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THE DEFENCE OF ACCIDENT IN QUEENSLAND: THE ONE PUNCH SCENARIO

**A Paper Presented at The Criminal Law Association of the Northern Territory
conference at the Bali Hyatt hotel, Sanur beach, Bali on 30 June 2011 by Roland
Peterson of the Queensland Bar.**

Introduction

In conjunction with Elizabeth Armitage I thought it appropriate to give this paper after Libby's presentation "bad luck and manslaughter."

The similarities in Queensland with the case presented by Libby in the Northern Territory is, I suspect likely to be a common occurrence in the criminal jurisdictions throughout Australia. This debate will continue where the unfortunate death of a victim occurs from a single blow or punch.

The ultimate question will be given the nature and extent of the force applied was the death of the victim a probable consequence of such force?

In Queensland the law has evolved as a result of some "one punch" cases in which the victim died from a relatively innocuous common assault. Those cases were *R v Taiters* [1997] 1 Qd R 333, *R v Little* (unreported trial) and *R v Moody* (unreported

trial). The concern arising from these cases was that the defence of accident was successful where death resulted from 'one punch' to the head of the victim.

As a consequence of various victim support groups lobbying, the State Government referred the issue to the Queensland Law Reform Commission ("QLRC"). After receiving a number of submissions from various stakeholders the QLRC delivered its report number 64¹ in respect of two issues that were referred to it, the accident defence and provocation in murder cases. At this conference I will only deal with the changes to the defence of accident in Criminal Law. Attendees should nevertheless look at the recommendations and new legislation on provocation for their own consideration.

The Queensland position

The Queensland Government acted upon the recommendations of the QLRC and expanded the legislation in respect of the accident defence.

Recently, the Queensland Parliament introduced an amendment to the criminal responsibility provisions of the Queensland Criminal Code².

This had the effect of deleting the term "**accident**" from s.23 in Queensland as it is singularly existed and expanded it into a twofold test.

¹see report 64 <http://www.qlrc.qld.gov.au/reports/R%2064.pdf>.

²*Criminal Code and Other Legislation Amendment Act 2011*, Act 7 of 2011.

The new legislation that applies from 4th of April 2011 is set out as follows with the underlining being the new legislation:

23 Intention—motive³

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—

(a) an act or omission that occurs independently of the exercise of the person's will; or

(b) an event that—

(i) the person does not intend or foresee as a possible consequence; and

(ii) an ordinary person would not reasonably foresee as a possible consequence.

(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

Prior to the recent amendment the term 'accident' was not clearly defined. This has now changed but does it mean that it will be more difficult for the accused to be relieved from criminal responsibility where death results from a 'single punch'? He will in effect have to raise and satisfy the twofold test set out in the section.

³<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CriminCode.pdf> at p.

56 on that site.

In the cases of *Taiters*, *Little and Moody* relatively minor acts of violence which led to the death of the victim resulted in the accused being able to rely on the defence of 'accident' because the unforeseen consequences of the single punch was enough to satisfy the criminal law's exoneration on the basis of 'accident.'

However, cases like this now may prevent accused persons from avoiding conviction for manslaughter.

In Queensland, the Queensland police service is certainly advocating in the media that "one punch can kill." They are also supportive of victim support groups in the community who are strongly advocating more education for young people who attend nightclubs against the dangers of a single punch to the body.

Jurors faced with this new expansive provision for accident may be less inclined to allow an accused person to be acquitted where a single punch causes the death of the victim.

Other Alternatives

The QLRC rejected the submission for the creation of a new offence of death by accident/negligence.

It observed and took account of the feedback from the Judges of the Court that they had no difficulty in explaining the concept of reasonable foreseeability to juries

when the defence of 'accident' was to be considered for determining criminal responsibility.

Interestingly, the Bar Association of Queensland, the Queensland Law Society, and Legal Aid Queensland made submissions that the defence of accident should be maintained for the one punch type of scenario.

In my respectful opinion there is a good argument for having a specific offence like assault occasioning bodily harm of **assault causing death**.

Realistically jurors will be likely to have to consider the same situations that have developed in cases such as are the R v. *Taiters, Moody & Little*, and the recent one in the Northern Territory.

Although the test of accident has been more specifically dealt with in section 23, jurors may have a dilemma with the circumstances that leads to the unfortunate death of a victim from a relatively minor act of violence. They now have to look at the situation from a subjective and objective point of view and make a decision.

This will be challenging for the juror.

Conclusions

The community anxiety over the availability of the defence of accident for cases involving death from one strike will never disappear. The legislation will be seriously challenged by able Counsel and it is hoped that the new legislation can remedy the mischief anticipated.

However it is my view that the complicated scenario could easily have been overcome with an offence of **assault causing death**. We can only await the outcomes of future assault cases which lead to an unfortunate death.

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