



**Crime and Corruption
Commission**

QUEENSLAND

CRIME AND CORRUPTION COMMISSION

MAKING ALLEGATIONS OF CORRUPT CONDUCT PUBLIC: IS IT IN THE PUBLIC INTEREST?

TRANSCRIPT OF PUBLIC FORUM

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Panel members:

Mr Alan MacSporran QC
Mr Marshall Irwin
Mr Richard Bingham
Dr Rebecca Denning

CCC Chairperson and Panel Chair
CCC Ordinary Commissioner
Queensland Integrity Commissioner
CCC Director, Policy and Research

Speaker:

Mr Kevin Lindeberg

Mr MacSporran QC Mr LINDEBERG. Could I ask you just for the record to give us your full name?

Mr Lindeberg Yes. My name is Kevin LINDEBERG.

Mr MacSporran QC Thank you.

Mr Lindeberg I live at Capalaba. Mr Chairman, can I just check what time do I have to talk?

Mr MacSporran QC We were going to – we’ve allowed 20 minutes for each speaker and it was to finish at 1:20, but you’re starting a little later. So I think 1:30.

Mr Lindeberg Yeah. I just wanted to know as to whether I’ve got to gallop or trot or whatever. Mr Chairman, thank you for the invitation. I speak here today in the public interest and in good faith. I’d like to start off by making an opening statement, if I may, and I wanted to start off by giving the personal insight into what motivates me in life because it is relevant to my submission and a few other things I want to say, being if I may use the term, being a whistleblower and the user of this body. So it is very important to all would-be whistleblowers and to the community at large that they understand what motivates me as a whistleblower. Is this too close?

Technical Support Maybe just move it a little bit away.

Mr MacSporran QC Just a fraction, I think, yes.

Mr Lindeberg Sorry.

Mr MacSporran QC That’s all right. It’s a difficult sort of balance to get right.

Mr Lindeberg I have a loud voice but I don’t know-

Technical Support Maybe just a little bit closer. Sorry.

Mr Lindeberg It’s like Goldilocks. I was raised in Maryborough by ordinary working-class loving parents. As children my siblings and I weren’t materially advantaged starting off life. But we were very advantaged by our parents’ love and values instilled in us. We were taught to be honest. We were taught to never bully or hurt others, and to always stand up to bullies, no matter their size, because

deep down most are cowards who take advantage of their positions in power. We were taught not to give up. We were taught to respect the law and those who upheld it.

I've tried throughout my life, to the best of my ability, to live up to those values but in doing so I don't consider myself for a second to be a saint or superior to others. In fact, I think I'm pretty normal. I do my best, hoping for the best in and from others. But when it comes to government I expect honesty and impartiality in dealing with its signed undertakings, especially when it concerns the CCC, the so-called keeper and enforcer of ethical conduct on all government officials. What the CJC says and does counts and what it says it will do it should do.

Well, after so many centuries later from my youth, or so it seems, after becoming a public sector trade union organiser, so that I could help others in industrial trouble facing the might of government, I walked in the corridors of power in Queensland in the '80s. In doing my job, I came across a very serious abuse of power when I got caught up in the Queensland Government deliberately destroying evidence, which is now commonly known as the Heiner Affair.

I first came to this organisation with this disclosure in 1990. After all that's happened I look back now and I realise when I walked into the CJC's front doors on Coronation Drive, I was really a lamb walking to my slaughter. I'd brought with my allegation my trust. In return I received their betrayal of public trust time after time, and regrettably, on the evidence before you in my submission, which you have redacted, along with the approval of the PCCC, I suggest it's still happening today. The only thing which keeps this matter truly alive or which has, is the media, in particular courageous journalists like Bruce GRUNDY. When others were too afraid to act he wasn't and now the Brisbane Times appears to have taken up this task.

Mr Chairman, this consultation paper about whether making allegations lodged with the CJC public a crime stands and falls on trust. Stands and falls on trust. Complete trust in this organisation to always act honestly, ethically and impartially as the law requires. Sadly, it must fall, because the CCC simply cannot be completely trusted. To me this proposal is an affront to our democracy and must be completely rejected.

Democracies are unwieldy because of openness. Openness and the right to know keeps everyone on their toes. On the other hand, secrecy by force of law makes matters of corruption in Government breed insecurity, fear and a potential police state.

Thomas JEFFERSON is attributed to giving us this warning in regard to the fragility of our democracies - "The two enemies of people are criminals and government, so let us tie the second down with the chains of the constitution so the second will not become a legalised version of the first." Mr Chairman, nothing in the workings of whole of government will more reliably hold everything together to instil public confidence in its functions and outcome, eradicate corruption and to better serve the public interest in an honest, transparent and ethical manner than for those who public office, either by election or appointment, be seen by the community at large to treat their respective public positions as a sacred trust, and when it is breached, pay a price.

In short, trust is everything. Without trust we have nothing. And when we have nothing to hold onto we turn inward looking and that leads to a complete breakdown in society. Those are the stakes at issue here. The public trust principle applying to public officials has been said to be the institutions of government and officials and agencies of government exist for the public, to serve the interest of the public. Lord BINGHAM, of the House of Lords in a recent judgment said this, "It follows from the proposition that public powers are conferred as if upon trust that those who exercise powers in a manner inconsistent with the public purpose for which the powers are conferred betray that trust and so misconduct themselves." This is an old and very important principle.

Now, in Queensland we have the Public Sector Ethics Act. It sets out ethical principles declared to be fundamental to good government. They are: integrity and impartiality, promoting the public good, commitment to the system of government, accountability and transparency. The CCC is bound by law to always act honestly. In essence, that means it must be ethical and trustworthy. In this paper, public office and public trust to the Seventh Annual Thomas Moore lecture on the 22nd of June 2012 in Canberra, Chief Justice Robert FRENCH said, "An official empowered by a law to make a decision effecting the rights, privileges and liabilities

of someone else will meet the requirements of the law if he or she makes a decision lawfully in accordance with the laws and for the purpose which the law prescribes. This, of course, excludes decisions making informed – being informed by dishonesty or conflicts of interest.”

Now, I want to say this. I want you to look at me. I'm not a statistic. I'm a man. I'm a person. This is not an academic exercise for whistleblowers. We put our lives on the line. Now, it may be that somebody says a little bit of shredding never hurt anyone or governments should be allowed to act on advice even when it's erroneous. But when a Baptist Minister shredded documents in less clear circumstances, he had the book thrown at him, was charged and found guilty by the Queensland Government and Justice Glen WILLIAMS said in the case that shredding is such a serious crime that the person ought to do time in jail to serve as a deterrent.

But when I went to the CCC or to the CJC in 1990 with clear evidence of shredding of documents, you turned around and said it was perfectly lawful to destroy documents providing the court proceedings hadn't commenced. Now that's been proved to be totally incorrect. You've never reputed it. Never. And yet, in this issues paper you talk about the matter of making things public, you shouldn't do it for fear that evidence may be destroyed. Well you can't have it both ways because previously you said it's perfectly okay to destroy anything providing the judicial proceedings hadn't commenced.

Now, just to conclude, because I want to open myself up to questions, I believe that we're in a crisis in Queensland. This is not about protecting reputations of officeholders, but about protecting the integrity of the office itself, because it is all about the public having confidence in government, in our structure. And so the notion of talking about reputations, no serious person would enter into things, in my view, to damage reputations. But it is important that one has confidence that this person will apply the law equally when the facts are there.

So, Mr Chairman, I know that it is now public that what occurred to me last year when I had a written undertaking from this Commission that it would appoint an interstate senior Judge to carry out a preliminary review and then

it was secretly switched to a Queensland Judge, [REDACTED]

And it seems according to this Commission it didn't matter, you just changed your mind without telling me.

[REDACTED]. And my message is to you and to the community, because of the importance of trust, that you should not venture further with this until this matter has resolved, because the premise, the premise of all the discussion here on the people who are saying that you should be allowed to get along and do your investigations in private, the pre-condition is that you can be trusted. And sadly you can't. That trust must be restored and it must be restored publicly. And the only way to do that is in evidence which is before this Commission is for Parliament to reintroduce Mrs CUNNINGHAM's bill that she tabled in Parliament on the 27th of November 2014. That's all I want to say at the moment.

Mr MacSporran QC

Thank you, Mr LINDEBERG. Do I take it, just to clarify, I'm assuming that the thrust of your submission is that if the agencies such as the CCC was an agency that could be trusted in the sense you speak of, and I accept that that trust is necessary, that it has to be an agency that has integrity, transparency, accountability and so forth, but if such an agency existed – I know you say it doesn't at the moment and we accept what you say about that – but if such an agency existed do I understand that you would support the proposition that that agency, with that trust and public confidence, should be given the opportunity to assess and if necessary investigate an allegation of corruption before it became public? Is that-?

Mr Lindeberg

-No.

Mr MacSporran QC

You don't agree with that either?

Mr Lindeberg

Because I believe that you must never get total power. I mean, the point is that, as you know, ethics trust goes right to the very core of the rule of law. And if I come to this body and go away with a signed letter that something is going to happen, and then you secretly betray my trust, what am I supposed to do? Say, oh, that's fair do.

Mr MacSporran QC

I understand your point. I just need to clarify that one point for my own-

Mr Lindeberg -Might I just say, I mean, given the evolving nature of our society and the prevalence of terrorism, and I'm not sure whether that actually falls into your brief, but God knows, but I mean, I wouldn't suggest that criminality of terrorism, and dare I even suggest drugs, that that should be allowed open slather. I mean, one hopes that we're all patriots in the proper sense of the word. But I'm talking about corruption in government. The administration of government.

Mr MacSporran QC Yes.

Mr Lindeberg And unless you've got that, where do you go?

Mr MacSporran QC No. Thank you. I understand where your point lies now.

Mr Irwin And so do I. You've clarified the point for me very clearly, Mr LINDEBERG. Thank you.

Mr Bingham Mr LINDEBERG, thanks very much. I noticed you quoted Lord BINGHAM, he's no relation of mine, although other players in the saga that you've referred to certainly are. And my father was the inaugural Chair, as you probably know, of the CJC. I don't have any-

Mr Lindeberg -And might I interrupt and just say that he's not necessarily a person of interest in my view, save to say, and it's on the record, that the people who were selected to review this matter back in '93 were given his tick of approval. But beyond that the decision which came out was not made when he was there. The decision which is totally, totally and utterly discredited.

Mr Bingham Sure, and I appreciate that, and thank you for that comment. I simply wanted to say that from my perspective, my role in relation to all of this is limited to this panel and it's the issue that's before this panel that's concerning me at the present time. Against that background, what I understood you to say was that there are no circumstances in which it would be appropriate for the publication of an allegation to the CCC to be prohibited, is that what-

Mr Lindeberg -Well, no. I think within the Act already you have the capacity, as Dr FERNANDEZ said yesterday, to punish people who are doing frivolous and vexatious complaints, and I think he said that to his knowledge you hadn't actioned that against anybody. I mean, I come to

you as a serious person and I know the ramifications, if I'm right, of my matter are very serious. I firmly believe in the right of the people to know. The right of the people to know. I know there are our problems with Nigel talking about mischievous journalists, etcetera, but I can only talk for myself. I don't go to mischievous journalists. I mean, notwithstanding that is very difficult even to go to the mainstream media.

For instance, you know, one journalist came out and said, "Well all they did was shred a tray load of documents." Well with great respect, if you were worried about volume, what a nonsense. What a nonsense thing. And the media take a position in this matter because it's highly political. Highly political. And I've not addressed – it wasn't my fault that it was the Cabinet that shredded the documents, I just happened to be there.

Mr Bingham

And if I can ask perhaps again to the question that's before the Panel. And what you've said, you're not going to get any disagreement from me about the benefits of transparency and the context of the integrity system. I agree entirely with what you've said about that. But there are competing interests and this is about trying to find some way of striking a balance about what is the public interest in a particular situation.

Mr Lindeberg

Look, I assure you I'm not going to name names or develop things or anything like that. One of the reasons why it was agreed that an interstate retired Supreme Court Judge should look at my matter was because it involved certain Judges. Now I greatly value the independence of the judiciary and all that type of thing. I stand for all these things. I'm not – I'm not trying to pull it down. I'm trying to make the system work for the public good. But Section 58 talks about informing the Chief Justice about these matters and so forth. Well what do you do if you reach the point where there has been an assessment made – there was an initial assessment made by this body that the matters which I brought before it warranted the appointment of an interstate retired Judge, at considerable public expense I would imagine.

At what point does it go that the Judges under review should have been informed? Should they still have continued to sit? You know, they're issues that need to be worked out because you have the example of Mr Justice VASTA in the Fitzgerald Inquiry. When

allegations came out against him he wasn't allowed to sit. I mean, these are all the things which are wrapped up in this whole thing and I haven't, you know, named names as such. I astutely stayed away from that. But they're the problems that you're wrestling with. And I think the people have a right to know that when they appear before Judges they are absolutely squeaky clean because you know that you don't have to – just because you're not a criminal doesn't mean to say you can sit on the Bench. It comes down to a matter of whether you're fit and proper, at the end of the day. You can be done for misbehaviour. And it's proper. It's proper. So, you know, we've got to bring the citizenry along with us and if you want to go with secrecy I think you're going counter to our whole ethos of the democracy.

Mr Bingham

And, as I said, Mr LINDEBERG, you don't get any disagreement from me about the benefits of transparency in the context of an integrity system. But I do still come back to the question as to whether or not there are circumstances in which you think it might be appropriate for a trusted body not to disclose the fact of an allegation.

Mr Lindeberg

Well I think I've answered that. I believe when it comes to terrorism and drug – but not when it comes to public administration. Somebody is sitting up there making decisions about your liberty or what have you, you want to be sure that that person who is passing those judgments doesn't have anything hanging over their head.

Mr Bingham

So some of the factors that we've heard about earlier in our panel's hearings have been things like reputational damage or prejudice to investigations, do you think those are legitimate considerations for a trusted integrity agency to take into account?

Mr Lindeberg

Look, it's a very vexed question, but I said to you before, this is about protecting the integrity of the post, not the person. Now, I know it's difficult. I know it's difficult. But we must maintain public confidence in our system of government. And it may be just for a short – hopefully the person will be vindicated. But what's a whistleblower do? I mean, in my case, when I went to the CJC and with others, they said, "Well, what do you want me to do, charge the entire Cabinet?" Well, I said, "If the law requires it, then yes." Because the counter to that is that Cabinet is above the law. It's not. No one, no one is

above the law. That's what my parents taught me and that's what the law is.

Mr Irwin

Can I just ask you this as a follow-up, Mr LINDEBERG, to give you an opportunity to comment on this point? Isn't there a risk, if there is public disclosure of allegations made to the CCC in the public sector context that it may disclose the whistleblower, at least impliedly?

Mr Lindeberg

Well, yes, sir. I think that's true. But, you know, I suppose I'm a well-beaten whistleblower, but still standing. I'm not sure that you can know a whistleblower, when they blow the whistle, can feel confident that their identity won't ultimately be known. But they must be protected. They must be protected. I mean, I was turned on by this organisation. I was called obsessed, untrustworthy, in public before the Senate. What? I mean, so whistleblowers, as Mr McMAHON said the other day, are important and I think there is a valid argument for the establishment of a whistleblower protection authority just to protect the whistleblowers.

But you see, in my view, I think we've reached such a crisis in public governance in Queensland because of the Heiner Affair, that the only way forward is to reintroduce Mrs CUNNINGHAM's bill as a matter of urgency. And out of that, I believe, will come a better system than what we've apparently got, because despite what Mr POTTS said yesterday, that from his experience, I'm telling you it's not working.

Mr Irwin

All right, thank you.

Mr Bingham

No, nothing else, thank you.

Mr MacSporran QC

Thank you, Mr LINDEBERG, thanks very much for your submissions and taking the time to come and speak to us. So thank you very much.

Mr Irwin

Thank you.

END OF FORUM