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CASE REPORT

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Table with 2 columns: Case Name, Reported in, Date(s), Court/Jurisdiction, Charges, Appeal, Co-accused. Row 1: Kelsey v Hill, [1995] 1 Qd R 182, Arrested: June, 22, 1993, Convicted: October 1, 1993, Appeal Heard: February 10, 1994, Queensland Court of Appeal, s 229I Criminal Code (Qld): Persons found in a place reasonably suspected of being used for prostitution, 1994, Name unknown.

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## Summary of Facts

Ms Kelsey and another woman were sex workers, who were found in a house in Bowen Hills, Brisbane that was being used for the provision of prostitution.<sup>1</sup> They both pleaded not guilty to being found in a place reasonably suspected of being used for prostitution and were found guilty after a summary hearing. They appealed this finding.

## Appeal

Section 229I *Criminal Code* (Qld) provides that a “person who, without reasonable excuse, is found in, or leaving after having been in, a place suspected on reasonable grounds of being used for the purposes of prostitution by 2 or more prostitutes commits a crime.” This offence was introduced in 1992 along with most of the offences currently seen in the *Prostitution Act 1999* (Qld).<sup>2</sup> It has since been amended slightly so as to not apply to people found at licensed brothels.

The women appealed on the grounds that as prostitution is not unlawful per se, it amounted to a reasonable excuse for their presence and thus a defence to s 229I.

It was contended by the appellants that there was an onus on the prosecution to provide an unlawful reason for being in the premises to exclude the ‘reasonable excuse’ defence. However, it was held that the offence was directed towards stopping the practice of shared facilities or brothels, thus it would be absurd if providing prostitution could amount to a defence under the section.<sup>3</sup> The court held that providing prostitution was not a ‘reasonable excuse’ in the context of s 229I. A person with a ‘reasonable excuse’ would include someone such as a health worker who was at the premises.<sup>4</sup>

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<sup>1</sup> *Kelsey v Hill* [1995] 1 Qd R 182 at 183.

<sup>2</sup> See separate file “Prostitution Offences, Queensland” at [www.law.uq.edu.au/humantrafficking](http://www.law.uq.edu.au/humantrafficking).

<sup>3</sup> *Kelsey v Hill* [1995] 1 Qd R 182 at 185.

<sup>4</sup> *Prostitution Laws Amendment Bill 1992* (Qld); Explanatory Notes.