

Insight

Got the money, lost the name

How John Marsden won a court case and destroyed his own reputation

By Kate McClymont

DESPITE being awarded close to \$600,000 yesterday, and having his legal costs paid, all the money in the world cannot repair the damage to John Marsden's reputation. As the former Law Society president, former Police Board member and former head of the

Finally, in November 1999, the case got under way with Justice David Levine presiding. The heart of the case was, as Marsden's senior counsel, Ian Barker, QC, told the court: "What Channel 7 alleges is grave and sustained criminal conduct over a long period, in the context not of sexual intercourse with adult men, but acts of

How it started: On March 13, 1995, Channel 7's *Today Tonight* program broadcast allegations that John Marsden, a member of the NSW Police Board, had had sexual intercourse with boys under the age of 18 and had sex with a 15-year-old boy to whom he supplied drugs. The following year, the now defunct *Witness* program alleged he had sex

in November 1999, ran for a total of 214 days, had 113 witnesses, 454 exhibits and almost 10,000 pages of transcript.

What happened yesterday: For the *Today Tonight* broadcast, Justice David Levine awarded Marsden \$275,000 plus \$34,160.25 in interest. For the *Witness* programs

standing in the community. He agreed that he was homosexual but denied ever having sexual relations with under-age boys.

What Seven claimed: Marsden had engaged in the alleged conduct and it had a duty to publish on issues of public interest and importance. It produced a parade of

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THOSE WHO SPOKE FOR MARSDEN



Christine Nixon
former assistant police commissioner: Marsden had become depressed and angry after Seven's broadcasts.



Michael Knight
former Olympics minister: It would be "politically impossible" to give Marsden another government job.



Ted Pickering
former Liberal police minister: Marsden had "friendships across the entire political spectrum".



Mark Latham
Federal Labor MP: Marsden had an "excellent reputation" with State and Federal MPs.



Dyesterday, and having his legal costs paid, all the money in the world cannot repair the damage to John Marsden's reputation. As the former Law Society president, former Police Board member and former head of the Council for Civil Liberties said yesterday: "I will remain forever tainted by the false claim that I was a pederast."

In fact, in the cold light of day, the court case - to seek compensation for the damage to his reputation - was far more damaging and personally humiliating than either of Channel 7's two programs ever were.

In February 1999, a four-person jury handed down its decision that Marsden had been defamed by Channel 7. After deliberating for a day, the jury found that a 1995 *Today Tonight* program and a 1996 *Witness* program had defamed Marsden by alleging that he had sex with boys he knew were under 18.

The jury, which did not have to decide whether the allegations were true or false, was discharged. The trial was then set down for an estimated six weeks, although months were spent on legal argument as to whether Channel 7 could call witnesses other than those who had gone on the programs. These witnesses were ones who had been interviewed by police during the course of their investigation into Marsden.

was, as Marsden's senior counsel, Ian Barker, QC, told the court: "What Channel 7 alleges is grave and sustained criminal conduct over a long period, in the context not of sexual intercourse with adult men, but acts of sodomy and other sexual conduct with teenage boys, most around 15. That is the sting of the matter."

That "sting of the matter" became a thousand other stings along the way. Like no other defamation trial before it, Marsden's life, in particular his sex life, was laid bare in the most public forum. Nothing was left untouched - from his visits to railway toilets for anonymous sexual encounters to his use of amyl nitrite to heighten sexual pleasure.

And while the two TV segments had a combined running time of half an hour, the details of Marsden's private life were played out day after day during the 214 days the matter ran in the Supreme Court of NSW.

Marsden endured the following headlines: "Marsden 'a manipulator'", "Marsden would lie and deceive to win case: QC", "Marsden a friend, says killer", "There's nothing wrong with having sex with a client, says Marsden", "Marsden told me to vanish for a few days: witness", "I was afraid of Marsden: prostitute", "Marsden paid me off: witness", "Marsden admits lie to save family", "Marsden 'blackmailed Billy

McMahon'", "Marsden 'traded sex'" and "Court told of whipping games".

Nothing was left of Marsden's private life. Everything from his preferred sexual position (on top) to his having sex with clients who had come to his law firm for help with criminal matters.

Central to the case was that Marsden did not deny having sex with many of the witnesses (although several he claimed to have never met). His argument was that they were not under-age.

In the end Justice Levine found that the events happened a long time ago, that there was little or no corroboration and the identification of Marsden as the perpetrator was fragile.

NSW Police Board, had had sexual intercourse with boys under the age of 18 and had sex with a 15-year-old boy to whom he supplied drugs. The following year, the now defunct *Witness* program alleged he had sex with 15-year-old boys, including male prostitutes, without asking their age. Marsden sued for defamation, and on February 25, 1999, a four-person jury found that Channel 7 had defamed him. Then a hearing began in which Marsden claimed for damages to his reputation and Channel 7 mounted its defences. The case, which started

What happened yesterday: For the *Today Tonight* broadcast, Justice David Levine awarded Marsden \$275,000 plus \$34,160.25 in interest. For the *Witness* programs he awarded \$250,000 plus \$25,698.63 in interest, bringing the total awarded to Marsden to \$584,858.88. Channel 7 was ordered to pay Marsden's legal fees, which he claims are near \$6 million.

What Marsden claimed: Seven's broadcasts accused him of criminal acts which destroyed his

The way that Marsden came to refute evidence that he had engaged in under-age sex was most unusual. Take Steven Elomari, a petty crim (whom Levine described in his judgment as an out and out liar). Elomari told the court that in 1982, when he was 17, Marsden had acted for him in Campbelltown court and then offered him weekend work. He has said he received \$100 for washing Marsden's car on the first Sunday and, on the second weekend, his drink was spiked and he was anally raped.

Marsden agreed with Elomari's account of how they met but said he had not anally raped Elomari and that their sexual relationship began after Elomari turned 18. Marsden was able to fix the date by recalling that their relationship had not started until the end of 1983, after he had acted for Elomari's mother when she was charged with slaughtering sheep in her lounge room.

Donkeys, Chinese restaurants and bedroom colours also proved vital to Marsden's rebuttal of Channel 7's witnesses. For example a witness, David Maynard, claimed he was about 15 or 16 when he saw a donkey being delivered to Marsden's home around 1985 or 1986. However, Marsden was able to produce irrefutable evidence that the donkey was given to him in 1992 as a 50th birthday present. (Marsden ended up owning six donkeys whom he named after High Court judges.)

In a strange twist, Maynard has opened himself to prosecution for perjury recently by contacting media outlets and giving them signed letters claiming he lied to the court when he said he had under-age sex with Marsden. The judge also said one part of his evidence was "inherently incredible".

Also proving to be a contrary witness was John Pearce, who made statements to five different bodies, including the police and Channel 7, that he was 15 when he first had sex with Marsden. But once it got to the defamation trial, Pearce said he was really 23 or 24 years old when he first had sex with Marsden.

Then there was an array of other non-sexual allegations against Marsden, ranging from witness tampering - which the judge accepted his denial - to giving a false name to police when arrested over an incident in a public toilet in 1967. On this latter matter, Justice Levine said he did not believe Marsden's evidence that it was not him who turned up in court the following day to represent the fictitious Mr

What Seven claimed: Marsden had engaged in the alleged conduct and it had a duty to publish on issues of public interest and importance. It produced a parade of witnesses who testified that they had under-age sex with Marsden. However, Justice Levine found that they were either not telling the truth or were not corroborated sufficiently. Seven's second defence was qualified privilege - that is, its conduct was reasonable. Levine disagreed, finding that Seven's broadcasts were motivated by malice.

Martin. However, he ruled that his veracity on this matter did not affect Marsden's overall veracity during the course of the trial.

Also damaging to Marsden was the evidence given by Les Murphy, who is doing life for the rape and murder of Anita Cobby. While both Marsden and Murphy denied Murphy's brother's evidence that he had seen Marsden anally penetrating 11-year-old Les at Costello's nightclub, Les Murphy's evidence in Marsden's case wasn't exactly helpful. The court was told about a poem Murphy wrote to Marsden which read: "A friend is someone you can trust whos [sic] very special

'Does it mean that because I'm a pot-smoking poofter I am entitled to less damages?'

JOHN MARSDEN

too, And I'm so glad that I have found a friend like that in you." It was signed "from your special friend for life, Les". Murphy then went on to say that Marsden had agreed to supply him marijuana while in jail.

On this matter Justice Levine said while "it is a matter for the plaintiff whether he chooses to make friends with a person such as Mr Les Murphy" he didn't believe Marsden had agreed to supply the marijuana and that ultimately his friendship with Murphy was not relevant to the case.

An interesting example of how much more damaging the court case was compared with the TV programs is to look at the effect on Marsden's law firm, of which he is the figurehead and senior partner. Marsden has his headquarters in Campbelltown but runs offices in the city, Ingleburn, Liverpool, and Parramatta.

The *Herald* understands that before Channel 7 ran its two programs in 1995 and 1996, the firm was receiving 750 new matters a month. Following the broadcasts that had fallen to about 600. However, by the end of the court case and its attendant bad publicity for Marsden, the firm's new referrals had slumped to about 400 a month.

During his closing submission Marsden acknowledged that regardless of



Phillip Adams
broadcaster and columnist: found Marsden to be "a person of preposterous candour".

Kathryn Greiner
Sydney City Councillor: Urged John and Colleen Fahey not to abandon Marsden.

whether he won his defamation case against Channel 7, his reputation would never recover and that "lurking little innuendoes" about him and his lifestyle would always remain in people's minds.

While the case is over (with Seven planning to appeal), there are still some ancillary matters to be dealt with. For example, the *Herald* has obtained a copy of the letter Channel 7 chairman Kerry Stokes has sent to the Legal Services Commissioner complaining about the actions of Marsden and his solicitor, Richard Potter. This related to the evidence given by Marsden's psychiatrist, Dr Malcolm Dent. Dr Dent, who has subsequently been struck off for having sex with two patients, said in evidence he colluded with Marsden's solicitor, Richard Potter, to excise two pages from a seven-page psychiatric report which was tendered in evidence.

A spokeswoman for the Legal Services Commissioner refused to comment but the *Herald* understands the commissioner deferred any consideration of Mr Stokes's complaint until the trial was at an end.

Also on hold is the legal action against two men who have been charged with conspiring to pervert the course of justice after an approach they made to Dr8, a Channel 7 witness, to retract his evidence.

Also awaiting the outcome of this trial are the police, who tried to have the defamation proceedings against Marsden stopped because they thought it was in the public interest that the Director of Public Prosecutions have the opportunity to consider whether criminal offences had occurred.

Detective Superintendent Michael Woodhouse, commander of Strike Force Cori, told the court he had been anxious to have the proceedings stopped and that in December 1998 he had sought advice from the Crown Solicitor's office as to whether the defamation trial could be adjourned or stayed. He said that in January 1999 he had been told the Solicitor-General was not prepared to make an application to have the defamation case stopped.

And as to Marsden, he plans "to pick up the shattered pieces of my business and my life" as well as working towards making "justice accessible to all".

Given what he has been through, one wonders whether other defamation plaintiffs will avail themselves, even if justice is made more accessible.

Winners, losers: where do they go from here?

Outside the court yesterday, John Marsden told the media that he intended to return to the law and devote himself to rebuilding his firm's legal practice. "I propose to return to the law, but with a vastly different attitude and a far greater determination to make justice accessible to all."

Channel 7 announced it will appeal yesterday's verdict. It also issued two media releases which praised the "brave people" who appeared on its programs making the allegations against Marsden, and stood by "the professional effort, and commitment" of its journalists and production staff.

However, Marsden's legal team sought an injunction preventing the release of Seven's statements on the grounds that they were "false and malicious". On the basis that Seven promised not to release them any further, Marsden dropped his injunction application.

Not that Channel 7 will let the matter rest. Seven's chairman, Kerry Stokes, has already lodged a complaint with the Legal Services Commissioner about the behaviour of Marsden and one of his legal team in relation to evidence given by Marsden's psychiatrist, Dr Malcolm Dent.

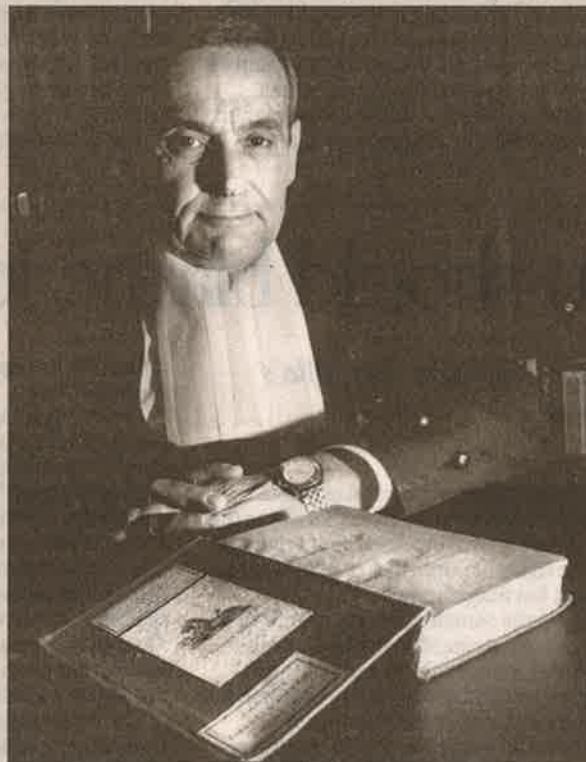
One witness faces possible per-

jury charges, having admitted he lied in court. Two other witnesses are facing court for allegedly attempting to pervert the course of justice by trying to get a witness to change his evidence.

As to a police investigation of Marsden, which was put on hold due to the defamation proceedings, no announcement has been made as to its status. When contacted by the *Herald*, Detective Superintendent Bob Inkster said he preferred not to comment and would wait to see details of the judgment.

And while Marsden extended his hand in "a spirit of Christian forgiveness" to those politicians he claims had made allegations against him (NSW Labor MP Deirdre Grusovin, Liberal senator Bill Heffernan, and former NSW MP Franca Arena), he was not so kind to the police whom he accused of conducting a witch-hunt against not only himself but other prominent gay figures.

The Police Commissioner, Peter Ryan, responded by issuing a media release which said that the commissioner had "refuted" calls to stand down after allegations from Marsden that he acted without proper investigation into child sexual abuse claims. Ryan also denied any "witch-hunt" by police against



214-day case... Supreme Court Judge David Levine.

Marsden or any other high-profile member of the legal profession.

Probably the most relieved by yesterday's verdict are Marsden's lawyers, who are owed a fortune in fees by their client.

One Senior Counsel is understood to be owed \$400,000 by Marsden. The law firm Phillips Fox, which has not been paid for some time, may be owed millions.

Kate McClymont