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The Panic Defence is Under Attack

... and an Online Petition has been Launched

by Unknown Author

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In the 1992 movie "The Crying Game", Jody (Jaye Davidson) is assaulted when her lover discovers her transgender status

Father Paul Kelly is taking up the cudgels against a plea for mitigation of violence using the "panic defence", usually an assertion that the victim of violence had made a homosexual advance to the perpetrator. The same kind of defence is sometimes used when a person commits violence against a transgendered person, when they discover the victims transgender history. This is sometimes referred to as the "Crying Game Syndrome" (in the movie *The Crying Game*, one of the central characters assaults the other violently when he discovers that the woman he was about to have sex with is a pre-operative transgender).

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Kelly took an interest in the loophole in Queensland law when a man was murdered in the grounds of Maryborough Catholic Church. Although in this instance the defence was not successful in having the murder charge downgraded, Kelly was shocked that it could even be brought up as a defence.

"It is extremely upsetting and worrying, I was following the trial with great interest and then there was this talk that he [the victim] had made some sort of homosexual advance", said Kelly. "I never heard of something so terrible, that there is some kind of defence that says if you make a homosexual advance then it can be used in court."

"I just can't believe in this day and age that can be any kind of defence to hurting someone."

Kelly also points out that by bringing up the defence, even when it fails to have the charge lessened, prejudice against the victim can be raised in the minds of a jury and increase their tolerance of violence. An Online Petition has been launched.

When enough signatures have been gathered, Kelly intends to take it to the Premier and the L.N.P. leader, Campbell Newman. It is to be hoped that the principle involved will be broadened to include transgenders and other minority groups subject to violence under these circumstances.

Kelly went on to say that he hoped it would not be seen as remarkable that a Catholic priest was embarking on this project.

"The Church has always defended basic human rights, it's never said intolerance or violence should be tolerated."

"It's a powerful mix of paranoia and intolerance that means people can get their charge downgraded to manslaughter."

"It's not about gay rights, it's about human rights." Queensland Attorney-General Paul Lucas told the *Brisbane Times* in April that "the passing of the Criminal Code and Other Legislation Amendment Bill 2010 had closed loopholes around the partial defence of provocation."

"No longer can mere words alone, including gay or straight advances, be sufficient for the defence of provocation, except in the most extreme and exceptional circumstances," wrote Mr Lucas in an opinion piece in response to calls for change.

Alan Berman, a senior law lecturer at the University of Newcastle, believes the concept of "exceptional circumstances" was open to interpretation and could involve "a non-violent homosexual advance". He further suggests that in most cases the defence counsel will assert that the proposition was not purely verbal but might have involved touching the person on the leg or other parts of his anatomy, sending him into a fit of uncontrollable rage.

The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.