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SPECIAL SUBMISSION

TO

PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER
JULIE M DICK SC
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BRISBANE QLD 4000

THE SHREDDING

SUBMISSION
BY
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20 LYNTON COURT
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8 OCTOBER 1999

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1. INTRODUCTION

A suspicion of official misconduct

The so-called "Lindeberg allegations" lodged with the Criminal Justice Commission (CJC) on 14 December 1990 were *never restricted* to whether or not the Executive Government of Queensland alone may have engaged in suspected official misconduct or in a breach of the criminal law in respect of the shredding.

The alleged misconduct, potentially perpetrated by the highest level of government, went to the very heart of the administration of justice. It could never have been viewed as anything but serious.

My evidence provided to the CJC to support the allegations raised serious questions of suspected official misconduct involving either:

- the entire Executive Government of Queensland;
- one (or more) Minister (nominated to be then Minister for Family Services and Aboriginal and Islander Affairs (DFSAIA) the Hon Anne Warner MLA) misleading the Cabinet in order to achieve the shredding decision;
- one (or more) senior DFSAIA public officials misleading their Minister the Hon Anne Warner MLA, who in turn, unwittingly misled her Cabinet colleagues, in order the achieve the shredding decision.

Under the circumstances associated with this matter, it could not and should never have been assumed by the CJC that just because one of the above (eg the Executive Government of Queensland) may have acted without giving cause to a suspicion of official misconduct it automatically cleared all the others of such a suspicion. Had the CJC thoroughly investigated my allegations in the first place, the misconduct evident within the Department would have been discovered many years ago.

Instead, in early 1991, the CJC left evidence of criminal conduct in the Department untouched contenting itself that as long as a process was purportedly followed by the Goss Cabinet [i.e. (a) following Crown Law advice; and (b) seeking prior approval to shred from the State Archivist] everything else [ie (a) an accurate chronology of events revealing deceit; (b) illegality of the advice; and (c) abuse of process giving rise to a suspicion of official misconduct - at the very least] could remain completely sealed off from a thorough and independent examination even when I raised my concern over this deficiency and artificial barrier.

For the record, the shredding was meant to encapsulate:-

1. The records gathered and/or generated by Mr Noel Heiner during his inquiry, in particular parts of those records that related to (i.e. were held on) Mr Peter Coyne;
2. The original complaints which brought the Heiner Inquiry into existence that related to (i.e. were held on) Mr Peter Coyne.

All of the above records fell within the meaning of "public records" under section 5(2) of the *Libraries and Archives Act 1988*, and were ***always*** legally and arguably accessible pursuant to the provisions of *Public Service Management and Employment Regulation 65*. They were never Mr

Heiner's personal property as the Office of Crown Law incorrectly believed in its advice of 23 January 1990.

An overwhelming difficulty too significant to ignore

The Queensland Government ***knew*** the correct legal status of (1) ***before*** they were ordered to be shredded on 5 March 1990. In advice provided to the Executive Government on 16 February 1990 (p4), Mr Kenneth O'Shea, Crown Solicitor, advised:

> *"The overwhelming difficulty in relation to this matter is that the precise terms of engagement of Mr Heiner remain vague but at the very least, he must have been acting as a consultant or agent of the Crown and in those circumstances, it would appear that the documents prepared during the course of his consultancy or period of agency were prepared for and are held on behalf of the Crown.*
>
> *Whilst it is not directly on the point, the position in a normal solicitor and client relationship, is instructive. In Halbury's Law of England (4th Edition), the following is stated concerning the ownership and use of documents in the solicitor and client situation:-*
>
> > *" Documents coming into existence in the course of business transacted under a retainer, and either prepared for the benefit of the client or received by the solicitor as agent for the client belong to the client. However, documents prepared by the solicitor for his own protection or benefit and letters written by the client to the solicitor belong to the solicitor."*
>
> *After considering the matter further, I am of the view that notwithstanding that Mr Heiner was primarily engaged to prepare a report, the Crown would be entitled to claim possession to the documents brought into existence by Mr Heiner in the course of undertaking his Inquiry. This is particularly so in relation to statements or transcripts of evidence upon which his final report was to be based."*

Mr O'Shea went on to advise that the Heiner documents could not attract "Crown (Cabinet) Privilege" because they did not *"...come into existence for the purpose of submission to Cabinet."* Hence, it can be reasonably held that they were "departmental records or files held on the officer" (in this case Mr Coyne and his management style for the John Oxley Youth Detention Centre) which correctly, or at the very least, enlivened the provisions of *Public Service Management and Employment Regulation 65* which any court would not dismiss as ill-considered or frivolous should a judicial interpretation of its applicability be sought.

I submit this aspect (which shall be developed further on in the submission) simply cannot be ignored when considering this matter as the shredding deliberately obstructed Mr Coyne's rights.

The existence of a reasonable apprehension of bias

It is highly relevant to note that in the CJC/Lindeberg file which emerged publicly at the Connolly/Ryan Inquiry for the first time, CJC's investigating officer, Mr Richard Pointing, had made a personal notation on my letter of 29 August 1991 which said:

"...This man is irrational and nothing which this Commission can do or say will satisfy him. I recommend that no reply to this letter be sent as it will only encourage further unnecessary correspondence with him."

I have never met Mr Pointing. I submit that Mr Pointing could not reach an impartial view of my mental state without at least first meeting me - let alone having any psychological qualifications to make such a judgement at any time. My alleged mental state (irrational or otherwise) should not have been a determining factor in whether my allegations could be dismissed if they gave rise to a suspicion of official misconduct. Certainly I never knew (nor was ever told) that my mental state was to be a factor regarding how the CJC would handle of my complaint when I lodged it.

As already stated it could not be reasonably held, I suggest, by any independent law-enforcement agency that an allegation claiming that public records had been destroyed by a government to prevent their use in court proceedings was not a serious matter warranting a thorough examination because it may have obstructed the administration of justice.

Had I known Mr Pointing's view at the time, (which was adhered to by his CJC superiors until I wrote on 2 November 1991 requesting an answer to my letters of 27 June and 29 August 1991), it would have given me and any reasonable person with knowledge of the facts just cause to believe that a reasonable apprehension of bias existed against me within the CJC. I submit the expression of such an unfounded view on Mr Pointing's part and the CJC's adherence to it gives good cause to suggest that suspected official misconduct may have been present within the CJC when it dealt with my allegations contrary to its obligations under section 22 of the *Criminal Justice Act 1989*.

I never accepted the CJC's findings at any stage. I consistently argued that the CJC's investigation was incomplete (ie biased) and not independent.

When the CJC later engaged (then) barrister at the private bar Mr Noel Nunan (now SM Mount Isa) around August 1992 to review my case, I submit that the CJC magnified its breach of section 22 of the *Criminal Justice Act 1989* to enlivening *prima facie* breaches of sections 127(2), 129(b), 130(b) and 131(b) of the Act. He did not disclose his potential conflict of interest concerning his membership of the ALP or former working relationship with Mr Goss at the Caxton Street Legal Service.

In addition, I submit that the conduct of CJC's Chief Complaints Officer Mr Michael Barnes in this matter gives rise to a compelling suspicion of official misconduct. He may be in breach of sections 22 and 127(2) of the *Criminal Justice Act 1989*. In turn, his conduct and the CJC's subsequent inaction may also give rise to a suspicion of official misconduct involving Mr Barnes' accountable officers (assuming they were fully informed) at the relevant times (ie former CJC Director of the Official Misconduct Division Mr Mark Le Grand, and then part-time Commissioners in late 1994/early 1995 and in May 1998 and CJC Chairmen Messrs Robin S O'Regan QC and Frank Clair) regarding their knowledge of unresolved allegations of child abuse at the John Oxley Youth Detention Centre which were the central feature of the aborted Heiner Inquiry. (Also see *Sykes v DPP* [1961] A.E.R. Vol. 3 p33 - Misprison of felony).

This concern is addressed further on in this submission and was recently featured in articles published in *The Courier-Mail* on 18 and 24 August and 17 September 1999.

The whistleblower's involuntary disadvantage

In making my public interest disclosure, I did so from an involuntary disadvantaged position which has been used by the CJC as an artificial shield to its own failure in not thoroughly and independently examining the allegations. That is to say, I lodged my complaint in good faith with the CJC as an ex-public sector trade union official. I was not in full possession of the facts as may more readily and easily occur when a public official decides to blow the whistle on what he or she believes may be suspected official misconduct. On occasions my disadvantage has been used by the CJC to discredit me publicly when a clearer picture has emerged - but none of which (the emerging facts) it should be said has lessened the seriousness or substance of my allegations.

It is now quite evident that there was a coterie of public officials who were always fully aware of the extent of the shredding, what was shredded and what the law required concerning access. That "extent" - ie the cover up - only emerged because I would not accept the findings of the CJC and stayed at the coalface constantly for over nine years wanting my allegations properly investigated.

For its part, the CJC's Official Misconduct Division *always* had the ability and legal duty to seek relevant information that could have been adduced from my hard evidence and/or leads. Like any police investigation, the complainant may not always have the complete picture or unrestricted access to all the necessary incriminating evidence. That disadvantage from being "outside the system" was ultimately turned against me by the CJC while it failed to access incriminating evidence sitting "inside the system".

Moreover, when I put basic questions to the CJC concerning the thoroughness of its investigation and whether it had questioned the State Archivist or checked out all the circumstances surrounding the legal action and *ex gratia* payment, I was ignored, and (as it was discovered at the Connolly/Ryan Inquiry when I accessed my personal file), was considered by the CJC investigating officer in August 1991, to be *"...irrational"* just because I would allegedly not accept anything which the CJC said on the matter.

Years later, the CJC itself publicly admitted before the Senate in 1996 and the Connolly/Ryan Inquiry in 1997 that it could have conducted a more comprehensive investigation, and if it had done so at the time, it may have reached a different view.

Publicly ridiculed

In 1991 I indicated that the CJC was failing to do its duty thoroughly, and for my efforts in trying to get the CJC to comply with its obligations pursuant to section 22 of the *Criminal Justice Act 1989*, I was described as being *"...irrational"* and was publicly ridiculed by the CJC before the Senate in 1995 as being *"...consumed"* and *"...often unreliable and sometimes duplicitous"*.

2. COMMENT ON THE MUIR DECISION

On further consideration, matters put in this submission may not infringe the Muir decision because the fresh evidence (which may better fit its description than new) I submit does not constitute *"...material outside the records of the Inquiry in the Review process."*

What has been established is that the evidence (ie the CJC's real state of knowledge of the facts) was not disclosed to the Connolly/Ryan Inquiry when it should have been. Consequently, rather

than arguing its admissibility on the ground found in case law pertaining the "new/fresh" evidence (See *McDonald v McDonald* (1965) 113 CLR 529; *Wollongong Corporation v. Cowan* (1955) 93 CLR 435, Dixon C.J., Williams, Webb, Kitto and Taylor JJ. at p 444; in *Hip Foong Hong v. H. Neotia & Co. (1918) AC 888* at p894) it appears to be more relevant to argue that the evidence before you is tainted giving rise to a suspicion of official misconduct on the part of certain CJC officials because the CJC did not provide all the known facts to the Inquiry when it was legally bound to do so pursuant to section 22 of the *Criminal Justice Act 1989*, and as a further consequence may also be in breach of section 127 of the *Criminal Justice Act 1989*.

The so-called fresh evidence regarding knowledge of suspected child abuse being at the centre of the Heiner Inquiry was known to the CJC at the time it gave evidence to the Connolly/Ryan Inquiry. *It was a fact in the mind of the CJC.* I was unaware of that fact, and consequently, years later, when I found out, I could rightly call it "new/fresh" but the CJC can not.

Your commission turns on section 22 of the *Criminal Justice Act 1989*, and whether or not the CJC has been effective and/or ineffective in its mission. If you gain a suspicion that the Commission may have engaged in misconduct or official misconduct or the commission of a criminal offence then your duty requires a referral for the matter.

We now know that it is a fact that the CJC ***knew*** about the allegations of child abuse when appearing before Commissioners Connolly QC and Ryan QC, and failed to inform them. It was unconscionable conduct and invites adverse inference on the CJC's credibility. That knowledge, at the very least, was highly relevant in the drawing up of the Deed of Settlement with Mr Coyne and the Government's motive in buying Mr Coyne's lifetime silence. It is open to conclude, at the very least, that a suspicion of official misconduct attaches itself to the payment of $27,190 and drawing up of the Deed of Settlement and its purpose.

It is relevant also to his involuntary retrenchment in February 1991 which *prima facie* breached section 28 of the *Public Service Management and Employment Act 1988* and the *Income Tax Assessment Act 1936 (Cwth)*. It also opens up real questions concerning His Excellency the Governor being deliberately deceived into signing Mr Coyne's retrenchment Minute on 7 February 1991. (See Supreme Court Writ No 1130 of 1997).

Despite its state of knowledge, the CJC has found no suspicion of misconduct surrounding the Deed of Settlement in spite of its unusual nature.

It also failed to inform the Connolly/Ryan Inquiry that a JOYC Youth Worker had been contacting the Commissioner since 1994 wanting the 1989 incidents of child abuse investigated, and that it had rejected his pleas.

The CJC's conduct delayed further the exposure of the child abuse that went on behind the walls of John Oxley Youth Detention Centre. It was still occurring at the Centre when Mr Barnes inspected the "Heiner Inquiry" files in the department. I suggest it make a mockery of its so-called watchdog role, especially when Commissioner Leneen Forde said in June 1999 in her Report's Foreword:

> *"I urge all Queenslanders to contemplate the experiences of children in institutions, how it came to pass that many of them were abused and mistreated, and why it has taken so long for their stories to be told. It was society that failed those children. In acknowledging that, we must ensure that the same wrongs are not repeated, and that this Inquiry has a positive outcome."* (Underlining added).

The Commission was party to that delay.

Its real reason for not investigating the child abuse allegations as soon as possible is yet to be told because had the CJC ever conducted an independent and thorough inquiry into the shredding, the trail would have inevitably led to the Centre in late 1990/early 1991, and it would discovered first-hand that a key witness at the Heiner Inquiry (Mr Feige) never wanted the evidence shredded and had no fear of defamation proceedings.

I submit that the CJC's handling and findings on my allegations are now so tainted by dishonesty and fraud as to have rendered everything it has said and done unsafe.

In *Wentworth v Rogers* (No.5) at pages 538-539 Kirby P said:

> *"... If they have evidence of fraud which may taint a judgment of the courts, they should not collude in such a consequence by refraining from raising their objection at the trial, thereby keeping the complaint in reserve. It is their responsibility to ensure that the taint of fraud is avoided and the integrity of the court's process preserved."*

I respectfully submit that the integrity of your Office may be in jeopardy if you do not take into account this *"...taint of fraud"* and better insight associated with the CJC's conduct in this matter. It cries out even louder for an appropriate referral so that accountability and public faith in the Commission can be restored.

Undermining public confidence in the CJC

The more recent admission by Mr Barnes in *The Courier-Mail* on 24 August 1999 (Letters to the Editor) that he became aware of the allegations of child abuse during his two visits to the Department to peruse the files opens up even more serious questions concerning the CJC's independence in this matter. Allied to that admission, is the contradictory position adopted by the CJC on 25 May 1999 when it issued a media release in which it specifically claimed that no knowledge of child abuse occurred during its investigation into the shredding. That is untrue.

Then CJC Chairman Mr Frank Clair assured the public in his media release that:

> *"...These allegations did not arise for consideration in the investigation of the shredding of the Heiner documents."*

The contradiction I submit gives rise to a serious *prima facie* breach of section 22 of the *Criminal Justice Act 1989* in its failure to act honestly, and a *prima facie* breach of section 127(2) of the Act by *"..advantaging another"* (ie Mr Peter Coyne and those public officials - elected and appointed - who (a) may have engaged in official misconduct eg child abuse; (b) destroyed supporting evidence of child abuse known to be contained in the Heiner documents; and (c) unlawfully disposed of the original complaints revealing the incidents of child abuse.

The contradiction, highlighted in *The Courier-Mail* on 17 September 1999 by journalist Mr Bruce Grundy I suggest has the effect of undermining public confidence in the CJC because its words and actions may not always be true or independent. It goes to the heart of the CJC's effectiveness and credibility.

The discrediting effect this fresh insight has on the CJC's alleged state of ignorance I submit contaminates its entire handling of my complaints as previously stated.

It brings into serious doubt its conduct and motives for providing misleading evidence to the Connolly/Ryan Inquiry which, in turn, give rise to a reasonable suspicion of misconduct, *Commissions of Inquiry Act 1950* and *Criminal Code (Qld)* for those CJC officials involved. (Also See page 6: Lord Buckmaster's statement in *Hip Foong Hong v. H. Neotia & Co. (1918) AC 888* at p894).

In *McDonald v McDonald* (1965) 113 CLR 529, supra at 532-3, Barwick C.J. emphasised that although the evidence of the fraud must be "fresh", it is not necessary that it would be admissible on the issues between the parties in the action in which the judgment sought to be impugned was given, the point being that if the court concludes upon the fresh evidence that the judgment was obtained by fraud, that is sufficient to justify setting it aside and ordering a new trial.

The presence of child abuse and the CJC's knowledge of it were not known to me (and my counsel) at relevant times, in particular before the Connolly/Ryan Inquiry, and unquestionably, had it been known, it would have been used then as material evidence. I suggest that it stabs at the very heart of section 22 of the *Criminal Justice Act 1989*, and cannot be ignored in your report.

3. THE DEED OF SETTLEMENT

The *ex gratia*/special payment of $27,190 to Mr Coyne by the State of Queensland through the agency of the Department of Family Services and Aboriginal and Islander Affairs was always an element in the so-called "Lindeberg allegations".

I provided additional material to the CJC after initially lodging my complaints on 14 December 1990 which brought the payment within the ambit of my "shredding" allegations (the PeterCoyne case) because the motive behind making it, and its make-up, raised a suspicion of official misconduct which I described as "highly questionable" at the time.

The relevance of the Deed of Settlement to the shredding was dismissed by the CJC on 23 August 1991 as being *"...simply ancillary to the final result"* and not warranting investigation. I submit that it should never have been viewed in such a light had the CJC acted in accordance with its obligations pursuant to section 22 of the *Criminal Justice Act 1989*.

The Deed of Settlement held a more sinister secret which only revealed itself when the existence of abuse of children at the John Oxley Youth Detention Centre (JOYC) emerged after years of concealment. That secret was unknown to me until 1998 but it was always known by those (including the Office of Crown Law) who drew up the Deed in early February 1991.

Failure to marry intelligence with known facts

What becomes highly relevant now is the failure of the CJC to marry its acquired intelligence of the incidents of child abuse at JOYC to the clauses of the Deed of Settlement which had the specific effect of concealing for the rest of his life the *prima facie* criminal assaults previously ordered by Mr Coyne during his management of the Centre, and having been paid him taxpayers' money in exchange for doing so.

The CJC acquired access to the Deed of Settlement during the 1992 Nunan review. It did not however, in the absence of any contrary evidence, come into knowledge of child abuse until sometime in 1994. Its first brush occurred when senior Youth Worker Mr Frederick Feige contacted the CJC (by phone) seeking to have the incidents investigated following the abandonment of the Heiner Inquiry by the Goss Government and shredding of the evidence. His pleas for action fell on deaf ears within the CJC. Mr Feige's activities only became known to me in 1998.

Its second brush occurred in late 1994/early 1995 when Mr Barnes inspected the "Heiner documents" files held by DFSAIA. He has now admitted (albeit in *The Courier-Mail* over four years later after an article written by journalist Mr Bruce Grundy) that he became aware of the incidents of child abuse and that *the Commission declined to act on the suspected official misconduct* because the incidents [according to Mr Grundy's recollection of the interview] were more than two years old. That alleged time factor of two years did not exist in law and was subsequently debunked by then CJC Chairman Mr Frank Clair in his media release of 25 May 1998 when the CJC decided to investigate the incidents following considerable media coverage of the abuse by *The Courier-Mail* in the Michael Ware articles.

Mr Barnes also publicly claimed in *The Courier-Mail* in his defence of the Grundy article that the public servant concerned (involved in the child abuse) was no longer a public servant. Mr Coyne (the public servant referred to) was in fact back employed by the Crown at Sir David Longlands Correctional Centre as a programmes officer when Mr Barnes made his discovery.

Concealing child abuse for money

The relevant passage in the Deed of Settlement effected on 7 February 1991 states:

> *"...2. The Claimant (Mr Coyne) will not canvass the issues surrounding his relocation from John Oxley Youth Centre, Wacol to Brisbane or the events leading up to and surrounding his relocation with any officer of the Department of Family Services and Aboriginal and Islander Affairs or in the press or otherwise in public and will forbear to take any action in any forum whatsoever which may have jurisdiction in respect of any of such issues and events;*
> *3. The terms of this Agreement will not be disclosed by either party without written consent of the other first being obtained;*
> *...5. Without limiting the generality of the foregoing provisions the Claimantshall not permit or allow the events leading up to and surrounding his relocation to Brisbane to be the subject of any autobiography, biography or any published article.* (Underlining added)

In evidence before the Connolly/Ryan Inquiry, counsel for the CJC, Mr Cedric Hampson QC had this to say (in part) about the payment and Deed of Settlement at p8203-8204 on 8 July 1997:

> *"...There was a deed signed and that's part of the evidence there with a confidentiality provision in it, but the CJC managed to obtain a release by Mr Coyne as a result of which the department made that available. And quite obviously the correspondence shows that Mr Coyne, backed by the union, made a claim for overtime for which he hadn't been paid, for travelling expenses and a number of industrial matters he claimed he was entitled to.*

The department acceded to his claim finally in that particular figure and he was paid that amount, and on correspondence there's nothing to indicate, as has been suggested, that in some way this was a payment to keep him silent...."

And:

"...When I say that I mean it was an industrial claim. It was a claim for further remuneration and he was backed by the union, and there were discussions about it and in the end the department capitulated...."

The payment has primarily made up of (a) unpaid overtime; and (b) travelling expenses. Mr Coyne had no legal entitlement to both either. All the parties were aware of that fact. This brings other motives into play and they are found in the clauses of the Deed.

What was missing for years in the equation was knowledge of what were *"...the (real) events leading up to and surrounding his (Coyne's) relocation"* which I did not know at the time but now do. I did not know at the time of my appearance before the Connolly/Ryan Inquiry in July 1997.

However, when Mr Hampson QC addressed the Connolly/Ryan Inquiry on this matter, at least one of his clients (ie Mr Michael Barnes) and potentially all relevant Commissioners, ***knew*** that *"... the events leading up to and surrounding his (Coyne's) relocation"* in fact referred to the Heiner Inquiry and complaints against Mr Coyne involving suspected abuse of children held in the care of the Crown at JOYC. Consequently, either the Commission deliberately withheld that knowledge from Mr Hampson QC and the Inquiry, or he also knew and withheld that vital information from the Inquiry of his own volition or under instructions.

I submit that by withholding such a state of knowledge from the Inquiry, the CJC acted in an unconscionable manner and *prima facie* breached its obligations under section 22 of the *Criminal Justice Act 1989*, and may have breached section 127(2) of the *Criminal Justice Act 1989* by advantaging those who engaged in the abuse and those who had knowledge of it and who covered it up for years, which, as we now know by its own public admission, also included the CJC itself.

Possible professional impropriety

Given the significance of this new evidence, and with due respect to Mr Hampson QC, I submit that it may open up possible questions of professional impropriety if he knew about the suspected criminal conducted involving child abuse (as his client undoubtedly did) and failed to inform Commissioners Connolly QC and Ryan QC when addressing the Deed of Settlement in evidence. It was plainly relevant in any consideration of the CJC's effectiveness in eradicating suspected official misconduct.

Mr Hampson QC presented it as a legal instrument whose sole purpose was to cover *"...an industrial claim"* when plainly it had a more sinister motive in its clauses now laid bare in the findings of the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions. (See pp 170-174). *Commissioners Connolly QC and Ryan QC were entitled to the whole truth.*

While Mr Hampson QC is entitled to the presumption of innocence because it is highly likely that he was not told, I submit that he is entitled to erase any perception of professional impropriety or imputation on his integrity as a senior member of the Queensland Bar by publicly declaring his

ignorance of this matter (ie the existence of evidence of unresolved child abuse) under oath before a Special Prosecutor.

4. SIGNIFICANCE OF IGNORING CERTAIN WITNESSES

Compared with the recent Net-Bet Affair investigated by Mr Bob Gotterson QC as the CJC's agent in which he claimed to have cross-examined some 20 to 30 witnesses (including at least one Cabinet Minister and other politicians and senior public officials), my matter never got out of the starting blocks, or at best it suffered from a false start. In the absence of contrary evidence, not one public official (elected or appointed) accused of wrong-doing has ever been interrogated in this matter.

The only witnesses ever interviewed have been Mr Coyne and myself in August 1992.

I requested that the following persons be interviewed, and others should have been interviewed based on evidence and leads emanating from Mr Coyne and myself. In the absence of contrary evidence, none ever was:-

- Former DFSAIA Director-General Ms Ruth L Matchett;
- Former DFSAIA Minister the Hon Anne Warner MLA;
- Mr Stuart Tait, then Acting Cabinet-Secretary;
- Queensland Premier the Hon Wayne Goss MLA and his Cabinet colleagues;
- DFSAIA senior public official Mr Trevor Walsh who ***knew*** first-hand that the records were (a) evidence for foreshadowed court proceedings; and (b) the subject of a legally enforceable access statute;
- DFSAIA senior public official and DFSAIA/CJC Liaison Officer Mr Donald A C Smith who ***knew*** first-hand that the records were (a) the subject of a legally enforceable access statute; (b) about incidents of suspected child abuse; (c) legally accessible for Mr Coyne; and (d) unlawfully disposed of without prior approval by the State Archivist (eg the original complaints and photocopies of same);
- DFSAIA Director of Organisational Services and Finance Mr Gary Clarke who ***knew*** (a) that Mr Coyne was not legally entitled to the *ex gratia* payment; (b) that the payment was made under threat of reporting suspected official misconduct to the CJC; (c) about the unresolved incidents of alleged child abuse; and (d) assisted in the formulation of the Deed of Settlement and witnessed its execution;
- DFSAIA senior public official Ms Sue Crook who (a) witnessed the meeting between our client and DFSAIA Director-General Ms Ruth Matchett on 23 February 1990 when the impending litigation was discussed in which the Heiner Inquiry documents (and original complaints) were the central item of evidence; (b) witnessed Ms Matchett wilfully disposing of the original complaints contrary to Crown Law advice and the law and reported same to another DFSAIA work colleague; and (c) ***knew*** about the unresolved child abuse;
- Ms Lee McGregor, State Archivist, who ***knew*** as of 17 May 1990 through Mr Coyne, that she had been critically misled by the Goss Cabinet into believing that no one required the documents when it was known that he (Coyne) did;

- Mr Kenneth O'Shea, the Crown Solicitor, who ***knew*** that the records were (a) required as evidence in impending litigation; and (b) the subject of a legally enforceable access statue when Cabinet ordered their destruction;
- Mr Barry J Thomas, solicitor in the Office of Crown Law, who provided much of the advice concerning the shredding and Mr Coyne's legal action in early 1990. Later transferred to the CJC as an investigating officer in the Official Misconduct Division under Messrs Le Grand and Barnes, and was working there in 1994 onwards when Messrs Le Grand and Barnes appeared before the Senate Select Committee on Unresolved Whistleblower Cases and when Mr Barnes paid his (two) visits to the DFSAIA in late 1994/early 1995 and discovered the incidents of child abuse.

The above list is not exhaustive.

I respectfully suggest that it gives some idea just how serious my allegations were (and remain), and just how lacking in diligence and commitment the CJC's handling of the allegations actually was at any stage. Messrs Morris QC and Howard described the CJC's investigation in their Report as "inexhaustive" and possibly not independent.

Several of the above politicians and public officials still work in Queensland public administration or still serve in Queensland Legislative Assembly. Five senior Ministers in the Beattie Government participated in the decision to shred on 5 March 1990, and according to the Cabinet Submission 00160 Decision No 00162 tabled by the Hon Mr Beattie MLA on 30 July 1990, it says (in part):

> **"URGENCY**
>
> *Speedy resolution of the matter will benefit all concerned and avert possible industrial unrest.*
>
> *Representations have been received from a solicitor representing certain staff members at the John Oxley Youth Centre. These representations have sought production of the material referred to in this Submission. However, to date, no formal legal action seeking production of the material has been instigated."*

I submit that the CJC's conduct was unconscionable and "open to conclude" in breach of sections 22 and 127 of the *Criminal Justice Act 1989*, and warrants a referral as it gives rise to a reasonable suspicion of official misconduct as a bare minimum.

5. SIGNIFICANCE OF THE CHRONOLOGY OF EVENTS AND RELATED CONDUCT GIVING RISE TO A SUSPICION OF OFFICIAL MISCONDUCT

A detailed chronology of events is attached. It is colour coded to assist in understanding how difficult it has been to put the picture together over many years. It would be a total misreading of history for anyone to believe that the Heiner Inquiry was always portrayed as dealing with serious

matters because former Queensland Premier the Hon Wayne Goss MLA dismissed the Inquiry (and the shredding) in late 1996 after the tabling of the Morris/Howard Report as a bit of a brawl between public servants. It was never that.

Notwithstanding the original Crown Law advice of 23 January 1990 was wrong at law and may, of itself, give rise to suspected official misconduct, it did not address the fundamental question going to the very heart of the administration of justice. That is, would it be lawful to destroy records in the Crown's possession up to the moment of being issued with a Writ after having been put on notice of impending litigation and knowing the material is evidence in those proceedings.

I suggest that it is a societal awareness amongst reasonable people, especially as in this case when one is dealing with senior well-educated public officials, that one does not destroy evidence known to be required for pending/impending litigation to prevent its use in those proceedings.

The use of the advice by the CJC to declare that the public officials who went ahead and shredded the material in accordance with it could not be found guilty of suspected official misconduct is, in our view, quite dishonest and biased. Those public officials have never been interviewed.

Unlawful hidden motives

Acting on bad advice does not prevent the law from being applied to the consequences of the action just because it was purportedly sought and offered without unlawful intent. In this matter openness and impartiality are absent from beginning to end thereby giving rise to a suspicion of official misconduct involving the public officials concerned. Moreover there are other suspicions attached to the real reason behind the shredding when, as Minister Warner told Parliament in May 1993 why Cabinet ordered it:

> *(i) the inquiry had ceased and no report would be produced, therefore there was no further need for the material;*
> *(ii) all parties involved in the inquiry would be assured that any material gathered would not be used in future deliberations or decisions. This applied to Mr Coyne as well as to all other staff;*
> *(iii) disposal of the material reduced the risk of legal action against any party involved such as Mr Heiner and Youth Workers employed in caring for children at John Oxley Youth Centre; (State Hansard 18 May 1993)*(Underlining Added)

There plainly existed within the Queensland Government, at the time, a reasonable suspicion that the *"...material gathered"* contained evidence of suspected child abuse being inflicted on children held in the care of the Crown by Crown employees. Indeed, it was the reason for relocating Mr Coyne because of his conduct.

No government, acting lawfully, could legally order the shredding of such evidence to protect the careers of those who may have been perpetrating such illegal conduct. The facts show that then Minister the Hon Anne Warner MLA was aware of the abuse in October 1989, and former Cabinet colleague the Hon Pat Comben MLA indicated on Nine Network's *Sunday* cover story "Queensland Secret Shame" screened nationally on 21 February 1999 that Cabinet was told before it destroyed the material.

A smokescreen

The advice of 23 January 1990 was presented by the CJC as being the "final" advice when it *knew* that DFSAIA Director-General Ms Ruth Matchett on 16 February, 19 March and 8 May 1990 was still (deceitfully) informing Mr Coyne and others (ie the Queensland Teachers Union) that she was still seeking "on-going" advice.

She did not finally respond to Mr Coyne's solicitors letters of 8 and 15 February 1990 until 22 May 1990, and all in-between letters indicated that "final/on-going" advice was still coming, when (as we now know), if the CJC's version of events were to be accepted, the Government always had the "final" advice it (purportedly) worked off as at 23 January 1990.

The final letter sent to Mr Coyne and his solicitors on 22 May 1990 had deliberately extracted from it the recognition that he (Mr Coyne) did in fact enjoy an access right pursuant to *Public Service Management and Employment Regulation 65.*

Deliberate deceit

Nowhere in the Crown Law advice of 23 January 1990 does it say that its view (i.e. the material could be shredded providing no court proceedings had commenced requiring production of the documents) should be withheld from either Mr Coyne, his solicitors or myself. Ms Matchett actively deceived Mr Coyne and his solicitors (as well as our client on 23 February 1990) that the evidence was secure and still the subject of on-going advice.

I submit (and am supported in the view by Messrs Morris QC and Howard in their October 1996 Report) that Ms Matchett may have breached sections 31 and 32 of the *Criminal Justice Act 1989* as well as sections 92(1) and 129 of the *Criminal Code (Qld)* when deliberately withholding such critically relevant information until it was too late to save the evidence from destruction by injunctive relief or other lawful means.

6. OWNERSHIP OF AND ACCESS TO PUBLIC RECORDS

A central feature in this matter concerns the integrity of the public record. The CJC's claim concerning the State Archivist's proper role under the *Libraries and Archives Act 1988* in respect of the shredding has was been rejected by the Australian Society of Archivists (ASA) and other similar professional archives bodies in the world.

The ASA's position on this matter was presented in evidence to the Connolly/Ryan Inquiry being relevant to the CJC's effectiveness in the protecting the integrity of the public record.

Using the facts of the Heiner shredding, public records known to be evidence in foreshadowed litigation and the subject of a legally enforceable access statute can be shredded without giving rise to a scintilla of suspected official misconduct. Moreover, the destruction appears to be perfectly legal up to moment of a Writ being served.

I suggest that is a profound misreading of the law. In my opinion it does give rise to a suspicion of official misconduct pursuant to sections 31 and 32 of the *Criminal Justice Act 1989* because any public official (elected or appointed) engaging in such conduct could not be acting honestly and impartially if the rights of another are not taken into account, notwithstanding *prima facie* breaching sections 92(1), 129, 132 and/or 140 of the *Criminal Code (Qld)*.

Impartially upholding a public trust

Public records are not owned by any government of the day to be treated as if they are its own private property. Any government holds them in trust as the "people's records." The impartial protector the public records is the State Archivist who can only perform his or her statutory duty by being fully informed of all relevant facts associated with records when it comes to their sentencing.

The Crown Solicitor took a view in 1995 that public records were owned by any government of the day, putting such ownership in the same category as a private citizen has with his or her own property. He suggested that government could dispose of its public records providing the requirements of the *Libraries and Archives Act 1988* were complied with. In advice to the Goss Government on 23 May 1995 in response to submissions put by (now High Court Justice) Mr Callinan QC and Mr Roland Peterson on my behalf to the Senate Select Committee on Unresolved Whistleblower Cases, then Crown Solicitor Mr Kenneth O'Shea said:

> *"...Suffice to say that, in all the circumstances the Government had, in my opinion, in the interests of fairness, a perfect right to seek the Chief Archivist's permission for their destruction and, although I did not advise her on the matter, the Chief Archivist had a perfect right, in the exercise of her wide discretion, to grant that permission."*

What becomes highly relevant, when exercising that discretion, is the information the State Archivist is entitled to expect from government and its agencies when appraising public records being sought for disposal.

In this matter the CJC has failed, at all relevant times, to act in accordance with its obligations under section 22 of the *Criminal Justice Act 1989*.

Contradictory CJC evidence

In its 20 January 1993 findings, the CJC claimed that the State Archivist's discretion in disposing of public records was "almost unfettered" under section 55 of the *Libraries and Archives Act 1988*. On 23 February 1995, before the Senate Select Committee of Unresolved Whistleblower Cases, Mr Barnes said the very opposite at page 108 Senate *Hansard*:

> *"...The archivist's duty is to preserve documents which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the State...."*

In evidence to Connolly/Ryan for the CJC, Mr Hampson QC said (in part) this at page 8209 on 8 July 1997:

"...The archivist, for example, doesn't have any responsibility to go and search the Supreme Court record to see whether a writ has been issued in - and these documents that are put before him or her may in fact be evidence in that particular action or something. I mean it just becomes nonsensical to think that the archivist has a general - section 55, yes, is the section, my learned friend reminds me.

CHAIRMAN: *55. I've got it here now.*

MR HAMPSON: *As a general power, as it were, to police what documents may be treated for the purposes other than what section 55 provides, that's her area of expertise, to look at the documents in the light of section 55 not to consider whether they might or might not (be) evidence in some action which has been started or might be started and so on.*

So to say that we publicly misrepresented the role of the archivist all we've said is that there could have been an offence committed unless the archivist's approved under section 55 and the archivist's discretion, in fact it's a wide unrestrained discretion, but limited as it were to a particular point. That is to say what section 55 says..."

When the CJC publicly put its above contradictory position, it is relevant to note that on 26 November 1991, it put the following views to the Electoral and Administrative Review Commission's Issue Paper No 16 "Archives Legislation" [Submission 13] concerning the archivist's role in archives and public record management. In response to the following question, the CJC said (page 4):

"When authorising disposal of public records should the Archives have regard to the present needs of accountability or concentrate only on future historical research needs? If so, what person or body should be responsible for ensuring that government agencies properly create, maintain, use and preserve public records, and how should this be done?

8.1. It is noted that EARC in the Issues Paper refer to the CJC as one of the bodies that is impeded in carrying out its functions by poor record keeping and the unauthorised or unlawful destruction of records. The experience of the Fitzgerald Commission and those of the CJC clearly establish this.

8.2. For reasons that relate to its functions, the CJC certainly supports the view that the Archives should have regard to the present needs of accountability, i.e. "the audit purpose." Maintenance of proper records and records systems assist in ensuring public bodies act responsibly and public officials act within the law

8.3. It would seem to the CJC that the responsibility for record management is appropriately an archival function, and concentration of all matters connected with archives in one body enhances the abilities of that body to effectively achieve its overall purposes. Therefore, the CJC believes that the Queensland State Archives (or however the body is called) should have the responsibility for ensuring that government agencies create, maintain, use and preserve public records." (Underlining added).

Undermining public confidence

To reinforce the point that the CJC has failed to act honestly in this matter knowingly presenting an inconsistent view of the State Archivist's role pursuant to the provisions of the *Libraries and Archives Act 1988*, the following is an extract from Queensland State Archives Web Pages. Ms Lee McGregor, the State Archivist, makes it abundantly clear to the world that if records have a legal claim on them by an individual at the time they are subject to her appraisal for disposal under the Act, then it is relevant information for her to know so that accountability needs can be lawfully met in properly preserving the public record. *Records with a claim on them cannot be shredded.*

> *"...Authorisation for the disposal of public records is given under and subject to the provisions of Section 61 of the Libraries and Archives Act 1988 (Reprint No.2) ("Section 61"). Public records must not be disposed of if disposal would amount to a contravention of Section. Particular care should be taken before disposing of public records of a Court or a Commission within the meaning of the Commissions of Inquiry Act 1959 - 1989.*
>
> *Public records must not be disposed if they are required:*
>
> > *(i) for any court action which involves or may involve the State of Queensland or an agency of the State; or* (Underlining added)
> >
> > *(ii) because the State holds documents which a party to litigation may obtain under the relevant Rules of Court, whether or not the State is a party to that litigation, or (Underlining added)*
> >
> > *(iii) pursuant to the Evidence Act 1977, or*
> >
> > *(iv) for any other purpose required by law. (Underlining added)*
>
> *Documents which deal with the financial, legal or proprietorial rights of the State of Queensland or a State related Body or Agency viz-a-viz another legal entity and any document which relates to the financial, legal or proprietorial rights of a party other than the State are potentially within the category of public records to which particular care should be given prior to disposal. Internal documents which strictly relate to uncontentious matters and do not involve areas of controversy (staff employment, discipline issues etc.) are unlikely to be required* (Underlining added).

In this matter, the Goss Cabinet (and presumably then Cabinet Secretary Mr Stuart Tait) and DFSAIA senior public officials (ie Ms Ruth Matchett, Ms Sue Crook, Mr Trevor Walsh and Mr Don Smith) all ***knew*** that solicitors were seeking access to the Heiner documents at the time the Cabinet sought the urgent approval from Ms McGregor to destroy the records. Not only was the legal demands of a citizen and his solicitors withheld from her, but the official communication on 23 February 1990 from Cabinet to her misled her into believing that the records *"...were no longer required."*

Throughout the entire life of this matter the State Archivisthas never been questioned by the CJC.

I have consistently suggested that her views in establishing whether official misconduct may have been engaged in are highly relevant. The facts of the case also suggest that the State Archivist herself may have engaged in suspected official misconduct in respect of her conduct in May 1990, and perhaps even earlier depending on her state of knowledge which needs to be established under oath.

It is worthwhile noting that the CJC on page 5 of its EARC submissions says this:

> ***"Should archives legislation explicitly provide that, in addition to, or as an alternative to, the commission of a criminal offence, a public servant who fails to comply with a requirement of archives legislation commits a disciplinary offence?***
>
> *10.1. The CJC believes that it is essential to establish firmly in the minds of all public servants the importance of complying with the requirements of archive legislation, and therefore any steps that can be taken to strengthen the remedies for failure to do so should be taken.*
>
> *10.2. Undoubtedly there will be occasions when it is more appropriate to deal with a failure to comply on the basis of it being a criminal offence, whilst at other times the incident would be more appropriately dealt with as a disciplinary matter. The two should be alternatives.*

In this matter, the CJC's impartiality under section 22 of the *Criminal Justice Act 1989* comes very much into question because both DFSAIA Director-General Ms Ruth Matchett and senior public official/DFSAIA/CJC liaison officer Mr Donald A C Smith failed to comply with the provisions of the *Libraries and Archives Act 1988* and yet the CJC (obliged to act independently) did nothing about their breaches of the law when they unlawfully disposed of the original complaints and photocopies of same on 22 and 23 May 1990 respectively.

I strongly suggest that the integrity of the public record, the role of the State Archivist and the CJC's handling of this aspect alone, if left unattended in your report, would tend to undermine public confidence, not only in the CJC, but in the proper protection of Queensland's public records within the rule of law.

7. RECOMMENDATION

My Connolly/Ryan Exhibit 394 (and submission in reply) shows that this matter does not just touch on possible misconduct within the CJC but goes to others arms of government as well. They include:-

Executive Council;
Executive Government;
Office of Crown Law;
Magistracy (ie SM Mr Noel Nunan's as a contracted CJC officer when a barrister);
Queensland Police Service;
Office of the Information Commissioner;
Queensland Audit Office;

Queensland Archives;
Other Government departments;
State Public Services Federation (and former QPOA officials);
And other bodies associated with "related matters".

The grave circumstances surrounding and substance of this matter I respectfully submit makes it unavoidable that an Office of Special Prosecutor would need to be established to get to the whole truth. The Affair I suggest still causes major disquiet because of its known unresolved nature.

Notwithstanding the Connolly/Ryan material may pertain to the CJC, any referral on this matter cannot ignore all the circumstances surrounding the shredding and related matters which inevitably impact on the above agencies/arms of government and other bodies in a significant manner involving possible official misconduct and criminal conduct in the cover-up.

There is currently no other appropriate body within Queensland's public administration which could adequately address any referral. Therefore, it requires Parliament (through a recommendation from the Parliamentary Criminal Justice Committee) to authorise the appointment of a Special Prosecutor because any appointee by Queensland's Executive Government alone into the shredding and related matters would immediately impact on five senior Ministers in the Beattie Government (ie the Hon Messrs Hamill, Gibbs, Mackenroth, Braddy and Wells) leaving the Special Prosecutor open to claims (rightly or wrongly) of bias or intimidation.

It is my view that the Special Prosecutor would need to be either a serving or retired Supreme Court Justice/s from outside Queensland, and Parliament should oversight the process.

The Terms of Reference should provide the Special Prosecutor with the capacity to recommend:

- appropriate changes to legislation or the structure of Queensland's public administration to ensure such a major breakdown in the administration of justice does not occur again;
- compensation for any party adversely affected in this matter;
- other changes as he/she sees fit.

.....

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8 October 1999