

The Sydney Morning Herald

Thursday June 28, 2001

First published 1831 No. 51,111 \$1.10 (incl GST)

A HARD ACT TO FOLLOW

SIR WILLIAM DEANE'S LAST DAY PAGE 14



All-smiles, no suspense action films

REVIEWS PAGES 17 & 18



Blues attack Langer 'can't hack the pace'

SPORT PAGE 46



Marsden's bitter-sweet victory: 'Forever tainted'

Kate McClymont

The high-profile solicitor Mr John Marsden yesterday finally received an answer to his famous query: "Does it mean because I'm a pot-smoking poofter, I am entitled to less damages?"

He won his marathon defamation case against Channel 7, with Justice David Levine saying that the network had broadcast "grave, false, defamatory" allegations against him, and had been "actuated by malice".

Mr Marsden was awarded \$275,000 for a *Today Tonight* program, broadcast in 1995, and \$250,000 for a *Witness* program broadcast the following year. He received an additional \$55,000 in interest, taking his total damages payment to just under \$600,000.

Perhaps more importantly, the 59-year-old Mr Marsden was awarded indemnity costs, the most favourable cost order available. This means that Channel 7 will have to meet his estimated \$6 million in legal costs as well as paying its own bill, estimated to be double that.

After the verdict was announced, the former Law Society president and ex-member of the Police Board, rushed outside to phone his new partner, Glenn, who is teaching swimming in Florida.

Then, flanked by his brothers and sisters, nieces and nephews, partners from his legal firm and friends, Mr Marsden gave a press conference on the front steps of the Supreme Court.

His voice quivering with emotion, he said that while he was pleased with the outcome,

"no amount of money can compensate for the anguish, the pain and humiliation of the past years".

"I will remain forever tainted by the false claim that I was a pederast."

Mr Marsden also said he despaired for the future of the law in this country. "I fought a David and Goliath battle in which the might of corporate wealth was used to delay, obfuscate and frustrate. If this case shows nothing else, it shows that there is no equality before the law."

Channel 7 immediately announced it would appeal and in a press release - against which Mr Marsden's legal team sought an injunction - it said it not only stood by the professionalism of its journalists and production staff, but highlighted "the courage of those people who came forward to put their side of the story".

"Seven does not resile from its broadcast . . . nor does the company resile from its defence in this defamation action brought against it by Marsden," said the network in one of its three statements issued yesterday.

In his seven-volume, 2,400-page judgment, Justice Levine said he had not been convinced by Channel 7's witnesses.

He went on to say that the problems with Channel 7's defence were that, in most cases, the events happened a long time ago, that there was little or no corroboration, and the identification of Mr Marsden as the perpetrator was fragile.

The judge was brutal in his appraisal of some of the network's



"No amount of money can compensate for the anguish, the pain and humiliation of the past years." John Marsden hugs his nephew yesterday after his defamation victory over Channel 7. Photo: Nick Moir

Stabbings, murders but no funds to protect women

Debra Jopson

After three years spent fighting the rising tide of violence in 16 Far North Queensland Aboriginal communities, Daphne Naden will be out of a job from tomorrow.

That's when the \$553,000 in Federal Government funding comes to an end for the Apunipima Cape York Health Council's family violence project.

Ms Naden says that in those three years, she and her two colleagues have "only touched the surface".

"Black eyes, busted lips, broken arms - they're run of the mill. Then there are the stabbings and murder," said Ms Naden.

"I am leaving women out there who need a lot of work and a lot of encouragement. I feel like I'm leaving them in the lurch," she said.

The axing of the program comes as violence in Aboriginal communities is the subject of more debate than ever before. In developments yesterday, Aboriginal leader Mr Terry O'Shane attacked Senator Bill Heffernan, who used parliamentary privilege



Ms Naden

INSIDE TODAY

- 10 WORLD
- 13 INSIGHT
- 14 EDITORIALS/OPINION
- 15 LETTERS
- 16 METROPOLITAN
- 18 AMUSEMENTS
- 22 WEATHER
- 22 LOTTERY RESULTS
- 23 TELEVISION
- 23 CROSSWORDS/COMICS
- 24 SPIKE COLUMN
- 24 TEN MINUTE HERALD
- 25 BUSINESS
- 28 MARKETS
- 29 THE MESSAGE
- 32 OBITUARIES
- 32 PERSONAL NOTICES
- 41 LAW NOTICES
- 41 VICE REGAL NOTICES
- 41 BRIDGE
- 46 SPORT

LIFTOUT: DOMAIN

CLASSIFIEDS INDEX TODAY

BUSINESSES

Businesses For Sale/Hotels/Motels 22
Businesses For Sale/Wanted 22
Businesses Interstate 22
Business Opportunities 22
Money, Stocks & Shares 22
Partnerships, Agencies 22

LEISURE

Boating 20
Holiday Accommodation 20
Travel 20

MOTOR MARKET

Motor Vehicles 22
Number plates 22
Trucks & Commercial 22
4WD and Off Road Vehicles 22

NOTICES/SERVICES

Company Notices 21
Dental Notices 21
Legal Notices 22, 33, 41
Lottery 22
Oz Lotto 22
Public Notices 21
Tenders 22
Tradespeople 22

EMPLOYMENT

Casual Work Available 40
Colleges and Schools 40
Hospitality, Catering & Tourism 40
Hospital & Medical 33
Positions Vacant Domestic 40
Positions Vacant General 40
Self-Employment 40
Training/Services/Resumes 40

ENTERTAINMENT

Auditions 20
Cinemas 19
Cinemas Suburban 19
Courses & Private Tuition 20
Entertainment 18
Gig Guide 19
Singles Scene 20
Theatre Directory 18

HERALD TRADER

Antiques, Fine Arts 20
Books & Publications 20
Building Materials 20
Building Trades & Services 20
Computers 20
Elect. Apps./TV/Video 21
Fashion & Accessories 21
Food, Wine & Catering 21
Garage Sales 21
Garden Supplies 21
Household Furniture 21
Internet Services 20
Livestock, Horses, Birds 21
Machinery 21
Miscellaneous 21
Musical Instruments 21
Office Furniture & Equip. 21
Pets 21
Photographic 21
Shop Fittings & Equip. 21
Sporting Goods 21
Stamps & Coins 21
Telecomm./Mobile Phones 21
Wanted To Buy 21

PERSONAL

Births 32
Deaths 32
Funerals 33
In Memoriam 33
Wedding Anniversaries 32

REAL ESTATE

For sale & wanted
Houses, Home Sites 40
Home Units, Townhouses 40
Farms and Acreage 40
Furniture Removalists 40

Commercial & industrial
Properties for sale 41
Comm. premises let/wtd 41
Industrial prem. to let/wtd. 41
Retail prem. to let/wtd. 41

Lettings, share & wanted
Apts., Board & Accom. To Let 40
Apartments & Flats To Let 40
Furn./Serviced Accom. To Let 41
Houses To Let 41
Share Accommodation 41

Published by John Fairfax Publications Pty Ltd, ACN 003 357 720 of 201 Sussex Street, Sydney. Postal address Box 506, GPO Sydney 2001. Registered by Australia Post Publication No NBF 1308. Printed by Fairfax Printers Pty Ltd, ACN 068 675 221, 1 Worth Street, Chullora, 2190. * Recommended and maximum price only. Interstate by air extra. A B C1 SMH 33

Sounds of silence greet victory

Stephen Gibbs and AAP

Gay rights groups welcomed Mr John Marsden's defamation victory yesterday, but many of the prominent Sydney citizens who gave evidence on his behalf were not in town or were unwilling to comment.

Sydney Gay and Lesbian Mardi Gras president Ms Julie Regan, who knows Mr Marsden, said the case had taken a big toll on the solicitor, but his decision to take the case to the Supreme Court had been vindicated.

Mr Anthony Schembrite of the Gay and Lesbian Rights Lobby said the court's decision dispelled a myth that homosexuals were child molesters. It was also important the court acknowledged that an openly gay man could still have a good and settled reputation in the community, which could be damaged by such allegations, he said.

Mr Ted Pickering, who had given evidence that the former premier, Mr John Fahey, had blamed his government's 1995 election loss on Mr Marsden's

RECENT LARGE DEFAMATION VERDICTS



April 1994

Jury awards Sydney solicitor Mr Nicholas Roderick Carson (left) \$1.3 million after finding *The Sydney Morning Herald* had falsely implied Mr Carson engaged in professional misconduct. Matter later settled out of court.

March 1995

Jury awards former Fairfield City alderman Mr Christopher John Hartley \$935,000 after finding the *Fairfield Advance* had falsely implied Mr Hartley had acted dishonestly as a migration agent.



March 1998

Jury awards promoter Mr James Richard Erskine (above) \$2.5 million after finding *The Sydney Morning Herald* had falsely implied he was a vicious person. Matter later settled out of court.

June 2001:

Judge awards Sydney solicitor Mr John Marsden \$525,000 after finding Channel 7 maliciously aired false allegations that Mr Marsden had sex with boys.

"outing" himself, was in court for Justice David Levine's ruling.

"Obviously I'm very pleased that John's been exonerated after what has obviously been a horrific experience for him," the former Liberal police minister said. "I always had faith in him and that trust I had in him has obviously now been proved to be valid."

Mr Pickering, who has known Mr Marsden for more than 20 years, had said in evidence he

marvelled at how many friendships the solicitor enjoyed "across the entire political spectrum", and that Mr Marsden's advice had been sought "from the highest office in the land".

But he said Mr Fahey, who had once been Mr Marsden's closest political friend, believed Mr Marsden became open to allegations of having underage sex only after outing himself as homosexual. "I will never forgive him for

it," Mr Fahey had allegedly said.

Mr Pickering said Mr Fahey believed that without Mr Marsden's outing, Labor MP Mrs Deirdre Grusovin would not have labelled him in Parliament as a pederast at the end of 1994.

Mr Fahey, now Federal Minister for Finance, did not wish to comment on yesterday's decision. Mrs Grusovin also declined to comment, as did Victorian Police Commissioner Ms Christine

Nixon, who gave evidence on Mr Marsden's behalf while she was an assistant commissioner with the NSW Police. The former Olympics minister Mr Michael Knight, who said in court he considered Mr Marsden innocent until proven guilty, also did not wish to comment yesterday. Supporters including Sydney City councillor Mrs Kathryn Greiner and NSW Privacy Commissioner Mr Chris Puplick were overseas.

'Forever tainted by the false claim that I was a pederast'

From Page 1

witnesses. For example, of Mr Steven Elomari, the witness who Channel 7 paid nearly as much as Mr Marsden ultimately received in damages, it was said that he was "neither reliable nor honest, let alone credible".

"Mr Elomari," said the judge, "was and is a liar."

Another witness, Mr John Pearce, was unable to discriminate between truth and falsity, and D20 was portrayed as a liar and fabricator.

Mr Marsden did not emerge from the judgment unscathed and it was suggested by the judge that he had lied to the court on several occasions.

On the subject of the Anita Cobby killer Les Murphy, Justice Levine said that he believed Mr Marsden got Murphy to persuade another witness "to change his position", but he was



I won... Mr Marsden shares his bitter-sweet victory over the Seven Network yesterday. Photo: Nick Moir

not able to find "that Mr Marsden expressly suggested to Mr Murphy that Mr Murphy use the threat of violence". He also said that "it is matter for the plaintiff whether he chooses to make friends with a person such as Les Murphy".

Justice Levine also held that

Mr Marsden had lied about a particular piece of evidence given by another witness, Mr John Maynard, and also about an incident where Mr Marsden agreed that he had given a false name to police in 1967 when arrested over an incident in a railway station cubicle.

Justice Levine said he believed it was Mr Marsden himself who turned up in court the next day to represent the fictitious "Mr Martin". Despite finding this, he said it did not affect his confidence in Mr Marsden as a witness of truth in other aspects of the trial.

On Mr Marsden's drug use, Justice Levine commented that he has been "forthright" and "arrogant" about his use of marijuana, "which is still illegal", and that there was "an expectation that members of the legal profession will obey the law".

Again, the judge concluded that he was not prepared to make the "big deal" of this as Channel 7 submitted he ought to.

While Mr Marsden told the *Herald* that "a win is a win" and that he was happy with the outcome, members of his legal team privately expressed disappointment at the amount of damages.

During the costs hearing yesterday, it was revealed that Mr Marsden offered to settle the case in early 1997 by having Channel 7 pay him \$250,000 in damages for each of the programs, plus payment of his legal costs. This was rejected by Seven.

Assessing costs, Justice Levine ordered that Seven pay all of Mr Marsden's legal fees from the date he offered to settle. Before that date, the network must pay about two-thirds of his legal bills.

After one last legal skirmish in the afternoon, during which Mr Marsden received an undertaking from Seven that it should not distribute any further earlier press releases - which the duty judge was told were "false and malicious," - he retired to the Southern Cross hotel for celebratory drinks with his legal team.

Families to be hit with order to pay

Tom Allard

Hundreds of thousands of families will find their tax refund slashed or receive debt notices in the mail next month after incorrectly estimating their yearly income when applying for family benefits.

Up to 700,000 taxpayers will find they owe money to the Department of Family and Community Services from July 16 in a move the Opposition said was a reflection of the botched introduction of the new tax system.

Family payments were changed to accommodate the GST and recipients were asked to estimate their income ahead of time, leading to miscalculations on a mass scale.

"How do they expect people to do that in the 21st century when there's so much casualisation of the workforce, overtime and other factors that make estimating income in advance so difficult," said Labor's family and community services spokesman, Mr Wayne Swan.

Previously, payments have been based on income earned in the previous year and allowed a 10 per cent margin of error.

The debts could be as much as \$1,000 and accrue when the recipient underestimates his or her income.

As a first step, the debt will be subtracted from any tax refund without notification. Any outstanding amounts will then be collected via a debt notice.

Mr Swan produced an internal Centrelink document in Question Time yesterday which showed the agency had stepped up its manpower ahead of the mail-out.

The Minister for Family and Community Services, Senator Vanstone, said people would not be too upset to pay back a debt if they earned extra money.

Her junior, the Minister for Community Services, Mr Anthony, confirmed that 700 extra staff would deal with the issue. "What's wrong with that?" he said. "What's wrong with the Government being prepared to assist families?"

Wealthy publicans shed assets to move into public housing

Thousands of dollars... change, said