



**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 John Smith

Mr MacSporran QC Mr SMITH, I think is next. Mr Smith, thanks for coming. Just for the record of these proceedings can you give us your full name?

Mr Smith Yes. John Thomas SMITH.

Mr MacSporran QC Now, we've read your submission and from the content of it I'm imagining, and you can correct me if I'm wrong, that the last thing you want to do is relive some of the experiences you've gone through, but are you able to tell us in a brief summary way, because you have had personal experience in this area-

Mr Smith -Yes.

Mr MacSporran QC -some of the benefits or detriments to, for instance, prohibiting publication of allegations before they are ascertained to have some merit?

Mr Smith Yes. Thank you. It's my belief, I guess, that when you're in public office there's a number of factors that will determine what happens. But I am firmly of the belief that if you are charged with or you're removed from office or stood down, then the public do have a right to that knowledge. Prior to that there needs to be an investigation which you're aware of and that investigation, I think, has the right to proceed without prejudice or – and in my own case, once the complaint was laid, as a person in elected office, your real duty is to sit back and play no part and let that investigation proceed.

What I got a bit dirty on, I suppose, was that you did that. The system worked in that respect, except that some years after that you had brought down your findings. There was a publication made on radio that had a great effect on me and I thought, well, you can either live with it or you can do something about it. So I chose to take some action and it certainly was an eye-opener for me, because there's a number of things come out of when you chose to do an action like that. Cost is certainly one. But, you know, it's a big thing getting someone who believes in your case, because defamation is not an easy road to go down. And there are a number of things, and I don't want to sort of – you would understand fully the High Court's ruling on the people's right to have access to information or the right to know.

The High Court has ruled that all Australians, as you know, have that interest and that's not something I'd like to take away. But I just believe that the identification of people, particularly in a small town, and I live in a small town, it does have a very dramatic effect, you know, on what happens to you.

Mr MacSporran QC

Yes.

Mr Smith

When you're in public office I think, you know, there's the old saying, if you can't cop the heat get out of the kitchen, but it doesn't even need to be a fair fight, but there needs to be some constraint. And that's why I believe that if there needs to be a change, or in my opinion, people who perpetrate that and do it, there needs to be some kind of penalty. And it's been spoken about here today with the "don't risk your campaign", and that's good advice. But there's always people out there who ignore that advice and I think ordinary citizens do believe in fair play. They may not show it at the time. But I proceeded to that trial and of course, the rest is kind of history. I was fortunate that it went on for a long, long time. I couldn't fault that procedure. You know, I couldn't say, look, I didn't get a fair trial. You absolutely do. But, you know, I feel I have been through the wringer and going through the wringer never stopped. That's the reality of it.

So I think the thing to do was to write to you people or talk to you people, well not write, and at least try and get some change. It's no good sitting back and whinging, if you don't partake in the opportunities that you're given. So I did take a few notes, I think. But, you know, I know that in your gentlemen's case and lady's case that you've heard it all before and you know the system. And I guess the heading, then, of what's in the public interest. Well I firmly believe that the public do have an interest in most things, but they can't, in my opinion, have an interest in something that is not correct or is false. And whilst I agree with some of the other submitters, you know, the public have a right to know that if they're elected people or they're public officials, and not behaving themselves, that's absolutely their right to know that. But, again, it comes down to if you are charged or if you are removed from office that they have a right to know that. But in the lead-up to that I think there's great need for

confidentiality because it does affect your health. I mean, it can become a death sentence.

Mr MacSporran QC

Yes. Can I just, for the record, Mr Smith-

Mr Smith

-Yes.

Mr MacSporran QC

-you've implied, well we should say it, you were accused of something by a fellow councillor, were you?

Mr Smith

Correct.

Mr MacSporran QC

And that was investigated. That was investigated confidentially?

Mr Smith

I was satisfied with that.

Mr MacSporran QC

Yes.

Mr Smith

Yes. And the complainant was advised of that, but it was some years later that that thing – the publication, you know, the broadcast was made.

Mr MacSporran QC

Yes. But in the initial investigation of the matter-

Mr Smith

-Yes.

Mr MacSporran QC

-that was all done confidentially and it was unsubstantiated. The allegation was found to be untrue?

Mr Smith

Yes.

Mr MacSporran QC

So you were vindicated in that sense. But after that, the publication was made?

Mr Smith

Yes.

Mr MacSporran QC

The same allegation was made against you by the same person?

Mr Smith

Exactly. Yes.

Mr MacSporran QC

You had the choice, as you say, of doing nothing or taking action.

Mr Smith

Yes.

Mr MacSporran QC

You chose to take a defamation suit?

- Mr Smith Yes.
- Mr MacSporran QC And you've been through all of that?
- Mr Smith Yes.
- Mr MacSporran QC You were successful in court?
- Mr Smith Yes. So we had the District Court hearing. Then we had the Supreme Court appeal. Yeah. And from that point it then went on to a District Court review. And that involved, I guess, well the truth of it is, you know, the private investigators who, in my opinion, don't have a lot of ethics. But again, it comes down to, you know, I support the whistleblower provisions. There are a lot of things out there that you people are involved in where people are assisted, and protection of whistleblowers is a vital part of our justice system, and also the right to use a McKenzie friend. And, of course, in my particular case I experienced all of that. So it's been a fairly long road to hoe and you don't expect that in local government.
- And the other thing I'd like to say, too, is that councillors or people who are elected, you know, there's a line that you don't cross and I would think that all elected members know that line, and you know if something comes up you know that you should not cross it, and there's plenty of people out there to advise you. The old saying, you know, if you're in doubt, get out, is pretty good knowledge to have, so there's no reason other than people want to, in my opinion, an electoral advantage to do that. And the complexities of our defamation laws, you know, it's extremely difficult to prove malice because malice, as an ordinary person considers, is in my opinion, not the malice, you know, that happens in law. So to say someone acted maliciously in slotting you, it's very difficult to prove. It's impossible to prove.
- Mr MacSporran QC Was it your experience that during election cycles there was an increase in complaints made by candidates against other candidates?
- Mr Smith In my experience I would say absolutely, yes. In the lead-up to an election it is my belief that some councillors, some candidates, save it up, I guess, for maximum impact, and the history of the shire that I was involved in, that happened almost every election, that

there was some complaints made about unlawful charges or unlawful conduct. And that becomes a bit, it becomes debilitating, you know. So I don't know how you deal with that, apart from if you're going to put out your documents, like, you know, "don't risk your campaign". And the [unintelligible] who was involved in that. There needs to be some kind of penalty if it's totally disregarded, because it does, it lowers the perception of that political system in the minds of the public. And the public, traditionally, I think, don't hold their elected members in really high esteem and, you know, there's probably some reasons for that. And in my case, I mean, I was Chair of Works for the last eight years on my council, so you continually say "no", so you get to the point where nobody really likes you, you know, but that's your job, you know, and you do your job as best you can. But there is a lot of help there for elected members and candidates. But, again, you know, I think the majority of candidates don't want to stoop low, you know, you try and keep it honourable, and the public expect that. Well, you hope they do. But in my case I just – yeah, I turned to the courts because there was no other, you know, form of – I couldn't afford to do it again.

Mr MacSporran QC

I take it your point is that you exercised the only remedy available to you which was the courts and unfortunately the courts really didn't provide an adequate remedy for your situation?

Mr Smith

Well, they provide a remedy in accordance with the law and that's the best – when you go to court that's the best deal that you're going to get, and so, in terms of the court case, I was satisfied with that, but I just feel that if candidates want to turn on one another and they want to lodge complaints, there needs to be something to say, well look, this seems to be unfounded, and there's a price you're going to pay for that, you know. That's what I would like to see come out of this.

Mr Irwin

I've just got something arising out of that.

Mr MacSporran QC

Yes. Sure.

Mr Irwin

Did you consider, Mr Smith, that the result of the defamation proceeding was effective in restoring your reputation?

- Mr Smith I think when you get to the point of going to court that your reputation is done anyway. One of the things that came out of the trial, and it was absolutely true in my belief, is that it was referred to that all people are born with a reputation. And I think the courts, the law recognises that and that if someone goes about to destroy that, then there ought to be a penalty they pay, and I was satisfied with that, that they should pay a penalty if they set about to take someone's reputation away, if it's unwarranted. You know, so I don't know if that answers your question, sir, but I might in my submission, I did it over the phone and I felt sorry for youse. I thought, geez, they're going to wonder what this is about.
- Mr MacSporran QC Well obviously not, because we've called you here today.
- Mr Smith Yeah. So it's been a very difficult time for me.
- Mr MacSporran QC Yes.
- Mr Smith And I just want to see that there's – I'd like to see that there's some change.
- Mr Irwin Yes. Well I see you've also put in a dot-point written submission. So thank you for the effort in doing that.
- Mr Smith Yes.
- Mr Irwin But while I'm asking you some questions, without interrupting Mr MacSporran unduly, I might also just ask you this. You might be aware that during the course of these proceedings, there's been a suggestion that when an allegation is made against a person in public, that the community is mature enough and astute enough to be able to filter out what are merely allegations and what is fact. Was that your experience?
- Mr Smith No.
- Mr Irwin Can you enlarge on that?
- Mr Smith Only that I think the community believe a lot in what they read and what they hear in the media and they have a right to know if one of their members is mucking up, you know, that's a given. But I think from the comments that I got in the lead-up to elections and things like that, and sometimes it's the comments that are written on ballot papers, I think would clearly, you know, probably agree

with me. Yeah, I don't think that the public probably do put a lot of credence on that. I think a lot of them do believe or misinterpret, perhaps, you know?

Mr Irwin

All right.

Mr Smith

And one of the things you learn as an elected member is that the public technically is never wrong and you have to accept that, you know, in a democracy, they have the right. And I think elected members, too, need to understand that they have a contract for a period of time with those people and if you break that contract, there's a price you pay for that.

Mr Irwin

All right. And I'll just ask you one final thing. As I understand your submission to us, you say that the fact that an allegation has been made should not be disclosed until a particular point of time, for example a time when the charge is laid or some positive action is taken, but am I right in understanding that your submission is not simply that the identity of the person against whom the allegation is made should not be disclosed, but the fact of the allegation and what that allegation is should also not be disclosed?

Mr Smith

Well, really, I think the identity is important.

Mr Irwin

Yes.

Mr Smith

And living in a small town, the minute that the allegation is made, a number of people are able to work out, you know, so that risk is there. But I thought the organisations like the CMC and that act fairly quickly so that if there is a chance or there is proven that wrongdoing is commenced or been done, then releasing that information and the identity from that point is absolutely in order. But I would prefer to see personally that the investigation be held so that you people can do it unrestricted. So-

Mr Irwin

-Sorry, I don't want to cut you off.

Mr Smith

-No, no. I think that the identity and the fact that there's been an allegation made that it should be withheld until the completion of the investigation.

Mr Irwin

Yes. And I think you were saying particularly in those where the mere reporting of the allegation is likely to

identify the individual who's the subject of the allegation?

Mr Smith Well, it has great chance for that.

Mr Irwin Yes, particularly in a remote or a more regional community?

Mr Smith Sure, yes, sure, no question about it, and I think the part that sort of affected me greatly was that, in my case, the person who made the allegation sought anonymity and was given it and there was no problem with that, but it was that person themselves who actually broke that anonymity the day before the election. And I don't believe that, you know, if they want anonymity there's no problem, that's fine, but don't go breaking it. If you do then there is a penalty, you should pay for that, and it's not a hanging offence, but I think there needs to be some way that, you know, that they can be made to suffer a penalty. Whether that's – I don't know, leave that to you people.

Mr Irwin You might be aware a submission was made to us that the person who makes the complaint, let's call them the whistleblower for want of a better description, should have their identity confidential, but that shouldn't prohibit the disclosure of the name of the person or the identity of the person against whom the allegation is made.

Mr Smith You know, I've got some things on that too, in my head. I think that, you know, to withhold the identity of the whistleblower, I don't particularly have a problem with that, they seek anonymity and many people in the community would prefer that, but to release the name of the person who is being investigated can have some detrimental effects, as they did on me.

And so, yes, I mean, to answer your question, I think I'd like to see, you know, the fact that there's been an allegation made, because it is only an allegation, I think documents exist where it says, until, you know, until an allegation becomes an accusation, it's only an allegation. So it's a bit of a fine line that you've got to walk because the public have an inherent right to know. But in my case and the reason behind my submission, I don't want to see it happen to anyone else and it's no walk in the park to go through a court proceeding. And in my case, there

was a lot of years, the so-called offence that I was supposed to have done was supposed to have taken place in 2004, and I think it was – and the complaint was made to you people and resolved by 2006 and it was two years later when it was broadcast. And then that was 2008, and it was then five years before it actually got into the District Court. Some reasons for that too, but all in all, I mean, I had my day in court and I'm grateful for the assistance I got. It's difficult to get a legal person to want to take on defamation because often they don't win, you know. But in my case I was successful in that, but there's no winners. That's the truth of it.

Mr Irwin

Yes.

Mr Smith

And I guess, you know, people say to me would you go back into council again, well the answer would be "no". You go there to try and do good for your people, most of them do. So I just think that there needs to be a penalty if someone breaks the system and I guess that's what some of this hearing is about, you know, is something in the public interest. And as I said, I don't believe it is if it's not factual. And so I've been a bit nervous about coming here because once you've been through – I don't like to disrupt or do anything. Some of the, I suppose, injustices that I see is that I am required to keep all of my paperwork for a period of years, but the person who loses gets the rest of their life to try and fix the system up. Well, so, for me the rest of my life is spend guarding the papers and waiting for something to restart the process so, you know, I have to live with that. Yes. But I'm grateful to be actually able to turn up and grateful that you agreed to hear me, because, you know, I read my submission often and I think, oh geez, who could understand that.

Mr MacSporran QC

I don't think you need to worry about that, Mr Smith.

Mr Smith

Yes. But, you know, I think I had lots of stuff written down but, you know, I guess the other thing is with this organisation, whatever name it goes under, it should be given the power to impose some kind of penalty, otherwise people see it as a toothless tiger. And we're pretty fortunate in this country and this State that we have these organisations who are there to try and rectify wrongdoing, long after the court process, you know. Yes, so I, you know, I have high regard for these organisations and I'm grateful that they're here.

- Mr Smith But if some good can come out of this, you know, that I'd be grateful for that.
- Mr MacSporran QC Certainly.
- Mr Irwin Thank you.
- Mr MacSporran QC Richard?
- Mr Bingham No. That's very helpful. Thank you, Mr Smith.
- Mr Smith Thank you for your time.
- Mr MacSporran QC So-
- Dr Denning -I've got just a quick one, Mr Smith.
- Mr Smith Yes, Ma'am.
- Dr Denning The media panel yesterday, when we were discussing the importance of the media being able to communicate in the public interest, one of the responses they gave was that the person who is alleged to have done wrongdoing has an equal opportunity to engage with the media so that they can put their story forward, and in doing so minimise any reputational harm that could occur at the point in time of the publication. So we've got defamation that sits way up here and you can find a solution there. But their argument was people who are the subject of a complaint, and even more so in public officials, who they say have greater access to the media, can actually engage with the media at that time and rebut any allegations made about them. What do you say about that?
- Mr Smith Yes. I listened to that panel and I probably don't have a very high opinion of some of the media. And I've had dealings with them and they're not all bad. In one particular instance, and this is the one where I actually came into contact with the broadcaster and he asked me some questions and one of his comments to me was that, you know, he should have hit the kill button. And my comment to him was, "Well you didn't." So, yeah, I guess, I don't know how you can control the media. Some people, and you'd probably be familiar with the prison inquiry of the early 1990s, I think Justice Carter conducted that investigation. I think one of his comments towards the end was that some candidates or councillors or elected people, they have the ear of the media and they

use it very well and those people, they generally get a fair go. But the media can be selective in what they publish and so I don't hold them in high regard, even though they're a necessary part. Again, they're not all bad, you know. I've known some good ones. But I didn't place a lot of evidence or credence on what they said yesterday. But, you know, they play an important part in the democratic system too, they can do. But I'm yet to be convinced that – see they're a commercial thing they operate, they have to sell newspapers or TV time. So sensationalism is a part of their goal and I don't know if you can spend time trying to fix that. I don't think you will. But, yeah, just from my experience, you know, I probably wouldn't invite them around to dinner, I don't have that rapport with them. And I'm not there to be a media star, you're there to do a job when you're an elected member and keep an open and clear mind.

Dr Denning

Thank you.

Mr MacSporran QC

Thank you. Mr Smith, just one thing.

Mr Smith

Yes, sir.

Mr MacSporran QC

Can I ask, with respect, how long you were involved in local government politics?

Mr Smith

Oh, yeah, twenty years.

Mr MacSporran QC

Twenty years.

Mr Smith

Six consecutive terms.

Mr MacSporran QC

So there was six election cycles you went through?

Mr Smith

Yes.

Mr MacSporran QC

Can you tell me, you've told us and it's a fact that the allegations against you were unsubstantiated, were false?

Mr Smith

Yes.

Mr MacSporran QC

Can you tell me what your sense was of the percentage overall of allegations made during election cycles against candidates which were false and done just for damage to the opponent?

