings. It was mentioned in Sydney on 6 October 2000, 1 December 2000, 2 February

2001 and in March 2001 before Barr J. It was then sent back to Lismore and mentioned before Bell J on 26 March 2001, who adjourned it, again at Lismore, to 6 April 2001.

It was mentioned again in Lismore on 18 April; and on 20 April, again in Lismore, the accused was formally arraigned and pleaded guilty of manslaughter. On 23 April the matter was remitted to Sydney for mention on 7 June. It was then adjourned for submissions to 27 July in Sydney and adjourned for sentence until a date to be fixed. The sentence was imposed in Sydney on 7 December by Bell J.

Ms Parker recalls that prior to April 2001 (she does not now precisely remember when) someone from the DPP office in Lismore telephoned her and spoke about diminished responsibility – "They explained to me what diminished responsibility was and everything else and that he may go for that. But no one actually came forward beforehand [that is before the plea of guilty was entered] and told me that he was going to and that he pleaded guilty, until three weeks later".

Ms Patricia Heffron, a lawyer from the ODPP, instructed Mr Peter Dare, Crown Prosecutor, at the arraignment hearings on 6 October 2000,

2 February 2001 and 2 March 2001. She has noted that she first met Ms Parker on 1 December 2000 when she was not involved in the matter but when, as I have indicated, the matter was mentioned. Her account is that Ms Parker came up to speak to her after the court sitting was over and asked some questions about the proceedings. Ms Heffron was only able to tell her generally about the arraignment process and that the defence were having the accused – that is Laupama - psychiatrically examined. Ms Parker does not specifically mention this meeting, but it is possible that what she remembers as a telephone conversation with a female from the ODPP Lismore was actually her conversation with Ms Heffron in Sydney.

The second occasion Ms Heffron and Ms Parker spoke was on 2 March 2001 when, according to Ms Heffron's file note, Ms Parker approached Mr Dare and Ms Heffron about what was going on concerning the medical reports. On that occasion it had been indicated to the court that the medical opinion was that a claim of substantial impairment would be available to the accused. I interpolate that Dr Delaforce had examined Laupama on 25 February 2001. Ms Heffron reports that Mr Dare explained to Ms Parker what that meant, and that she seemed to understand what was being explained. This discussion only took place in

the corridor outside the courtroom and was fairly brief. The full text of her file note of that date records:- "She seemed happy not to have to give evidence but needs to have conference to have whole thing explained fully". Ms Parker told Ms Heffron that she had had no contact with anyone from the Witness Assistance Service (WAS) a division of the ODPP, and very little with the ODPP. Mr Dare's report is as follows:- "

> "My dealings with the complainant were confined to a single and brief meeting with her on 2/3/2000. I recall advising her that a psychiatrist had examined the accused and found that he was mentally 'substantially impaired' at the time of killing the child and I explained the effect of this as evidence upon a trial for murder. At the time I did not have the actual report – only a 'potted version' of the result (for the information of Barr J. who wanted to know whether he was listing the case for plea or trial). I explained that if the totality of psychiatric opinion was that the Accused was 'substantially impaired' at the relevant times – then the Crown would be placed in the position of considering acceptance of a plea of guilty to 'manslaughter'. I further explained that if such an event occurred, (a) she would be spared the ordeal of having to give evidence in Court and (b) there would be the certainty of a conviction.
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> It seemed to me that she understood all that was said to her. She had been (understandably) apprehensive at the prospect of having to give evidence and appeared relieved that the prospect of a plea of guilty to manslaughter (if accepted by the Crown) would save her from that."

Ms Heffron says that having heard that Ms Parker had had no contact with WAS, passed on Ms Parker's details to Ms Lee Purches from the Sydney office of WAS. Ms Purches in her report says that Ms Parker was referred to the WAS in Sydney on 2 March 2001 by "solicitor

Patricia Herron a solicitor based in the Sydney DPP Office who had spoken with Kelly at an arraignment hearing that day." She indicates that on 7 March 2001 she telephoned Ms Parker to introduce herself and the service that WAS was able to provide. Ms Parker reported to her the difficulty for her in not being able to return to Lismore because of her tragic memories of the area, and also her relief at not having to give evidence at court.

Ms Parker, however, denies any meeting on 2 March, 2001. She told me in her interview:- "The only person I ever met from the DPP was Nick Harrison and Amina Barr (?) which was his sort of sidekick – I don't know what she's called. But they were the only people that I met with and that was on, like I say, the 6 June or 6 July, that was the only time I ever met anybody from the DPP."

Further, despite the contrary recollections of Ms Heffron, Mr Dare and Ms Purches, Ms Parker told me that she had always wanted to give evidence, had never expressed any relief at being released from that task by a plea of guilty, and had always made these sentiments quite clear.

As I have said, on 20 April in Lismore before Bell J, Laupama's plea of guilty was formally entered and on 23 April the matter was adjourned to Sydney for mention on 7 June.

It seems to me clear that assuming that the meeting with Ms Dare and Ms Heffron did take place in Sydney on 2 March as they relate, which seems to me probable, Ms Parker was never consulted by anyone from the ODPP before the plea was taken on 20 April. Accordingly, again assuming that the conversation on 2 March took place, the most she knew was that there might be a plea of guilty to manslaughter on the basis of diminished responsibility. Hence, again assuming that meeting as recorded by Ms Heffron, Ms Parker's request "to have conference to have whole thing explained fully" was unfortunately ignored. In fact, Ms Parker made a routine inquiry by telephone to the ODPP at Lismore to find out how matters were going, and was then told about the plea of guilty. She rang Detective Peter Fox and found that he did not know either of the plea until she informed him. She was shocked and distressed at the loss of an opportunity to have fully explained to her the reasons for the proposed plea, and to express her own views about what was proposed. She asked Ms Purches, the officer from WAS who was supporting her (whose assistance Ms Parker acknowledges) to try and

arrange a conference well before the sentencing date which was then to be 27 July.

A conference took place on 6 June 2001 attended by Ms Parker, the Crown Prosecutor, Mr Nick Harrison from Lismore, his instructing solicitor, Detective Peter Fox, HVSG counsellor Di Beckett and Ms Purches. According to Mr Harrison's report, the reasons for accepting the plea were discussed and Ms Parker appeared to understand them. Harrison told her that in his view such a result was inevitable (that is, that the partial defence of diminished responsibility would be established) and the plea would avoid the trauma to her of giving evidence at trial unnecessarily. Ms Parker says that she raised the question of the kidnapping charge which she understood was in the indictment with the charge of murder. But no one had ever spoken to her about it.

Mr Harrison notes that the brief originally submitted to him at some time shortly after 21 March 2001, did not recommend that the kidnapping charge should proceed. However, he determined that it was appropriate for such an interrelated matter to be placed on a Form 1 and sought the attitude of the Public Defender, Mr Bruce, to such a course. He says that

he raised with Ms Parker this question of the kidnapping being placed on a Form 1 and told her that he was awaiting confirmation from Mr Bruce that his client would consent.

However, Ms Parker's recollection is that it was she who raised the kidnapping charge, and she believes that somehow the Crown had overlooked it. Mr Harrison recalls that Ms Parker raised with him the question of possible deportation of the accused after sentence and, as appears from paragraph 59 of the judgment, he invited the judge to make that recommendation.

According to Ms Purches, Ms Parker raised the issue of wanting to include the kidnapping charge in her Victim Impact Statement (VIS), and asked the Crown Prosecutor what was happening to this charge which she felt should be before the court. Mr Harrison then discussed the possible inclusion of the kidnapping charge on a Form 1. Ms Parker again raised the question of her access to the psychiatric reports – she had already asked to see them – and Mr Harrison explained that she could not see them at that time because they had not been tendered and she was still a possible witness if the charge negotiations broke down.

On 26 July 2001 there was a further conference at which were present Ms Parker, a support person from HVSG and Ms Purches. Ms Purches recalls that a representative of the ODPP was present who discussed the possible range of sentences and mentioned the fact that it was possible that judgment would not be given on the hearing day, which was the following day, 27 July. At the sentencing hearing, Ms Parker had support people with her from HVSG and Ms Purches as well. On that day the matter was adjourned for sentence to a date to be fixed and there were apparently some hearing dates fixed and then vacated.

During this period Ms Purches spoke to Ms Parker on the telephone on twelve or more occasions, seeking to keep her informed of the progress of the matter and noting her extreme frustration at the continuing failure of the ODPP to keep in touch with her and advise her of progress. On 29 November Ms Parker wrote to Mr Nicholas Cowdery QC, the DPP, complaining generally of a lack of information from the ODPP and in particular of the office's failure to consult her before formally accepting the plea of guilty. She mentioned also that she had never been told by the ODPP that a sentencing date set for 6 September was to be vacated; and she mentioned raising the kidnapping charge with the Crown Prosecutor who appeared to be quite surprised about it. She quoted

certain provisions of the Victims Rights Act, 1996 and told Mr Cowdery that she had a strong expectation that action would be taken regarding her complaint. She added:- "I also expect to be informed and involved in this action. If I have not received a response to this letter by 15 December 2001 I will take this matter further." On 7 December Laupama was sentenced to the term which I have previously indicated. There followed further correspondence between Mr Cowdery and Ms Parker, and finally she wrote to Mr Andrew Osborne at the Attorney General's Department, who is assisting me in this Inquiry, and I was then asked by the Attorney General to consider the matter as part of my review.

I have set out the essential facts in some detail because, as has appeared, there are some differences between Ms Parker's accounts and those given by various members of the ODPP. However, I am quite satisfied that there was a failure by the ODPP to keep Ms Parker adequately informed of the progress of the prosecution. In particular, she most certainly should have been consulted about the intended plea, the reasons for which should have been explained to her in detail and she should have been invited to express a view. I appreciate that to some the necessity to consult a victim whose opinion is in no way determinative and has no

necessary influence on the course which the prosecutor proposes, is troublesome and unnecessary. But such consultation is not only required by the Charter of Victims Rights, it is the ordinary currency of the courtesy and compassion which ought to be extended to any victim of violent crime and, in particular, to a victim who has suffered from so terrible a crime as this one.

I can understand that what happened here was in part a consequence of the trial being first listed at Lismore and then transferred to Sydney; and of the fact that, as must often be the case, the Crown Prosecutor with final responsibility for the matter was not briefed until comparatively late, and apparently had a fairly inaccurate understanding of the meeting which had taken place between Ms Parker and Mr Dare. He evidently believed that Mr Dare had had a full discussion with Ms Parker about the issue of the plea, whereas in fact it was no more than a cursory conversation. Further, it seems that Mr Harrison may have believed that information about progress was in fact being conveyed to Ms Parker when in truth it was not.

There is one further problem. Ms Parker could not have access to the psychiatric reports before they were tendered, which she understood.

However, she encountered some difficulty in getting access to them after the sentence was imposed. I will deal with this matter in my recommendations. In cases where a plea of guilty is considered for acceptance on grounds contained in written statements, the consultation with the victim must necessarily be concluded on the footing of the prosecutor's precis of what those statements contain.

Of course, some victims of crime have a much greater need for information than others. Ms Parker, in view of the immense psychological trauma which she had suffered, was one of those who needed to be kept in regular touch with the proceedings. As the DPP himself has said, the level of consultation that his office had with Ms Parker did not match her expectations. In all the circumstances of this case, I do not consider that her expectations were unreasonable.

CONCLUSIONS

- **in my opinion the acceptance of the plea to manslaughter was justified by the psychiatric evidence and was consistent with the requirements of section 23A(1)(b) of the Crimes Act.**

- **I am satisfied that the communication maintained by the ODPP with Ms Parker was inadequate.**

- **The ODPP failure to consult Ms Parker before the plea to manslaughter was accepted was a serious breach of the policy and guidelines.**