

3/02/2006

CRIME & MISCONDUCT COMMISSION  
No. 2005-5 Date 7 FEB 06  
IN THE MATTER OF:

OP GRAND

EXHIBIT No. 334  
*[Signature]* CLERK

**Submissions on behalf of Cr Robert La Castra to the Public Inquiry concerning allegations into the Gold Coast City Council election in March 2004**

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## Introduction

At the outset it is noted that counsel assisting does not recommend prosecution against Cr La Castra. Counsel assisting also does not allege;

1. That Cr La Castra was aware of the existence of the trust prior to the election;
2. That Cr La Castra solicited any funds for the trust;
3. That Cr La Castra breached s.394 of the *Local Government Act*;
4. That Cr La Castra voted whilst under a conflict of interest; or
5. That Cr La Castra failed to exercise his official responsibilities honestly, impartially or disinterestedly.

Nonetheless there are several matters raised in the submissions of counsel assisting which need to be addressed.

## Independence of Candidates

1. Counsel assisting submits that the independence of candidates funded by the trust was for public display only (p.15). The only candidate funded by the trust to whom Cr La Castra is said to be connected is Roxanne Scott (p.18).
2. It is presumed that the word 'independence' as used by counsel assisting is intended to convey an impression of a candidate who did not commit themselves to following the lead of another candidate, councillor or any other person in respect of policy decisions which are to come before the council. This presumption is made because counsel assisting does not define the word, despite using it extensively.
3. There is no evidence to suggest that Cr La Castra ever agreed to a common policy agenda.
4. Power was asked (T2510) about conversations he had had with Cr La Castra concerning Ms Scott as follows;  

'Did my client ever give you reports on Ms Scott?-- No.  
Did my client ever suggest to you that Ms Scott would be, if elected, a reliable vote for you?-- Absolutely not.  
Did my client ever tell you that you could say to Ron Clarke or Gary Baidon or any other mayoral candidate that if elected Ms Scott would form part of a reliable vote for his reform agenda?-- No.'
5. Crs Grew (T1963), Hackwood (T1981), and Shepherd (T2092), all of whom were alleged to be members of a pro-development, also denied that Cr La Castra ever assured them that Ms Scott would vote for a particular agenda if elected. Mayor Clarke also denied that any such assurances were ever given to him (T2367). At no stage did counsel assisting challenge these denials.

6. Cr La Castra's involvement in Ms Scott's campaign was limited to giving her general advice and other minor matters (p.18). Cr La Castra also gave minor assistance to another candidate who ran against Cr Betts (T2166).
7. It is submitted that the evidence does not support a conclusion that Cr La Castra was not independent and further does not support a conclusion that he corrupted the independence of any other candidate. The evidence that Cr La Castra supported a candidate who ran against a trust funded candidate (Cr Betts) also mitigates generally against any suggestion that he was involved in the management of a group of candidates.

## **Fundraising Dinner**

### ***An alleged attempt to evade reporting requirements***

8. The suggestion that Cr La Castra attempted to avoid his reporting abilities (p.70) was never put to him in examination by counsel assisting. This is despite counsel assisting examining on the subject of the dinner at some length (T2176-T2180). Nor was it ever suggested that the notional valuation made by Cr La Castra was incorrect. Neither of these issues is even raised tangentially.
9. Counsel assisting did not call any witness or produce any document in evidence to contradict Cr La Castra's notional valuation. In respect of such a failure, Windeyer J quoted with approval from Wigmore on Evidence (3<sup>rd</sup> ed) as follows,

*'The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party.'*<sup>1</sup>

10. The Commission is entitled to feel some surprise that counsel assisting would make a serious allegation of this nature in submissions without calling any evidence in support of it and without directly cross-examining the witness on the matter. The suggestion of an attempt to avoid reporting responsibilities is grossly unfair and rejected.

### ***Reliance on the Local Government Handbook***

11. Cr La Castra consulted a handbook entitled '*Disclosure of Election Gifts Guidelines for candidates and councillors for local government elections*', published by the Queensland Department of Local Government and Planning when determining whether or not to declare funds raised at his fundraising dinner (T2165;T2196-T2197). Relevantly the handbook states,

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<sup>1</sup> *Jones v Dunkel* [1959] HCA 8 at para 15 of the decision of Windeyer J

***'Other items that do not need to be disclosed***

*The following items are not required to be reported in the return*

- *Proceeds of raffles, dinners and other similar fundraising activities conducted by a candidate or a candidates campaign committee;*
12. Only the most Orwellian reading of this section could cause a candidate to believe that they were required to disclose the proceeds of a fundraising dinner. If candidates are unable to treat the disclosure advice given by the Department of Local Government as being authoritative and are instead required to obtain their own legal advice, then a significant strain will be placed on local democracy as the cost of doing so will doubtless discourage many potential candidates.
13. The Commission is urged to recommend a change to legislation to ensure that where a candidate relies in good faith on an official government publication for the purposes of determining what must be declared, that they will not commit an offence because of a disparity between the official publication and an Act.

**Sunland Rates Discount**

***Failure to prove corruption***

14. The question as to whether or not Sunland did in fact fail to pay the rates notice in question because of a matter beyond its control is, in Cr La Castra's submission, irrelevant. The relevant issue for this Inquiry is whether or not councillors voting in favour of the discount did so corruptly or in a way that could legitimately be perceived as being corrupt.
15. Cr La Castra's reasons for voting in favour of the discount are given at T.2172. Counsel assisting does not submit that any evidence suggests that those reasons were other than genuine (p.83). Cr La Castra was not aware of the donation by Sunland to the Trust at the time of voting for the rates discount (T2171). Counsel assisting is unable to point to any evidence to suggest that Cr La Castra received any actual benefit from Sunland as a result of his vote in this matter.
16. Given the reasons stated by Cr La Castra for his vote on this matter and his lack of knowledge about Sunland's donations to the Trust, it is submitted that his behaviour can in no way be construed as being corrupt and that no reasonable member of the public could have any other perception.

***Reliance on council officers***

17. At p.83 of his submissions, when dealing with the Sunland Rates Discount matter, Counsel assisting states,

*'Further, they [councillors voting in favour of the discount] acted against the council officer's recommendation.'*

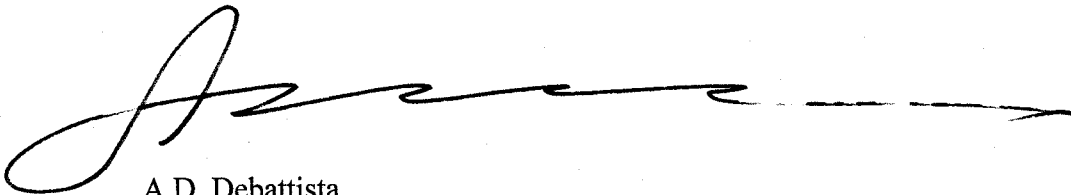
18. This statement, apparently intended to imply some wrongdoing on the part of certain councillors, reflects a fundamental misunderstanding of the role of democratically elected representatives of the city. The implication that councillors must confine themselves to merely agreeing with recommendations by council officers is a remarkable one that would reduce councils to no more than a rubber stamp for bureaucracy. This is plainly not the intent of the *Local Government Act*.
19. There will inevitably be occasions when elected representatives will desire not to follow the recommendations of officials. Any suggestion that this is in some way symptomatic of corruption or is in anyway improper is rejected.
20. Cr La Castra submits that the CMC should strongly reject the imputation of counsel assisting in this regard.

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### Recommendations

The ultimate submissions of Cr La Castra are that the Commission,

1. Recognise that Cr La Castra did not compromise the independence of any candidate;
2. Reject any notion that Cr La Castra deliberately understated the profit from his fundraising dinner in an effort to evade his reporting responsibilities;
3. Not recommend Cr La Castra to any prosecuting authority in respect of his fundraising dinner;
4. Recommend changes to the *Local Government Act* to ensure that candidates relying in good faith on government advice as to disclosure do not commit an offence; and
5. Strongly reject the notion that there is anything inappropriate with elected representatives not following the recommendations of officials and further condemn that notion as antipathetic to effective local democracy.



A.D. Debattista  
Chambers - Friday, 3 February 2006