

Friday 3<sup>rd</sup> February 2006

OP GRAND

Mr. Cameron Stewart  
Crime & Misconduct Commission  
Solicitor

EXHIBIT No 346  
*[Signature]* CLERK

Via Facsimile: 33606059

Dear Commission

SUBMISSIONS ON BEHALF OF BRIAN PHILIP ROWE

Reference is made to the document of Counsel assisting the Commission, Mr. Mullholland QC undated but served upon me at 11.30pm on the 25<sup>th</sup> January 2006.

Generally

Mr. Rowe provided frank disclosure to the Commission and his evidence was forthright.

The enquiry has revealed a large degree of confusion amongst candidates, incumbent members of the council and members of the legal and professional community at large.

The Gold Coast City is a large electorate of which party politicized politics is not an undercurrent and whilst there are some small interest groups such as the "greens" there is no collaborative community interest group that runs, supports or manages candidates at local council elections.

It is evident from the hearing transcripts that each of the candidates ran very independent candidates, were not known to each other than by two meetings to discuss "ideas" and certainly did not support each other or profess to support each other. Indeed Pforr says that he did not think that Rowe was the right candidate for local council and when asked did not promote, endorse or recommend him to voters.

Consistent in the evidence of candidates was there existence of no expectation from any party and the lack of knowledge of the actual benefactors of the "trust fund" and the expectation that the trustees of the fund, in this case Hickey Lawyers, to provide details of the fund's benefactors.

Whilst the Chief Executive Officer has the power to enquire as to further particulars of a return, it is the case that no further particulars were requested, sought or otherwise. No complaint was lodged with the Chief Executive Officer enabling a further possibility of the CEO requesting further details.

Group of Candidates

Counsel assisting the commission has suggested that there was a "group of candidates" as defined by the Act. It is submitted that the definition provided by s.427 does not help define what a "group" actually means.

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Consistently through the hearing the idea of a "group" was refuted. It is submitted that a group would have a larger degree of "commonality" through out its members such as support for each other (Pforr actually did not support Rowe) and quite possibly a common standing on specific policy and issues for the council.

Each candidate, ran a very individual campaign. Rowe in fact ran a campaign that had a very individual theme, focus and message (jigsaw theme). This was not done in unison with any other candidate, did not require another candidate to be aware of the theme nor approval and was run without reference to any other candidate.

It would be difficult to conclude that Rowe was a member of a "group" other than a member of the challenging candidates.

If counsel submissions as to the intent of s.427A and s.427 are to be accepted then the intention of the legislation is not reflected by its wording. If the legislature intended that a "group" be persons whom might receive collective actual support from members of the community, but still remaining their interdependence, then the legislation would be amended to reflect this wider meaning.

A "group" would appear to mean a collective band of ideas, ideology and policy. The simply resolve by a number of persons, with independent campaigns and ideas to unseat an unpopular council is in a real sense just that, not a collective and collaborating group.

Counsel has based many of his recommendations on an assumption that there was a "group of candidates", notwithstanding that the candidates have each referred to their independence of each other and the fact that many of them had only met them at the meetings of Quadrant and outside those meetings had no contact, or reason to be in contact with the other candidates.

#### Rowe, Power, Pforr and Fish Meeting

The conclusions adopted by counsel are difficult to comment upon by Rowe. Rowe has given frank testimony as to his personal relationship with Fish. Indeed Fish is declared as a benefactor of Rowe's campaign in specific terms.

Rowe is unable to comment as to the state of mind of those that happened to attend the meeting seemingly arranged by Hickey, save that his intention of attending the meeting and the result of that meeting are clearly declared in his return.

#### Common Sense Trust

The evidence before the Commission is that all candidates were aware of a "trust fund" but the details of the benefactors of that fund were not available.

It is interesting to point out, and a degree of weight must be had by the commission that the Chief Executive Officer did not query the returns, noting the "trust fund" as he is entitled to so do by operation of s.435 of the Act.

Rowe's evidence is that he was aware of a group of "developers" prepared to donate monies for use amongst various candidates. Whilst the individual identities of the various developers were not available, the fact that they were members of the development community generally on the Gold Coast were well publicized by the local media pre and post the election.

It would be difficult for each candidate to specifically name the benefactor individually that benefited the campaign. Candidates were entitled to assume that third party returns, such as the "Common Sense Trust" would provide the benefactors of the fund and their details generally.

It is submitted that candidates whom disclosed the trust as a donor and the contact details for the trust. At page 44 of counsel's submissions, counsel notes that the issue is in fact difficult to define and make recommendations as to the distinguishing nature of client and benefactor. Counsel notes that the details of the benefactors was not made available and there is some confusion.

By declaring the receipt of funds from the "Common Sense Trust", such trust being operated by Hickey Lawyers, it is submitted that given the confusion, Rowe has made a proper declaration. In his evidence he explains why reference was made to "Common Sense Trust" and his knowledge that the trust was a collection of monies from the development community.

Rowe states in his evidence that no developer or benefactor to that "Common Sense Trust" called upon him (save the direct conversation with Fish) to say that they were funding his campaign.

#### Statements To The Media

A common theme throughout the hearing was the style of the Gold Coast media. It is submitted that statements made to the media and their quotation should be disregarded. Accurate records of the interview are not available and it is common ground that one "quote" can be taken out of context and that media statements and questions not published in full context of the interview can be manipulated and misinterpreted.

#### Counsel's Recommendations As To Rowe

It is not disputed that Rowe complied with s.427 of the Act by providing within the required time limits the relevant declaration as is required by the operation of that section.

Counsel recommends that the fact that Rowe failed to declare the trustees of the trust ought be referred to an appropriate authority.

Counsel acknowledges that the "Common Sense Trust", "Lionel Barden Trust" and/or "Power/Robbins Trust" was not recorded by a deed, and that essentially its name became a descriptive noun for the monies held in Tony Hickey's Trust Account and paid at the direction of possibly Power and/or Robbins and/or persons unknown.

The relevant test of the section for prosecution requires that Rowe (s.436) requires a deliberate intention to knowingly give false information.

In evidence Rowe deposed to that fact that his knowledge was that monies were held by Hickey Lawyers, in its trust account and were distributed by a means not known to him. He further deposed to the fact that he was not expecting nor advised of any obligation, condition or rider to the provision of these monies to his campaign.

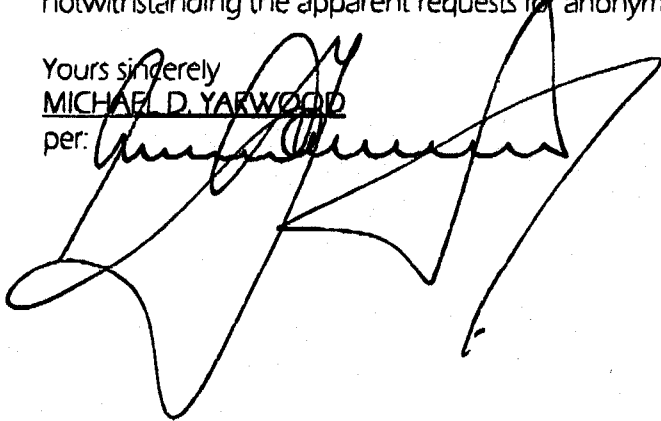
To recommend the prosecution of candidates for what is essentially interpretive technical defects with the legislation is not good governance, nor does it serve to further the interests of the community at large.

Rather this enquiry should recommend to the Minister for Local Government the need to amend the legislation to properly define "groups" and to put upon solicitors and third parties an obligation to make full disclosure as to monies they hold notwithstanding the apparent requests for anonymity.

Yours sincerely

MICHAEL D. YARWOOD

per:



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