



**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 Craig Burgess

Mr MacSporran QC Mr BURGESS, I think, is next in order. Mr BURGESS, thanks for coming. Can you just give us your full name and who you represent, if you do represent someone else apart from yourself.

Mr Burgess My name is Craig Neilson BURGESS. I'm a retired law lecturer and a retired barrister. I represent myself.

Mr MacSporran QC All right. You know what they say about barristers who have themselves as clients. Well thanks very much for coming. We've seen your submission. Would you like to make an opening statement summarising your position?

Mr Burgess Well basically my position, Mr MacSPORRAN, is that my main interest is in the prejudicial publicity side and then where it becomes to a matter of freedom of speech versus a right to a fair trial, that the right to a fair trial trumps the freedom of speech in those particular issues. And I think disclosing the identity of an accused as soon as a person is suspected of committing an offence is unfair to the accused and an unacceptable invasion of their privacy, and, as the Commission says, making allegations of corrupt conduct public, is it in the public interest? Well, what is an allegation? It's really an unproved assertion, a declaration without proof, and it's just a mere suspicion.

I must say I'm attracted to the submission of the Honourable Ian CALLINAN and Professor ARONEY where they say the Crime and Misconduct Act ought to be amended so as to make it an offence to disclose the fact of or the identity of a person who is subject of a complaint or of an investigation or an interest in a matter without the prior written consent of the subject of that complaint or investigation. Since I put in my submission, I've put forward a preferable view in the matters that I differ a little bit from the Callinan and Aroney submission in that disclosing the fact of or identity of a person. All I'm saying is that an identity of the person should be kept suppressed until they are formally charged or unless they consent to it, whereas the allegations can still be made public, but the identity of the person is kept private until they are charged. So that's my position.

Mr MacSporran QC Thank you. Can I ask you this - we've heard some submissions that maintain that, taking the example of the election cycle situation where complaints are often made

by candidates about other candidates, and it's been said, principally during the media panel session yesterday, that there's no harm in that becoming public because the voting public is educated about the fact that that's just the political game that people play, that they make baseless complaints hoping to get some political advantage and the public just ignores it, goes ahead and votes in the way they would anyway, so there's no harm in it. Do you have any comment about that proposition?

Mr Burgess

Well I'm not quite sure what the evidence would be that no harm, as I was quite interested to hear Mr HOFFMAN say, that people are prevented from standing for public office because they fear the fact that their reputation is going to be trashed. I don't think it's a trivial matter. It may be for some who have got a thicker skin, but I think for people at the lower end of the spectrum, say for councils, their reputation is still trashed for a very long time. And, of course, with the internet these days that sort of stuff can stay up on the internet *in perpetua*, forever. So I think that's taking a little licence.

Mr MacSporran QC

Thank you, all right.

Mr Irwin

Mr BURGESS, thank you for your submission. You make the point today that your proposition is that you favour the identity of the person against whom the complaint is being made being suppressed but not the fact of the complaint or the nature of the allegations?

Mr Burgess

That's correct.

Mr Irwin

Right.

Mr Burgess

That's where you would say, for example, you know, a person is under investigation for whatever, but they're not named as such.

Mr Irwin

Isn't there a risk that by reporting the nature of the allegation that that in itself could identify the suspect, even if the suspect isn't named?

Mr Burgess

It could do in certain circumstances. But in the broader interest, it probably wouldn't be apparent always to the public. Say, for example, someone who is a public servant in a government department, well, people within the government department might know about it, but the broader public may not know about it and therefore they wouldn't be prejudiced by it if it came to trial.

Mr Irwin We've heard the submission this morning from the representative of the Queensland Railways that there could be a particularly acute position in regional and remote communities where it might be more likely, given the size of the community, that by referring to the allegation, that that could identify and have serious repercussions for the reputation of the individual. Would that be a matter of concern to you, because Queensland is such a broad decentralised State and it's one thing to talk about allegations made within metropolitan areas and large government departments, for example, whereas there are a lot of smaller towns with departments that consist of sometimes only a few people.

Mr Burgess Well, yes, but it seems to gain greater credibility if it's out there in the public and it's got the authority of the Crime and Corruption Commission and also the media naming that person. It's more likely that people will give it some credit, where it's just an allegation well then people would be more likely not to.

Mr Irwin What do you say about the-

Mr Burgess -Sorry, and I'm not-

Mr Irwin -Yes, go on.

Mr Burgess Yes. I do recognise that it can be a situation where there might be say half a dozen people in a particular department and then they all get smirched with that allegation. Again, I say that the reputation of the person who is going to be charged is a greater consideration rather than a few people being discomforted for a short period of time.

Mr Irwin What do you say to the proposition that by publishing the subject matter of the allegation and the fact that a complaint has been made about it, that that could prejudice the investigation because the person, even if not identified, is likely to know that they're the person who's the subject of the allegation and therefore has the opportunity to get his or her story straight, collude with other people to destroy evidence and so forth?

Mr Burgess Well, that would be the situation if they were named anyway, so it wouldn't really change things.

we've heard that they're a little bit tricky, but there's confidentiality provisions and privacy and defamation. Just briefly, if you don't mind, what your views are on the major deficiencies of the existing mechanisms?

Mr Burgess

Major deficiency really is that the time before the pre-trial and the pre-charge publicity. Once a person has been charged, well then, they come under the jurisdiction of the court and *sub judice* rules apply, although I notice in the media of late, and I'm not sure if this is a change to the Defamation Act, seem to ignore that and all the – well, many of the high-profile trials are attended by significant amounts of pre-charge publicity. And, you know, following on from that, is my recommendation is that, you know, that should not be allowed to occur until a person has actually been charged, because that does, in my view, affect any possible jury pull, and it doesn't come within – the only remedy a person would have in that sort of situation would be defamation, that is, everyone on the panel I'm sure knows, bringing any defamation action is very costly and beyond the reach of most private individuals. Indeed, I think, one former Queensland Chief Justice said he couldn't litigate in his own court because of costs involved, so I don't think defamation is a remedy.

Mr Bingham

Thank you.

Mr MacSporran QC

Okay.

Mr Irwin

If I could just ask one further question. I can't let you go, Mr BURGESS, without asking you a question I've asked of a number of the people who've spoken during this forum about whether or not, in coming to the decision that subject to the qualification that you've suggested you support the Callinan/Aroney recommendation, but have you had regard to Section 56 of the ICAC legislation that I have mentioned to other witnesses during the course of the proceedings?

Mr Burgess

I haven't looked at it in great detail, no.

Mr Irwin

No. So you're not in a position, in those circumstances, to make any comment about why, for example, you'd prefer the recommendation from Callinan/Aroney over the legislation that exists in South Australia at the present time?

Mr Burgess I have looked at the South Australian legislation and, yes, that is significant, but I prefer the Callinan/Aroney one, I think, subject to my qualification, because it strikes the right balance, I think, between freedom of speech and the right to a fair trial.

Mr Irwin All right, thank you, I've got nothing further at this stage.

Mr MacSporran QC Thank you, Mr BURGESS. Thanks for coming.

Mr Burgess Thank you.

END OF SPEAKER