



Speech by

BRUCE DAVIDSON

MEMBER FOR NOOSA

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AUCTIONEERS AND AGENTS COMMITTEE; MR D. KELLY

Mr DAVIDSON (Noosa—LP) (11.49 a.m.): Today in this House we have heard about and witnessed the abhorrent interference by the Minister for Fair Trading in providing background information to legal counsel for a complainant in a politically motivated act to pervert the decision-making process of the Auctioneers and Agents Committee. However, instead of trying to flesh out the actions of the Minister, I will leave it up to the Minister to explain her actions. I would like to bring to the attention of this House the background to this entire sorry saga.

This issue revolves around the payment of a sum of \$6,700 from the Auctioneers and Agents Fidelity Guarantee Fund to a gentleman, a Mr Bill Kelly, when it has been shown that he did not take all reasonable steps to mitigate his loss. This is not just the Opposition's position but a position supported by none other than Mr Neil Lawson, the Commissioner for Consumer Affairs and Registrar of the Auctioneers and Agents Committee; Crown Law and departmental investigators.

In June 1998, Mr Kelly purchased a 1990 Subaru Brumby utility from Frank's Wholesale Cars. Just four days later, Mr Kelly contacted Frank's Wholesale Cars and stated that he no longer wished to retain the Subaru and wanted his Mitsubishi returned. Mr Benussi informed Mr Kelly that he was unable to return his trade-in vehicle as he had already on-sold it. Later that same day, Ms Kelly—Mr Kelly's daughter and subsequent legal counsel—contacted Frank's Wholesale Cars and alleged that it had fraudulently issued a certificate of roadworthiness and advised that they would be making a claim to the Auctioneers and Agents Committee if the Mitsubishi was not returned that day. Again, Mr Benussi informed the Kellys that he was unable to return the trade-in vehicle as he had already on-sold it. However, Mr Benussi arranged with Ms Kelly for a reinspection of the vehicle by Pit Lane Motors. That inspection discovered rust in the vehicle, and Pit Lane Motors made the offer to Ms Kelly, through Mr Benussi, to repair the rust and to service the vehicle at no cost for the next six months. Ms Kelly refused this offer and demanded the return of the Mitsubishi.

On 23 June 1998, Ms Kelly refused to accept Mr Benussi's offer to repair the rust and service the car at no cost for six months. On 25 June 1998, Mr Bill Kelly had the vehicle inspected by Mr Stephen Matthew Witt, his former son-in-law. In addition, Ms Raelene Kelly wrote to the Auctioneers and Agents Committee seeking compensation from the Auctioneers and Agents Fidelity Guarantee Fund for the sum of \$9,000, comprising \$8,000 for the car and \$1,000 in legal fees. During July 1998, Mr Barry Vickers telephoned Mr Howsan, of Brisbane Motor Auctions, requesting that he value a vehicle and informed him further that the vehicle was owned by the father of a former Auctioneers and Agents Committee member, Ms Raelene Kelly. He also informed Mr Howsan that the stated vehicle was the subject of a claim against the Auctioneers and Agents Fidelity Guarantee Fund.

On 17 July 1998, Mr Kelly brought the vehicle into Brisbane Motor Auctions for a valuation and received a valuation from Mr Howsan of approximately \$3,000. On 8 September 1998, Mr Kelly sold the vehicle through Brisbane Motor Auctions for \$2,995, with a bill for \$150 for sale costs, to Alby Smith, a Gold Coast car dealer. On 9 September 1998, Ms Kelly informed the Auctioneers and Agents Committee that her client had sold the Subaru at auction through Brisbane Motor Auctions and wished to adjust the compensation claim to \$5,150 plus \$1,550 for legal costs.

On 4 November 1998, the Auctioneers and Agents Committee decided that, among other things, the claim should be formally investigated by investigators from the Fair Trading Branch. In a significant step in this process, on 13 November 1998 Mr Kelly obtained a sworn affidavit from Mr Witt,

who is not a qualified engineer, based upon his inspection of the car five months earlier. On 18 November 1998, the Auctioneers and Agents Committee brought on the Kelly's claim, which was not listed on the agenda, ahead of matters which were on the agenda, some of which then had to be deferred to the next meeting on 2 December 1998.

The failings of the Auctioneers and Agents Committee were as follows: firstly, not waiting for the results of the formal investigation it had ordered at its previous meeting on 4 November 1998; secondly, accepting an uncorroborated affidavit from an "engineer" who was a longstanding acquaintance of Mr and Ms Kelly; and, thirdly, allowing Mr Vickers, who had previously made representations to the motor auction on the Kelly's behalf, to move that the committee make payment of the claim. The deputy registrar, Mr David Goddard, representing Registrar Neil Lawson, raised a significant number of serious concerns and urged the committee not to pay the claim. However, against Mr Goddard's advice, the committee approved the Kellys' claim. Some days later, on 18 November 1999, Mr Goddard advised Mr Lawson of his concerns regarding the committee's conduct in handling the Kellys' claim and consequential issues.

On 9 December 1998, an investigation by the Fair Trading Branch concluded that Mr Kelly did not make any endeavour to mitigate his loss and recommended that the committee reconsider its decision of 18 November 1998. The very next day, Consumer Affairs Commissioner and Committee Registrar Neil Lawson advised fellow committee members of a Crown Law opinion that Mr Kelly had no legal entitlement to any money from the fund for the car and that the maximum recoverable legal costs would be in the order of \$1,000. He asked his fellow committee members to reconsider the claim and refuse it.

On 20 January 1999, the committee heard submissions from Ms Kelly and provided her with a copy of the Crown Law opinion tabled by Mr Lawson. The committee resolved to seek independent legal advice on whether it had the power to rescind its decision. Subsequently, the committee received conflicting legal advice that it did not have the power to reconsider the claim and refuse or reduce compensation. However, that same advice informed the committee that it could recover overpayment by civil action.

On 22 January 1999, Ms Kelly—a lawyer—lodged a claim for an additional \$3,200 in legal costs. On 25 January 1999, the committee deferred further consideration of the Kelly's claim pending further submissions from Lawson and Kelly. On 27 January 1999, Mr Lawson again wrote to his fellow Auctioneers and Agents Committee members disputing the view that the committee did not have the power to reconsider the claim. He also advised against paying the further legal costs of \$3,200. On 28 January 1999, the committee held a special evening meeting by teleconference to discuss the claim and it resolved not to rescind its decision. It directed also that the claim of \$6,700 be paid, but rejected the claim for further legal fees.

That triggered Mr Lawson, on 29 January 1999, to seek and subsequently be granted an interim injunction by the Supreme Court against the committee's decision to pay the claim. Mr Lawson's affidavit was prepared by the Crown Solicitor, Barry Dunphy, who later instructed Mr Lawson's legal counsel in the Supreme Court. On 5 February 1999, in the Supreme Court Justice Moynihan heard argument from the various parties and agreed that there was cause for concern and that some disturbing considerations arose from the affidavits. He stated—

"I can see why there's concern. I mean quite frankly I find the course of events fairly extraordinary and what took place in the light of former membership and all those things."

On 17 February 1999, the committee paid the claim. Even at the last sitting of this House, I asked the Minister to explain why the "Kelly Gang" had been so well looked after by the Auctioneers and Agents Committee when another claimant, Monica Loski, had been entirely deserted by the Minister's department to such an extent that she had to go to the Small Claims Tribunal to get the same result that the Labor mates got through their association with the Minister. It appears that Labor mates can forget about following the rules and just apply to the Minister for a refund from the fidelity fund. Does one have to be an associate of Ms Spence or a mate of other senior Labor members—the old boys or, in this case, the old girls—to get preferential treatment and an open season on the fund?

The Motor Traders Association is vitally concerned, as it should be, about the proper management of the fund. Given this Minister's dismal performance in this matter, it and its fellow contributor to the fund, the real estate industry, should have major concerns in this area. Today in the Courier-Mail we were told in an article written by Michael Ware that Ms Spence's spokeswoman said that there was nothing improper in any of the Minister's dealings in this affair. The article went on to say that Ms Spence's participation in a teleconference during which privileged information was given was not disclosed to Parliament, because it was "insignificant".

I ask the Minister whether Ms Kelly, representing her father, Mr Kelly, was the only legal representative on behalf of Mr Kelly whom she has spoken to about these sorts of issues? I know for sure that she would not speak to Ms Loski. Ms Loski had to pursue her correspondence with the

Minister through my office, as the shadow Minister, and then had to pursue the loss of \$2,500 on the purchase of her car through the Small Claims Tribunal. The Opposition will pursue this matter further. I believe it is of the utmost importance that we, on behalf of the Motors Traders Association and the real estate industry, ensure that Labor mates of the Minister are not allowed to raid the Auctioneers and Agents Fidelity Guarantee Fund.
