

OP GRAND

**OPERATION GRAND  
RESPONSE TO SUBMISSION BY COUNSEL ASSIS  
ON BEHALF OF CHRISTOPHER MORGAN AND TON**

EXHIBIT No. 343  
*[Signature]* CLERK

1. The submission by Mr Mulholland et al as Counsel Assisting the Inquiry ("the CA Submission") makes a number of references to Messrs Tony Scott and Chris Morgan or their advertising agency "Quadrant". Some of those matters, it is submitted, bear some further examination by the Chair before findings are made.
2. Quadrant is a commercial advertising agency. It has no particular interest in the outcome of the inquiry. Its involvement in the Gold Coast elections of 2004 was purely commercial. However, Messrs Scott and Morgan hold concerns, given the public nature of this inquiry, that if any specific criticism is to be made of Quadrant's work in the election process under review that any such intended findings be made clear to avail them of a proper opportunity to respond: *Ainsworth v CJC* (1992) 175 CLR 564.
3. There are some matters that Quadrant wishes to address at this stage.

**Secrecy**

4. The CA Submission has sought to make some moment about the notion that the work of Quadrant, or indeed even the fact of its involvement, was undertaken secretly. This is rejected particularly if it is sought to be inferred that Quadrant was associated with this attempt at alleged secrecy.
5. There are several points to be made. Firstly, the identity of any advertising agency in a political campaign is not usually the subject of great amplification. There was no reason for it to be different at this election. Further, like lawyers, advertising agents are paid to publish the merits of their clients' products and views. Although this professional undertaking might involve advice about these views, it does not necessarily mean – and invariably it would not – that those views are embraced by the agency or its executives. Quadrant has never seen itself, nor does it have a history, as a political player.<sup>1</sup> Whilst it did not seek to proactively publish its involvement, the suggestion that Quadrant's role was undertaken secretly and that this was done to conceal collaboration between councillors is not accepted nor borne out in the evidence.

<sup>1</sup> Accepting that Mr Morgan and Mr Shepherd had a pre-existing friendship and that there had been some personal involvement by Morgan in Shepherd's previous election campaign.

6. Second, in respect of the issue of 'secrecy' generally surrounding the media campaign of the councillors that were assisted by Quadrant, little and insufficient regard has been given to the polemic approach that the local media, in particular the Gold Coast Bulletin ("the Bulletin"), had taken in favour of particular candidates prior to the election campaign. Page 3 of the CA Submission effectively applauds the accuracy of the media. This is an absurd observation. This issue is not within the terms of reference of the Inquiry, nor has the issue been properly tested, and it is at least curious that Counsel Assisting feel the need or consider it appropriate to give such an endorsement.
7. There is evidence available that the editors of the daily Bulletin (and the weekly Gold Coast Sun) effectively exercise a monopoly over print and editorial opinion in respect of local politics on the Gold Coast. The Bulletin was, and is, regarded as having its own political agenda. As such it was not viewed as being impartial. A professional view was reached by Quadrant that it would not be in the interests of its clients to engage with the attendant editorial disadvantage. It was also widely believed that Bulletin personnel were involved in the use and publication of official information secretly supplied by individual councillors and/or officers and in the cultivation of relationships with particular councillors. Thus the Bulletin was at times both the source of news and provider of the competing view in local politics. In the result political aspirants were totally "in the hands" of its editors as to the rules of engagement. They determined the agenda. This "made" the print media on the Gold Coast omnipotent and thus potentially dangerous. It is primarily for this reason that contact with the Bulletin/Sun was avoided by Quadrant during the course of the council elections.
8. The Commission should acknowledge this complex media environment that existed in 2002/2003 in order to contextualize the alleged "secrecy" of some councillors in how they were approaching their individual campaigns. At the very least the Commission should acknowledge that there were reasons which were prevailing and which were legitimate other than that suggested by Counsel Assisting for keeping information from the Bulletin and other local media, if in fact secrecy per se, as distinct from exclusion of the local media, occurred.
9. Counsel assisting has submitted that there was no breach of s 394 of the *Electoral Act*.

10. However, it is then asserted at page 77, apparently echoing what was said in the Tweed Heads inquiry, that "public perceptions sit at the heart of democracy" after challenging the insight of some councillors on issues such as "conflicts of interest" and "material self interest". These issues do not directly affect Quadrant, however the comment and criticism is provocative and seems somewhat misplaced. It directly bears on this issue of secrecy. In any event, these so called "public perceptions" – a concept that must be almost impossible to assess with any accuracy – to be a reliable barometer of anything, must be sourced to a balanced and even handed body of accurate information throughout the more prevalent mediums for information dissemination in the community for this maxim to ring true. The "perceptions of an outsider" are useless unless they are informed perceptions. The Bulletin has an impressive market share in the print medium on the Gold Coast and it would be naive to ignore the agenda of privately operated media outlets like it or to view them as bastions of community minded beacons of democracy. A more sophisticated analysis is necessary before these lofty ideals are sought to be applied to a small municipality such as the Gold Coast and the events under examination.
  
11. Actual independence from self interest is an ideal that eludes many in society, and lawyers are certainly no exception. To put these somewhat pious ideals into the socio-political vernacular concerning the events under examination smacks of hypocrisy and avoids a candid assessment of how first world democracies operate and the manipulative capacity of the media and other commercial interests. One would think that "truth" might enjoy a more prominent place in the institution of democracy than mere perceptions however there is perhaps little use debating the merits of these sorts of "motherhood statements".

#### **Meeting of 16 December 2003 – Exhibit 14**

12. Exhibit 14 is sought to be used in the CA Submission to seek to support various opinions and conclusions.
  
13. Morgan, the author of the document, gave evidence which was not disputed in the following terms:
  - 13.1. He constructed the document by himself prior to the meeting (T836).
  - 13.2. He had not been asked to prepare any such document by any other individual (T836).
  - 13.3. He prepared it to assist him in selling his ability to provide useful advice to prospective 'clients' to those who were deciding upon his involvement (T836).

- 13.4. It was never intended to be an agenda for the meeting nor was it used as such (T836).
- 13.5. Not all of the document was referred to in the meeting nor was it adopted as a document to emerge from the meeting as listing its collective outcomes.
14. His account of this document corresponded with the recollection of others and was not challenged under cross-examination.
15. The further unequivocal evidence is that many of the concepts in the document were rejected out of hand at the meeting e.g. the "joint ticket" concept.
16. It is apparent that too much stock has been placed by Counsel Assisting upon a document which was drafted, created and used by an advertising executive seeking to sell his wares and insight into the brief to secure a commercial contract. There could be little doubt that Morgan's agenda at the time was to 'sell up' his capacity to Power, Robbins and Ray with whom he had no relevant relationship. To seek to use this document or Morgan's conduct at this time, to support overall conclusions as to the motives of various people at these meetings reveals the paucity of evidence that is available on these issues. It demonstrates a high degree of inductive reasoning and should be rejected by the Commission.

#### **Supply of Quadrant invoices and financial records to the Commission**

17. Further evidence of this approach is evident in the CA submission at page 33 where it is observed, for no particular forensically relevant purpose, that: "It must be considered doubtful that the Power/Robbins invoices would ever have come to light if Morgan had not been overseas when the Commission first requested material from Quadrant."
18. This is an unfair and unsupported allegation that should also be rejected. It has the effect of casting an unfair aspersion upon Mr Morgan. Such an irrelevant throwaway line seems to have no other purpose than to seek to malign Mr Morgan. It is quite unsupportable, not put to Mr Morgan despite lengthy cross-examination spanning several days and thus quite unworthy of Counsel Assisting.
19. It is also unfairly asserted that: "Morgan could not explain why the earlier invoices were not included".

20. Morgan offered a satisfactory explanation as to why he had not produced further copies of the invoices already supplied by Tony Scott:

Can you explain to the Commission why that is so?-- I've supplied whatever other material I had in a complete file to the Commission. **I haven't gone back and completely replicated everything we had on file because all that information was already here.** Anything and everything that I had relevant to it, I've included. As to the best of my knowledge, everything that we've produced by way of invoices to you are either in the Commission's hands or have been supplied subsequently. (T939)

21. Moreover, in his covering letter to the CMC of 19 August 2005, Mr Morgan states "All documentation not previously supplied by Tony Scott (CEO of Quadrant) on 19 April 2005 ... is attached in hard copy form".
22. This was in response to a Notice to Discover from the CMC which required Quadrant to give to the CMC: "All documentation not previously given by you to the Crime and Misconduct Commission by letter under the hand of Tony Scott dated 19 April 2005 ....".
23. Much is sought to be made about what is clearly either lack of attention or imprecision in the communications between the Commission's staff and Mr Morgan (c.f. T944 – 945). The aspersion sought to be cast by Counsel Assisting is completely misplaced and ought to be rejected.

#### **Quadrant Invoices**

24. The CA Submission at page 57 has indicated that the matter of misleading invoices from Quadrant, imply charges for work not conducted could be misleading, and will be referred to the Australian Taxation Office. It is not made clear who will be referred.
25. It is asserted at page 55 that "Scott admitted that the invoice was false because it suggested that Quadrant had done consultancy work for Ninaford in the amount of \$10,000.00." This is an inaccurate re statement of the evidence. The evidence was:  
"Mr Scott, you are an experienced commercial person. You know that this invoice to any person other than yourself is false because it suggests that Quadrant had done consultancy work for Ninaford in the amount of \$10,000. Please address yourself to that question. Is that so?-- That was not our intent.  
But that is clearly the result of what you did, isn't it? Isn't it?-- It is?" (T2226)
26. The unequivocal evidence is that these invoices were never published by Quadrant to any third party including any officer of the ATO in support of its own taxation claims. Quadrant has declared all income properly and remitted GST as required by law.

27. The evidence, if there be any, of to whom the invoiced entities published these invoices has not been the subject of close analysis by the writer. However, on any view of the materials, it could not be asserted that Quadrant has breached any provision of the taxation laws of this country. If any referral is to be made by the Commission it could not properly suggest that Quadrant has been at fault. Therefore if the foreshadowed referral is to be made to the ATO this specific undisputable fact should be made clear.



Andrew Boe | [aboelawyers.com.au](mailto:aboelawyers.com.au)  
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6 February 2005