



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Members present:

Mrs EA Cunningham MP (Chair)
Mr PJ Dowling MP
Mr IS Kaye MP
Mr JM Krause MP
Mrs JR Miller MP
Ms J Trad MP
Mr PW Wellington MP

Staff of the Office of the Parliamentary Crime and Misconduct Commissioner present:

Mr P Davis SC (Acting Parliamentary Commissioner)
Dr K Mellifont SC (Counsel assisting the Acting
Commissioner)
Mr M Kunde (Principal Legal Officer)

Staff present:

Mr N Laurie (Clerk of the Parliament)
Mr S Finimore (Committee Office Manager)
Ms A Honeyman (Acting Research Director)
Mr P Rogers (Principal Research Officer)

INQUIRY INTO THE CMC'S RELEASE AND DESTRUCTION OF FITZGERALD INQUIRY DOCUMENTS

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 13 MARCH 2013

Brisbane

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Committee met at 10.00 am

CHAIR: Good morning. I declare this public hearing of the Parliamentary Crime and Misconduct Committee open. On behalf of the committee, I welcome Dr Kerri Mellifont SC who will be assisting the acting commissioner and the acting commissioner, Mr Peter Davis SC, who will be joining the proceedings tomorrow.

I am Liz Cunningham MP, the member for Gladstone and chair of the committee. Mrs Jo-Ann Miller MP, the member for Bundamba, is the deputy chair. The other committee members are: Mr Peter Dowling MP, member for Redlands; Mr Ian Kaye MP, member for Greenslopes; Mr Jon Krause MP, member for Beaudesert; Ms Jackie Trad MP, member for South Brisbane; and Mr Peter Wellington MP, member for Nicklin. By resolution of the House dated 7 March 2013, the committee is tasked with inquiring into and reporting on (a) the CMC's incorrect classification of documents lodged with the State Archives that were sourced from the Fitzgerald inquiry which were transferred to the State Archives from the CMC between 2007 and 2009 that necessitated urgent legislation being introduced and passed by the House on 7 March; (b) the CMC's failure to remedy the incorrect classification of the above documents in a timely and effective manner; (c) the destruction of records of the Fitzgerald inquiry; (d) the CMC's failure to account to the PCMC in a timely and effective manner in relation to the matters; (e) as to how the issues arising from the incorrect classification of documents can be remedied in the longer term, including whether some or all of those documents have to remain confidential; and (f) on any other matters and make any other recommendations the committee believes necessary to address issues raised in its inquiry.

The resolution of the assembly requires the committee to report by 5 April 2013. By any measure, the committee's task is large when compared to the time within which it is to be achieved. This leads me to a very important issue—the importance of rational and correct reporting of what has occurred. There are a few matters, said either with the intention to mislead or said in ignorance, which need to be corrected. Before addressing those matters, given this inquiry is about the Fitzgerald inquiry documents, I believe it appropriate to quote a passage from the report of that inquiry. In expressing his concern about misreporting or efforts of people to undermine the inquiry, and I quote selectively, Commissioner Fitzgerald said the following at page 21 of the report—

... allegations aimed at undermining the Commission were published on the basis of rumour or misinformation ... As a result, the public was misinformed.

With some notable exceptions, there was insufficient careful or reasoned media analysis of the Commission's work.

Most criticism was ill-considered or based on misconceptions, while the real issues, on which competing views could legitimately be held, were neglected.

Some damaging reports were blatant propaganda and others were unsubstantiated and recklessly, if not deliberately, damaging. Some created unrealistic community expectations, while others eroded essential public support. At the very least, controversies raised by such reports distracted Commission resources and energies from other pressing tasks.

It has been a week since this committee became aware of the misclassification of the Fitzgerald inquiry material in the State Archives and, a little later, the destruction of some Fitzgerald inquiry files at the CMC. Despite this, there has been an allegation that the fault in the matter lays with this committee. This claim is not based on fact and represents a complete misunderstanding of the respective roles of the CMC and this committee. Indeed, the comments have a real potential to, deliberately or otherwise, mislead the community.

Firstly, the PCMC, while vested with the responsibility to monitor and review the CMC, is actually precluded by legislation from being involved in the day-to-day operation of the commission given the commission's charter in relation to investigating misconduct and crime. The PCMC is not, for instance, involved in the issuing of approvals for covert operations or the use of phone-tapping powers. However, to ensure compliance with their legislated obligations, the Parliamentary Commissioner is required to audit the process by which the CMC exercises these powers and then must report to the PCMC and the PCMC to the parliament.

Secondly, there are very limited powers for the PCMC to direct the CMC. As a committee the PCMC may request reports or updates. In extreme circumstances we may direct the chair to attend meetings. I believe the absence of powers to direct the CMC has added to the frustration over time taken to finalise matters. For example, in a recent matter the current committee could only

recommend firmly against the use of someone who the CMC had engaged. Ultimately the decision sat with the CMC. The point is that in relation to the day-to-day operations of the CMC, the committee's involvement is minimal under the act as it currently stands.

In relation to these current events, because the PCMC is, arguably correctly, not involved in the day-to-day operation of the commission, the Crime and Misconduct Act obligates the CMC to advise the committee of certain matters. One of the issues in this inquiry is whether the CMC acted in accordance with its reporting obligations.

It is, however, emphasised that it is misleading to suggest that this committee has caused the issues the subject of this inquiry. If that were so, the assembly would never have charged this committee with the function of investigating the issue. Indeed, the facts will show that given the limited information the committee first received about this matter—a brief telephone call to the chair of the committee on Tuesday evening 5 March—the committee acted very quickly. The committee required the CMC chair to attend a meeting on 6 March and resolved to have the Clerk issue a summons to the State Archivist to appear before the committee and produce material on 7 March. On the same day the committee asked the government to consider urgent, temporary legislative relief. To prove this point, this committee, in accordance with the resolution of the House, has now authorised the publication of its private hearings on 6 and 7 March 2013. The only redactions in the transcripts are those which prevent the identification of names in Fitzgerald inquiry files which the committee is attempting to protect.

Despite the committee acting quickly and decisively, the committee has been the subject of unfair, uninformed, adverse comment. The comments were not balanced, but designed to be sensational. On one view, to borrow a phrase, 'words are wind'. But we all know that not to be true. In the context of a serious inquiry, words can be much more than wind. Words can easily damage the reputation of individuals before they have had adequate opportunity to answer the charges against them. Words can create an atmosphere of fear, which can dissuade people with valuable evidence from coming forth or discourage witnesses that will be called from giving as frank an account as they should to protect themselves or others.

Words can, in short, interfere with the proper conduct of an inquiry. Indeed, in the days since the resolution of the House, this committee has worked hard to avoid being distracted by the words of others. However, valuable time was spent discussing and responding to these words—time that could and should have been spent preparing for these hearings.

Of course, this is not the first or the last inquiry that must cope with unnecessary distractions. The Fitzgerald inquiry itself was often distracted by such words. Commissioner Fitzgerald pointed to the difficulties confronting the commission being immeasurably increased by forays into the arena by some in search of a sensation—his comments of 4 November 1987 pages 3918-3920. The commissioner also noted that the creation of an atmosphere of sensations and point scoring could make the proper conduct of an inquiry almost impossible—his comments of 1 November 1988 pages 18835-18837.

Now this committee needs to make its position clear. The past is the past. We have far too important a job to undertake than to rake over events of the past few days. But from this point forward we will no longer tolerate words that have the propensity to distract us from our inquiry and report to the assembly. To use the words of the statute 'any improper interference with the free exercise by this committee of its authority or functions' will, in future, be actioned. Those who have been injudicious to date should take it upon themselves to reflect and remedy their actions or words.

Moving to a more constructive topic, I note that the format for this inquiry is unprecedented in Queensland and if not unique rare in Westminster democracies. We appreciate the opportunity by the Legislative Assembly to utilise this new format of inquiry. We are determined to make it a successful model for the future. On this note, the committee wishes to emphasise that we are not afraid of positive reform of either the CMC or the PCMC. We are open to new, better methods of parliamentary oversight. But such reform should be done with the public interest and notions of accountability at its heart. In this respect, we again quote, somewhat selectively, from the Fitzgerald Report—

The main object of this report and its recommendations is to bring about improved structures and systems.

...

The community would be badly served by any unnecessary departure from the fundamental presumption of innocence to which each citizen is entitled unless and until tried and convicted. Every person who was adversely mentioned in evidence

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before this Inquiry (or who is mentioned in material held by the Commission) is innocent unless and until proven guilty in a court or other appropriate tribunal, which must make such a finding in the proper discharge of its functions.

...

Findings, whether favourable or unfavourable, which ignored that material would be unsatisfactory, and unfavourable findings which took that material into account without providing the individuals affected an opportunity to be heard would be unfair.

Under the standing orders, witnesses may be accompanied by legal representation. Whilst witnesses may confer with their legal representative to obtain advice on their rights, the legal representative is not a witness in this inquiry and may not address the committee and such representation is by leave of the committee.

I remind all of those participating today that these proceedings are similar to parliament, to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to, or excluded from, the hearing at the discretion of the committee. The committee has resolved that the whole of the proceedings of the committee may be broadcast online with the conditions for broadcasters and guidelines for camera operators, which are available from one of the parliamentary attendants in this room. We have also resolved to allow the media to take continuous pool footage with the traditional conditions that apply.

I ask that mobile phones or pagers be either switched off or switched to silent. Also, I should remind you that food and drink are not permitted in the chamber. For the benefit of Hansard, I ask all witnesses to identify themselves the first time they answer a question asked of them. I note that this morning's proceedings are largely formal and procedural. The committee will then adjourn to a public hearing via videoconference in the Dandair Room at 4.30pm.

I will now ask Dr Mellifont, counsel assisting, to continue the proceedings with the return of summonses.

Dr Mellifont: If I might set out the procedural issues for today. The proposal is to first call Ms Sidonie Wood who is a solicitor with the Crime and Misconduct Commission. May I note the presence of Mr Geoff Diehm Senior Counsel in respect of whom the committee was given advanced notice of his attendance as legal representation and in respect of whom I understand there to be no objection by the committee to appear in that respect.

CHAIR: If there is no objection, leave is granted.

Dr Mellifont: Ms Wood is responding to a summons issued to the CMC and will produce a number of documents. One can see at the back of the room a number of boxes of documents, and they are the documents produced in response to the summons. Subsequent to Ms Wood formally producing those documents under summons, the intention is to call a number of staff members of the State Archives in respect of information provided in an in camera session that, Madam Chair, you have already referred to of last week and to formally adopt the transcript in respect of same. The proposal then is to stand down until 4.30 this afternoon and to call a witness Mr Barry Krosch.

Mr Krosch was engaging in postgraduate research work with a specialist police research centre at a Brisbane university. Towards the end of 2011 he turned his focus on to the latter years of the special branch arising out of the Fitzgerald inquiry. It was in the context of that research that he first observed that a number of the documents to which he sought access had a 65-year limitation on them, but by approximately February 2012 in respect of some of those documents there had been a reclassification to 20 years, and he ordered the some such documents, paid the requisite fee and was provided them. In respect of other documents in that type of category, there was a request to the director's office who were then the possessor, formally, of the documents. So Mr Krosch's evidence will essentially speak to the public accessibility of the documents in the period of late 2011 and 2012. It is then proposed to stand the committee hearings down until tomorrow and to resume at 11.30 with a CMC staff member and then to resume on Friday at 10 am.

Might I please call as the first witness Ms Sidonie Wood. Ms Wood is present at the table next to Mr Diehm. Can I ask that she be sworn or affirmed, please?

WOOD, Ms Sidonie, Official Solicitor, Crime and Misconduct Commission

Witness was sworn—

Dr Mellifont: Can you state your full name, please?

Ms Wood: Sidonie Larisse Wood.

Dr Mellifont: What is your official position?

Ms Wood: The Official Solicitor of the Crime and Misconduct Commission.

Dr Mellifont: Are you admitted as a legal practitioner of the Supreme Court of Queensland?

Ms Wood: I am.

Dr Mellifont: Are you here in response to a summons issued on 12 March 2013 under the hand of the Clerk of the Parliament?

Ms Wood: I am.

Dr Mellifont: Can I ask you please to have a look at this original summons and tell me whether that is a summons to which you are responding?

Ms Wood: Yes, it is.

Dr Mellifont: Madam Chair, I table that summons. Have you brought with you today a number of documents in response to the said summons?

Ms Wood: Yes, I have.

Dr Mellifont: Are those documents set out on the back table in a number of boxes and lever arch folders?

Ms Wood: Yes, they are.

Dr Mellifont: Is there anything outstanding from your perspective in terms of the response by the CMC to the summons?

Ms Wood: Yes, there are some outstanding documents which we hope to be able to provide by tomorrow.

Dr Mellifont: Are you able to give a rundown in terms of categories of documents, please?

Ms Wood: Yes. Those outstanding are any relevant 2009 minutes of the commission. They are in hard copy and are presently being examined. They are the 2006, 2007 and 2013 emails relating to item 4 and a small number of documents with respect to Mr Krosch and our communications with him, which is item 5. I also note that we have not had an opportunity to undertake a forensic examination to identify any other potential gaps in the information, and there may be some potential series. We hope to be able to ascertain this in the next few days. May I say that since receiving the notice to the summons in draft on the 10th we have done our best to identify and produce all the relevant material.

Dr Mellifont: Can I ask, therefore, for your undertaking for further compliance with the summons as soon as possible?

Ms Wood: Yes.

Dr Mellifont: And for production of documents to this committee via the Clerk of the Parliament as and when they become available?

Ms Wood: Yes, I make that undertaking.

Dr Mellifont: Thank you. On that basis, Madam Chair, might Ms Wood be stood down on her undertaking to reappear and on her undertaking to provide the documents? It is expected that Ms Wood will be called as a witness perhaps on Friday of this week.

CHAIR: Yes.

Dr Mellifont: Ms Wood, you are currently stood down. Thank you very much.

Ms Wood: Thank you.

Dr Mellifont: Madam Chair and the committee, the next witness I wish to call is Ms Janet Prowse, the Executive Director and State Archivist of the Queensland State Archives. If I could ask Ms Prowse to come forward to the table please and if she could be sworn or affirmed.

PROWSE, Ms Janet, Executive Director and State Archivist, Queensland State Archives

Witness was sworn—

Dr Mellifont: Could you state your full name, please?

Ms Prowse: Janet Lee Prowse.

Dr Mellifont: Is your position that of Executive Director and State Archivist of the Queensland State Archives?

Ms Prowse: Correct.

Dr Mellifont: Did you on 7 March 2013 participate in a closed hearing with the PCMC in respect of the subject matter of this inquiry?

Ms Prowse: Yes.

Dr Mellifont: Have you had the opportunity to review a transcript of that hearing?

Ms Prowse: Yes.

Dr Mellifont: Do you have a copy of that in front of you?

Ms Prowse: Yes.

Dr Mellifont: I might just ask you to formally look at this one. I understand that you might have an amendment to make at page 11. Firstly, if you could have a look at the document being handed to you, can you tell me whether that appears to be a copy of the transcript of the hearing that you attended?

Ms Prowse: Yes, that is correct.

Dr Mellifont: Can I take you please to page 11? Is there an amendment that you would wish to make in respect of what was said during the hearing?

Ms Prowse: Yes. I made one error which I informed the committee of yesterday.

Dr Mellifont: Can you state what that error was and what the correct version is, please?

Ms Prowse: Yes. I indicated that Queensland State Archives has security cameras on site, meaning at Runcorn, but not in the public reading room. It is incorrect. We do have security cameras in the public reading room as well.

Dr Mellifont: Apart from that correction, is what you said during that transcript true and correct?

Ms Prowse: Yes.

Dr Mellifont: I table that transcript, please, Madam Chair. Might Ms Prowse be stood down again on her undertaking to reappear if required? Thank you, Ms Prowse.

Ms Prowse: Thank you.

Dr Mellifont: I call Mr Niles Elvery. I ask that Mr Elvery be sworn or affirmed, please.

ELVERY, Mr Niles, Manager, Public Access, Queensland State Archives

Witness was sworn—

Dr Mellifont: Can you state your full name, please?

Mr Elvery: Niles Cameron Elvery.

Dr Mellifont: And your position, please?

Mr Elvery: I am the Manager of Public Access at Queensland State Archives.

Dr Mellifont: Were you a participant in a closed hearing of this committee on 7 March 2013?

Mr Elvery: Yes, I was.

Dr Mellifont: Have you had an opportunity to review a transcript of that hearing?

Mr Elvery: I have.

Dr Mellifont: I will ask you to look at the document just tabled and tell me whether that is a copy of the transcript that you reviewed.

Mr Elvery: It certainly looks like it, yes.

Dr Mellifont: Having reviewed the transcript, do you stand by the accuracy and truthfulness of any information you provided in that hearing?

Mr Elvery: I do.

Dr Mellifont: On Mr Elvery's undertaking to reappear if required, might he be stood down, please?

CHAIR: On that undertaking, yes.

Dr Mellifont: Thank you. May I ask for the return of the document, please? I call Elizabeth Hawkins. Can I ask Ms Hawkins to be sworn or affirmed, please?

HAWKINS, Ms Elizabeth, Manager, Archival Collections, Queensland State Archives

Witness was sworn—

Dr Mellifont: Can you state your full name, please?

Ms Hawkins: Elizabeth Jane Hawkins.

Dr Mellifont: And your current position, please?

Ms Hawkins: Manager of Archival Collections at Queensland State Archives.

Dr Mellifont: Were you a participant in a closed hearing of this committee on 7 March 2013?

Ms Hawkins: I was.

Dr Mellifont: Have you had the opportunity to review a transcript of that hearing?

Ms Hawkins: I have.

Dr Mellifont: May I ask you to look at this document and tell me whether that is the transcript that you reviewed?

Ms Hawkins: Yes, it is.

Dr Mellifont: Do you stand by the truthfulness and accuracy of anything you said during that closed hearing?

Ms Hawkins: I do.

Dr Mellifont: On Ms Hawkins' undertaking to reappear if required, might she be stood down, please?

CHAIR: On that undertaking, yes.

Dr Mellifont: I call Josephine Horner and ask that she be sworn or affirmed.

HORNER, Ms Josephine, Manager, Agency Services, Queensland State Archives

Witness was sworn—

Dr Mellifont: Can you state your full name, please?

Ms Horner: Josephine Horner.

Dr Mellifont: Your current position, please?

Ms Horner: Manager of Agency Services at Queensland State Archives.

Dr Mellifont: Were you a participant of a closed hearing on 7 March 2013 of this committee?

Ms Horner: Yes.

Dr Mellifont: Have you had the opportunity to review a transcript of that hearing?

Ms Horner: Yes.

Dr Mellifont: I will show you this document. Can you tell me whether that is a copy of the transcript?

Ms Horner: Yes, it is.

Dr Mellifont: Do you stand by the truthfulness and accuracy of what you said during that hearing?

Ms Horner: Yes.

Dr Mellifont: On Ms Horner's undertaking to reappear if required, might she be stood down, please?

CHAIR: On that undertaking, yes.

Dr Mellifont: I call Maureen Sullivan.

SULLIVAN, Ms Maureen, Manager, Collections and Preservation, Queensland State Archives

Witness was affirmed—

Dr Mellifont: Can you state your full name, please?

Ms Sullivan: Maureen Patricia Sullivan.

Dr Mellifont: And your current position, please?

Ms Sullivan: I am the Manager of Collections and Preservation, Queensland State Archives.

Dr Mellifont: Were you a participant in a closed hearing of this committee on 7 March 2013?

Ms Sullivan: Yes, I was.

Dr Mellifont: Have you had the opportunity to review a transcript of that hearing?

Ms Sullivan: Yes, I have.

Dr Mellifont: I ask you to look at this document and tell me whether that is a copy of the transcript?

Ms Sullivan: Yes, it is.

Dr Mellifont: Do you stand by the truthfulness and the accuracy of the contents of that hearing insofar as the words you said?

Ms Sullivan: Yes, I do.

Dr Mellifont: On Ms Sullivan's undertaking to reappear if required, might she be stood down?

CHAIR: On that basis, yes.

Dr Mellifont: Madam Chair, as a matter of formality, Mr Adrian Cunningham is present in response to a summons. Can I ask that he simply be sworn but stood down? I do not propose to adduce evidence from him at this point in time but just in terms of a formal response to the summons.

CHAIR: Yes, that is fine.

Dr Mellifont: I call Adrian Cunningham.

CUNNINGHAM, Mr Adrian, Director of Digital Archives and Government Recordkeeping, Queensland State Archives

Witness was sworn—

Dr Mellifont: Can you state your full name, please?

Mr Cunningham: Adrian Edward Cunningham.

Dr Mellifont: And your current position?

Mr Cunningham: I am the Director of Digital Archives and Government Recordkeeping at Queensland State Archives.

Dr Mellifont: Were you present at a committee hearing on 7 March 2013?

Mr Cunningham: I was.

Dr Mellifont: And you have reviewed a transcript of those proceedings?

Mr Cunningham: I have.

Dr Mellifont: I will show you this document, which is the same tabled document. Does that appear to be the transcript that you reviewed in respect of the committee hearing?

Mr Cunningham: Yes.

Dr Mellifont: Insofar as there is information contained within that transcript, do you stand by the truthfulness and accuracy of what appears there?

Mr Cunningham: I do.

Dr Mellifont: On Mr Cunningham's undertaking to reappear when required, might he be stood down, please?

CHAIR: On that basis, yes.

Dr Mellifont: That concludes the procedural aspects for this morning. May I ask the committee to adjourn until 4.30 this afternoon to resume the hearing?

CHAIR: Members, ladies and gentlemen, as has been stated, that concludes the presentation of evidence this morning. I adjourn the hearing until 4.30 in the Dandair Room in the Parliamentary Annexe.

Committee adjourned at 10.31 am