



**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 Bill Potts

President
Queensland Law Society

- Mr MacSporran QC All right. Mr POTTS, last but not least.
- Mr Potts My name is Bill POTTS. I am the President of the Queensland Law Society which represents some 11,000 solicitors in this State.
- Mr MacSporran QC Thank you. Would you like to make an opening statement about the issues?
- Mr Potts It's often said – I think best said by Elizabeth Taylor on the eve of her eighth wedding. She was asked what she was going to do, and her answer was that she knew what to do, she just didn't know how to make it interesting. So following such excellent speakers, and in particular Professor Charles Sampford, who – much of whom, I have to say, stole my ideas, but did so far more eloquently and far more forcefully than I could convey. So to some degree I'll cut down what I'd actually prepared to say.
- The very fact that the Crime and Corruption Commission is holding public hearings such as this, and that so many members of the public and interested persons, members of the media, are here, shows that we have a system that works. I note Professor Fernandez, or Dr Fernandez, gave evidence and talked about was there any evidence for the need for change, and, of course, the Law Society, and I suspect the Crime and Corruption Commission – about evidence-based legislative change. Sometimes that evidence may be difficult to obtain. Sometimes it may be more quantitative than qualitative, or the other way round, but what is being sought, as I understand, by this public hearing is to identify a balance. And Professor SAMPFORD talked very eloquently about a number of balances, and they are, broadly: the need for the public to know, an old statement being that sunlight is the best disinfectant; secondly, the need for this Commission to go about its work effectively, privately, sometimes publicly, and that, of course, is always a question for, I suspect, dispute. Do you get it right all the time? Maybe, maybe not, but nevertheless it's an effective thing.
- Professor Sampford talked about the concept of being an army, and the army is best when it never gets used, so the Crime and Corruption Commission, by its very existence, is seen to be having a public presence, and I fully support this Commission publicising its victories, publicising its involvement, and in particular its

educative role and its research role, which was, in my opinion, shamefully destroyed some years ago. So it builds upon corruption prevention, as you identified, Mr MacSPORRAN, and that is, indeed, an excellent thing.

The Fitzgerald Royal Commission, and I was there, as was yourself, as were many in this room, was a very public lesson for many people of the ways in which corruption had involved itself in our public institutions, in particular the police, the politicisation of that force, the corruption, quite frankly, of the political process. And in a State where effectively we have what has often been referred to as an elected dictatorship, that is whoever holds the majority effectively can do what they want, it is very important that this Commission be seen to be independent. I wish I could join with Professor Sampford by saying that a strong bipartisan appointment process worked. If that were so, we'd have two extra part-time Commissioners, but perhaps that's an argument for another day. The simple reality is that we have a very public Commission which is doing an excellent job.

Now, where, as I understand, the argument about the balancing of the right to know, the proper concern for whistleblowers and people making complaints to be heard, lies is always going to be a question of dispute. Dr Denning talked about sometimes the heightened atmosphere in election campaigns, because there are great stakes. I think it's sometimes been said that academic disputes, and I'm sorry, Professor Sampford, are often said to be the most vicious because the stakes are so small. In reality where people believe themselves best placed to represent the will of their democratic electors the stakes are much higher, and sometimes the temptation to make complaints in a very public way, and clothe those complaints with either the imprimatur or the blanket of the Crime and Corruption Commission's good name is often very tempting. Yes, there are a number of mechanisms, and, no, Mr Irwin, I am not aware of Section 56 of the South Australian legislation.

Mr Irwin

But you'll be reading up on it now, won't you?

Mr Potts

But I'll be reading up on it immediately, I tell you. But the way in which it can be dealt with, quite clearly, is going to be, I suspect, also a balancing exercise. Just taking them serially, and moving entirely away from any form of script, the great temptation during heightened

election campaigns for people to make complaints of significance is an important feature. The point, I think, made by Mr MacSporran was that you're not attempting to stop such complaints being made, but the concern is that the person publicising the complaint, saying, "I've made a complaint to the CCC and they're investigating it," followed closely by Mr MacSporran and the press saying, "we have no comment to make," really does not take away from the short-term gain that the person may see that they're receiving and, in addition, the quite clearly identified problem of the massive destruction of a person's reputation.

Now, the difficulty is in those types of heightened election campaigns, there is all too great a tendency for people to do that, to seek advantage, and then later on when the heat has gone not to follow up with it or whatever. Now, it's another saying, and I suspect I'm quoting my mother this time, but she always used to say that a lie can travel halfway round the world by the time the truth gets its boots on, and the arguments afterwards about defamation, the arguments later about some kind of penalty, cannot and will not undo the real harm that is being done. So without knowing the detail of section 56 or its wording, I believe broad support for a prohibition about the publicising of those complaints has a value.

We live in a State where I suspect I share Professor Sampford's concerns. Whilst lawyers pat themselves on the back and say we are a noble profession and we have obligations to the rule of law and to the courts, we also have an enforceable series of ethics. The Media, Entertainment and Arts Alliance does not have an enforceable ethical framework. It's aspirational more than anything else. It's often unenforceable and is, I suspect, sinned against every single day. We live in a State where just a few months ago in the aftermath of the Court of Appeal decision in the Baden-Clay matter that our Courier-Mail saw fit to have a screaming banner headline saying that "the law is an ass". There is always going to be a balancing of these issues and not one solution, I suspect, that this open hearing is going to come down to with a recommendation which is going to solve all problems, because there are going to be, quite often, things which people will clearly disagree on. There will always be those who will say we should investigate everything. We don't have the resources.

Secondly, some of the complaints are entirely frivolous, but, as has been pointed out, those frivolous complaints taken en masse may point to a greater problem, may lead to other and better investigative directions that the Commission can take, and, consequently, I am very strongly against, firstly, the change that was brought about by a former Government requiring statutory declarations. That had a chilling effect on complaints, and has quite rightly been removed. But secondly it is, in my view, extraordinarily important that we do not criminalise people who make complaints. Sometimes people may make complaints for very, very good reasons, and they may, as it turns out, be deluded or wrong or paranoid, or they may, in all of that, still yet have a significant issue which they are able to identify. So the complaint process must be as open as it can be, but open without the very real prospects of abuse that we see.

Professor Sampford talked about the work that the Commission does, and I've been a practising criminal lawyer in this State for some 35 years and have been appearing before this Commission and all of its predecessors as a professional, so I can say its work is valuable, more often than not, when it is done privately, because in those circumstances where there is a coercive power used, it is, in my view, generally used quite carefully, and this Commission has a very lengthy history of recognising the very danger of power or too much power corrupting. So there have been successes in the very good custodians of that power and, of course, the oversight of the PCCC is said to be a softener also to that, at least another guardian.

Taking all of those into account, the solutions to the problems are going to be nuanced. It is not a one size fits all approach. It is important that the Commission be seen to do its job publicly even though at the same time it may privately be investigating matters which will, in a timely fashion, become matters of great public interest. Sometimes there are dangers, which have been identified, in identifying too soon. I had a client once who headed in the general direction of Spain and never came back. You can all guess who that was.

There's also the issue of people destroying evidence or people who may be potential witnesses, or standing over or threatening potential witnesses. So in the proper

balancing of and execution of this Commission's very precious power there has to be a significant clarity of thought, of plan, but it shouldn't be hindered by the fact that it might appear in tomorrow's headline, and that's where the balance lies. We're not talking, as I understand, about not bringing these things out into the public, but it's a timing issue, and it's an issue that surrounds the prevention of the misuse of the Crime and Corruption Commission's name.

I join, certainly, with Professor Sampford's argument to say that if we believe all of our institutions, all of our politicians and every person who makes a complaint is as pure as the driven snow, then we're living in a false paradise. I'm not quite sure that was the exact phrase, but that was the import of what he said. So it is important in those matters that we be as open as we can be, but prevent the misuse of this name, because, quite frankly, I think the lengthy and rather convoluted illusion to horses, yards, bolting and the like, I'm not quite sure where that fits. But in the big scheme of things if you want to see untrammelled, undiluted viciousness and suggestions about corruption, we look to the Twittersphere, we look to Facebook, but I suspect, perhaps borrowing again from Professor Sampford, people don't necessarily believe that, but they do believe presses that publish – they use ink by the ton, they do believe television and they do believe when it is said that the Crime and Corruption Commission has an interest in the matter so that is what we have to guard against. I'm sure the arguments that I've heard perhaps cover more than the field, but that's where I'd like to finish my statement.

Mr MacSporrán QC

Thank you, Mr POTTS. I have just one point. Can you see any detriment to the public interest in, on this timing issue, delaying the making of allegations of corrupt conduct public until after an agency such as ours has a chance to ascertain whether there's merit in the complaint?

Mr Potts

The way it seems to me it's a timing issue, so I'll talk about that. A politician 'on the make' seeking election may have evidence of corruption which they may not be able to effectively get into the press because of the defamation laws, and, yes, the defamation laws are slow, expensive, and often give little or no recompense to the people making the complaint. But where the issue lies is that if the press won't print it because of the defamation

laws, or the concern for it, how, then, do we allow someone to make the allegation of corruption and then say it's before the Crime and Corruption Commission? I think that there is certainly a public interest in knowing, and I think there's certainly a public interest in ensuring that corruption, wherever it is and in what other form it takes, whether it's a corrupt person or a corrupt organisation or a corrupt process, is seen to be being dealt with. But in my view what we're talking about in an election campaign is a short period of time, and what we're trying to prevent is the balancing of the evil of the destruction of a person's reputation against the short-term gain.

Now, if the public are assured, and that could be dealt with by, in essence, through any paper that is delivered, an explanation of a protocol of a process that will be utilised, that there is no intent by this Commission to hide that type of evidence or that type of material, then after what is normally a short election cycle, though I did note that the Federal election went for eight weeks this time, but the last State election went for a very short period of time. I don't see that there is any public harm or public ill in the short delay between the actual election and the then potential reporting of it.

Mr MacSporran QC

Thank you.

Mr Irwin

Mr POTTS, are you of the view that the requirement for confidentiality that you support should be the subject of an offence provision in the CCC legislation?

Mr Potts

The breaching of it?

Mr Irwin

The breaching of it, I should say.

Mr Potts

Yes.

Mr Irwin

Yes. And I note that in the written submission that's been supplied you say two things. One is that the Law Society submits that maintaining a requirement for confidentiality in the assessment stages of complaints will assist in deterring baseless or politically motivated complaints.

Mr Potts

Yes.

Mr Irwin

And subsequently that in the view of the Society the only exclusion to this confidentiality would be where the Commission has given a clearance based upon public interest factors and only after the Commission has accepted the complaint has a base for further investigation. I just wanted some clarification, if you could, as to what you're suggesting the end point or expiration point of the confidentiality might be. Are you saying that it's at the time that a criminal investigation is commenced or a disciplinary investigation is commenced? Are you saying it's at some earlier assessment stage that the Commission engages in? Just exactly what is your view in respect of that?

Mr Potts

There are significant timing issues, as we know. An investigation may take many forms and may take – may turn out to be baseless. People, truly believing in their own version of the truth, provide statements which then are investigated and later turn out to be either baseless or false or based on a false premise. I can remember sitting before the late Bill Carter in a hearing which took place where there was a significant headline in the Courier-Mail about corruption at the Sir David Longland Centre and the covering up of some sexual impropriety. The end result was that the people who were making the allegations truly believed it, but that it was based, unfortunately, on completely incorrect assumptions which could only be demonstrated to them during a public hearing. They, when shown privately, disbelieved it, and the Courier-Mail fought to hold the truth of their story, wrongly as it turned out. Now, sometimes the very issue of the investigation already damages the person's career, so in that type of case I think if there is going to be some openness about it there has to be some significant real admissible evidence, and you'll take the gist of what I'm saying so far as admissibility is concerned, to demonstrate that there are matters which should be then placed before a court for proper procedure, because, of course, the decision to prosecute is not this Commission's.

Mr Irwin

Right. So in your view would that be at the time that a decision is made to commence criminal proceedings or to commence a disciplinary action?

Mr Potts

Yes.

tribute, not only to the Commission, but also to a liberal and open democracy. So thank you, everybody.

Mr MacSporran QC

Thank you.

Mr Irwin

Thank you, Mr POTTS.

Mr MacSporran QC

On that high point, we'll adjourn until tomorrow morning at about 9 o'clock. Thank you all for coming.

THE FORUM ADJOURNED FOR THE DAY