

Att: Jodie, please call me on 0414 180 119 to confirm

OP GRAND

This submission is in response to the submission of Mr Robert M Counsel Assisting the Crime and Misconduct Commission Inquir Coast City Council, which was received by me on 25 January 20

EXHIBIT No. 340
[Signature] CLERK

It is Mr Mulholland's submission that consideration should be gi proceedings being commenced against me for allegedly providing an electoral return which contained particulars that were, to my knowledge, false or misleading.

It is my submission that his position is the result of an alternative interpretation of the facts as presented as evidence in the Inquiry.

In relation to my return, the evidence shows that what I did know was as follows:

- That the funds would be provided through a Trust Fund, so that donations would be kept at arms length to minimize any potential for a conflict of interest, which was the same way that state candidates organised their funding.
- That a cross section of businesses would be approached for funding.
- That I was provided with two cheques from Hickey Lawyers Trust Account.
- That the account was held with The Commonwealth Bank in the name of Hickey Lawyers.
- That Sue Robbins informed me that the people who controlled the money wanted to give it to another candidate instead of me.
- That the Trust Fund became commonly known in the media as The Lionel Barden Trust Fund from 26 March 2004.

The basis to Mr Mulhollands submission is that my return form relevantly listed two donations from The Lionel Barden Trust Fund, with the first being on 29 January 2004 for \$7000.00 and the second on 20 February 2004 for \$5000.00.

There seems to be two points that he relies upon that relate to these cheques in his submission :

1. that the two amounts listed were provided to me under a cover letter from Hickey Lawyers to Mrs Susan Betts, my wife and campaign manager, advising that the cheques were enclosed "as directed by Councillor Robbins and Councillor Power".
2. That Lionel Barden put his name to the Trust Account on 03 March 2004.

.....

WERE THE PARTICULARS, TO MY KNOWLEDGE, FALSE?

It appears that Mr Mulholland is suggesting that, due to the covering letters that came with the cheques, I should have known that Councillors Robbins and Power were the trustees of the Hickey Lawyers Trust Account. Therefore, leading to the conclusion that, by showing "The Lionel Barden Trust Fund" in the Relevant Details section of my return, rather than Robbins and Power, I knowingly provided false information.

My response to that suggestion is that the letters were addressed to Susan Betts as my campaign manager and although I probably banked the cheques, or at least saw them, I cannot recall seeing the letters. However, even if I had seen the letters, it still would not have made me think that the Councillors were the trustees. My belief was that they were acting as "middle men" between those who controlled the dispersion of the funds and the trustee of the account, Hickey Lawyers. *(To illustrate this point, my own personal situation is that I have a family trust account, and being a trustee of that account I am required to sign the cheques to "authorize" any payments from the account).* The evidence is that, although Sue Robbins and David Power may have been involved in the decision making process to allocate funds to candidates, they did not sign the cheques. Hickey Lawyers signed the cheques which validated them, or in effect, legally "authorized" the funds to be deducted from their account upon presentation. In my mind, the Councillors were go-betweens who did the organizing and liaising between parties. No evidence was presented to suggest that I thought anything else.

I submit that the following evidence shows that I was not of the opinion that the Councillors controlled the funds:

1. That in reference to questioning by Mr Mulholland over who I believed controlled the Trust Fund I informed him of a relevant discussion I had with Sue Robbins about another candidates announcement to run for Council (T483 also reproduced in Mr Mulholland's submission on page 47):

MR MULHOLLAND: I'm asking you a question directed at who was controlling this Trust Fund? - - Yeah, okay, sorry, that's what I was getting at. So we were talking about Max Duncan running and she said to me something along the lines of "the people who are controlling the money, we may have a problem with me getting money because the people who are controlling the money want to give it to Max Duncan".

Who's the "me", you? - - Yeah me. Because I was assuming I was getting this money from the Trust Fund.

So who's saying this to you? - - This is Sue. She's telling me that when Max Duncan put his hand up that the people who were controlling the money wanted to give it to him. So she had to fight to get the money for me.

So the people controlling the money may have had a problem? - - With me, because they wanted Max Duncan.

Right. Well who were the people controlling.....? - - I don't know.

Well didn't you want to know who the people were who were controlling the money? - - I've got(interruption by Mr Webb)

MR MULHOLLAND: *The question is, what did you believe as to who controlled the fund? - - I didn't know who controlled the fund....*

My evidence was quite clear. I was under the clear impression that Sue Robbins was being told by those who were making the decisions about who got the funds that someone else should get it instead of me. She then had to argue my case with those people. This is not the kind of thing that I would expect to hear from someone who actually controlled the funds.

2. That under questioning by Mr Mulholland about my final return I gave evidence about my knowledge of the source of the funds: (T501 and reproduced in Mr Mulholland's submission on page 47)

MR MULHOLLAND: *I just wanted to mention that. Yes, now, the point that you are....? - - So are you saying to me that my final return only had "The Lionel Barden Trust Fund"*

That's right, as a donor? - - Even for the two cheques?

Yes? - - Okay, well, I must have decided that since that was the name of the Trust Fund, I had to put that in.

Well, for some reason you have put Hickey Lawyers in the interim return? - -

Yes, because that's all I knew.

That's all you knew? - - Yes.

But you didn't think that you had some obligation to investigate where it came from? After all, you didn't think that it was coming from Hickey Lawyers.

You must have known there was a source? - - Well, I - I didn't know who the donors were so my understanding was that it was going through Hickey Lawyers so that was my obligation to supply the name of Hickey Lawyers.

3. That the cheques that I received were titled "Hickey Lawyers" and were also marked "Hickey Lawyers TRUST ACCOUNT". Hickey Lawyers, not Robbins and Power signed the cheques. (discovered documents from Hickey Lawyers by CMC - item 32 & 44)

.....

It is relevant to note at this point that in Exhibit 50, Counsel representing the L.G.A.Q. submitted that (page 2):

7. *Where a gift is made by a trustee out of trust funds, the "relevant details" are defined in section 414 as follows:-*

"for a gift purportedly made out of a trust fund..... -

- (i) the names and residential address or business addresses of the trustees of the fund....; and
- (ii) the title or other description of the trust fund.... "

8. *The Trust Account of a firm of solicitors is an account established under the Trust Accounts Act 1973. No one other than partners of the relevant firm are capable of being a "trustee" under that Act of funds held in a trust account established under that Act.*

Therefore, based on the information that I had at my disposal I believed the facts were that:

- a. the gift was purportedly made out of a trust fund (*purport: appear to be or do – Oxford dictionary*)
- b. the trustees of the fund were Hickey Lawyers
- c. the title or other description of the trust fund was "The Lionel Barden Trust Fund"

The title "The Lionel Barden Trust Fund" first appeared in *The Gold Coast Bulletin* in an article headed "How a plot took shape" on 26 March 2004 (Exhibit 3, item 31) and appeared numerous times in *The Bulletin* and *The Sun* and on a regular basis until the present day. Initially, I chose to put Hickey Lawyers as the donor on my interim return, but when I received the details of my campaign spending from Quadrant in June 2004 it confirmed that the donor was the Lionel Barden Trust Fund, so I put that on my final return. I was unaware of the date that Lionel Barden put his name to the fund and there is no evidence to suggest that I was aware of this.

I submit that there is no evidence that would suggest that I knew for certain exactly who controlled the Fund and therefore cannot be accused of knowingly providing false information. I maintain that at all times I acted in good faith to meet my obligations under the Act. Although I didn't meet the requirements of the guidelines, I did meet my legal obligations as per the Act.

.....

WERE THE PARTICULARS, TO MY KNOWLEDGE, MISLEADING?

Under questioning by Mr Mulholland about the possibility of an interested person being able to link my return to the original donors I responded that (T533):

".... my responsibility is not the third party return, it's my return." ... "the link is there. I put down The Lionel Barden Trust Fund and the Lionel Barden Trust Fund will put down the donors who are in it."

It is quite clear that to describe the details of my return as "misleading" is nonsense. Any interested person can access my election return and see that I received funds from The Lionel Barden Trust Fund. In the third party returns they will find the Lionel Barden return with all the names of the original donors on it. The link is complete and it has met the disclosure intent of the Act.

It is clear that public disclosure was made as the media were able to connect my return with my donors.

.....

SUMMARY

It is my submission that no further action is warranted in regard to the completion of my electoral return for the following reasons:

1. That I acted in good faith to provide accurate and detailed information in my return.
2. That, to my knowledge, I did not provide false information on my return.
3. That, to my knowledge, I did not provide misleading information on my return
4. That my return was not misleading, in that it did provide a direct link to my donors via the third party return.
5. That the disclosure provisions of the Act were met.

Signed  Date 