

Gordon Harris

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Sent: Thursday, 27 September 2012 11:41 AM
To: 'info@childprotectioninquiry.qld.gov.au'
Subject: 2012132

Family Law Doyle Keyworth & Harris

Our Ref: GLH:2012132
Your Ref: M J Copley SC

QCPCI 3 (e)

27 September 2012

Date: 19-06-13

Executive Director
Queensland Child Protection Commission of Inquiry
PO Box 12196
GEORGE STREET QLD 4003

Exhibit number: 373

Email: info@childprotectioninquiry.qld.gov.au

Dear Sir/Madam

Re: Application for Authority to Appear – Paragraph 3c, 3d and 3e of the Order in Council of 1 July 2012

We refer to the above and the Procedural Guidelines 05-2012 of the Queensland Child Protection Commission of Inquiry.

In accordance with the Commissions Guidelines we provide the following information to support our application. The written application should:

(a) Identify the name of the person on whose behalf the application is for;

Annette McIntosh, formerly known as Annette Harding;

Shelley Ann Farquhar formerly known as Shelley Ann Nyman or Shelley Ann Neal;

██████████ and

██████████

(b) Explain, by reference to established legal principles, how that person's interests are sufficiently connected with or are likely to be materially affected by any inquiry into the above-mentioned matter; and,

The cases of Annette McIntosh and Shelley Ann Farquhar are both matter that fall within Paragraph 3 e of the Order in Council of 1 July 2012. Both matters are sufficiently connected to be material to any findings of the inquiry. Whilst the cases of ██████████ and ██████████ cases do not fall within the ambit of paragraph 3e, these cases fall within the ambit of 3c and 3b. It is respectfully submitted that the combined evidence of all four witnesses will allow the Commission to make findings that a culture which shows a disdain for the law and the rejection of it application had existed throughout the former Department of Families and its protégé the Department of Communities (Child Safety Services) and Police officers over decades. There has been a disregard for the truth, and an abuse of authority to protect the culture.

Not all officers of the departments mentioned above are responsible for the culture. Experience has shown that many officers retain their integrity and provide excellent work in their profession.

The destructive culture reflects values that are outdated. It is submitted that any criticism of the conduct if the officers involved is rejected and the critics trenchantly attacked, sometimes under Parliamentary privilege and sometimes with false information.

Along with the culture comes an unwritten code that is an integral element of the protection of the culture. The code exaggerates the need for mutual loyalty and support and under it, it is impermissible to criticize other officers, the department and is seen as reprehensible if complaints are made by outsiders. Criticism is kept under control by those who have authority. The code requires that laws are not enforced against other officers or not to provide co-operation to assist investigations or deflect such investigations.

The matters for which our clients are involved are particularly serious and complex. It is very doubtful if the parties are required to self-represent themselves that they would obtain procedural fairness as they take on the entrenched might, resource rich and financially viable government departments. Further, evidence will be presented against our clients and we say there is a risk that if our clients are not legally represented, that there will be calls for the Commission to make adverse findings against them.

It is on the above grounds that we seek to represent our clients and seek Authority to legally represent our clients at the Commission in accordance with the Orders in Council.

By way of background our client's will provide evidence as follows:

Shelley Farquhar born [REDACTED] was an inmate of the John Oxley Youth Centre (JOYC) in 1991. On 4 April 1991, Shelley Farquhar was a 15 year old child and was raped by an employee of the Department of Family Services and Aboriginal and Islander Affairs. The rape occurred at Wivenhoe dam. Threats were made to Shelley to remain quiet over the allegations by three female inmates who were involved in giving sexual favours to the employee for favouritism. When Shelley told a male inmate of the rape of her by the employee, she was set upon by the three girls and seriously assaulted. It is reported in department correspondence dated 14 May 1991, that on 16 April 1991 Shelley advised that she had been sexually assaulted. We understand the employee ceased his employment on that day. The police became involved on 18 April 1991.

Annette McIntosh, born [REDACTED] was an inmate of the JOYC in 1988 and 1989. Annette McIntosh was a 14 year old child and was packed raped twice whilst in the care of JOYC. The first rape occurred at Mr Barney and the second rape at Mt French. JOYC was a juvenile detention centre operated by the Department of Family Services. After the first rape, the then Minister for the Department of Families, told the media that the Annette was 17 years of age. Mr Craig Sherrin was then Minister of the Family Services who made the statement to the media. Mr Sherrin was a Cabinet Minister in 1989 and as a result of holding that position formed part of the Executive Government as outlined in *Section 51 of the Constitution of Queensland 2001*. See the Executive Government of Queensland article on the Queensland Parliament website at <http://www.parliament.qld.gov.au/explore/about-us/parliament-overview/executive-government> and the Australian Constitution, Chapter II, Executive Government.

What happened to Shelley and Annette in JOYC can also be described as a crime against humanity. The United Nations on 19 June 2008, through Resolution 1820 stated "rape and other forms of sexual violence may represent a war crime, a crime against humanity or an element of genocide." The United States Secretary of State, Condoleezza Rice said "Rape is an unpardonable crime..." We appreciate that the United Nations and Secretary Rice were talking about rape in the perspective of a war crime. In Shelley's and Annette's case there was no war, there was no fighting, no acts of aggression, there was no violence to bring about the vile act of rape.

Both Shelley and Annette's cases were inadequately investigated by the Department and Police despite a criminal offence being committed.

[REDACTED] was abducted just prior to [REDACTED] birthday. The abduction of [REDACTED] was a criminal offence that was totally disregarded by authorities. [REDACTED] complaints were not investigated by the Department of Communities or Police. Psychologist, [REDACTED] who had never met [REDACTED] wrote a report harmful to [REDACTED]. This report was then circulated throughout Government departments and officers within the various departments accepted without challenge to contents of the report. When it was exposed that no investigation was properly done into [REDACTED] complaints and that the law with respect to child protection was totally flaunted by officers of the department, the department returned the blame to the child. It became apparent that this tactic was a way for the department to sidestep its responsibilities and to sidestep the legislation made in respect to the Bluecard system.

A submission on behalf of [REDACTED] was sent to a member of the Executive Government in the present Cabinet, it stated:

The Department of Communities (Child Safety Services) (Queensland) pursuant to the *Child Protection Act (Old) 1999*, declared in correspondence^[1] [REDACTED] had emancipated^[2] [REDACTED]. Whilst the Department supports the emancipation of [REDACTED], they did not perform their statutory duty pursuant to the *Child Protection Act (Old) 1999*. The Department based their claim that [REDACTED] caused [REDACTED] harm.

Under the *Child Protection Act 1999*, a Child Safety Service officer has a statutory duty to investigate.^[4] If the officer believes that there is a risk or allegations of harm^[5] the officer must as soon as practicable apply for a temporary assessment order.^[6] The officer must give details of the alleged harm or risk of harm to at least one of the child's parents.^[7] The Chief Executive's custody of the child ends when a temporary assessment order is decided^[8] or 8 hours has elapsed after the child is taken into custody.^[9] If the officer believes the child is at risk of harm move the child to a safe place.^[10] The moving of the child does not affect existing parental rights for the child.^[11] If a person, acting honestly notifies the Child Safety Service that a child is being harmed the person is not civilly, criminally or under any administrative process liable for giving the information.^[12]

A temporary assessment order is made to authorise actions necessary as part of an investigation to assess whether a child is a child in need of protection if the consent of the parent has not been obtained.^[13]

To obtain a temporary assessment order the officer must apply to a court.^[14] This is normally done through a Magistrates Court. The application must be sworn and state the grounds on which it is made, the nature of the order sought and the proposed arrangements for the child's care.^[15] A magistrate may refuse the application if all the information the magistrate requires is not given.^[16] A temporary order must not be more than 3 days.^[17] A magistrate can decide whether the parents are to be notified for the temporary assessment order.^[18] Extensions of temporary orders are available for another 3 days.^[19] The next step is a court assessment order.^[20] This is made if the court is satisfied an investigation is necessary to assess whether a child is in need of protection. The court may order interim protection whilst the investigation is being carried out and can direct a parent not to have contact with the child.^[21] Case Plans are a written plan for meeting a child's protection and care needs.^[22] A plan must be done for each child in need of protection.^[23] The case plan must encourage and facilitate participation of the child, the child's parents and other appropriate persons.^[24] This is normally done in a family group meeting.^[25]

The Children's Court, by the threshold test may make a child protection order only if it is satisfied the child is in need of protection and there is a case plan developed that is appropriate to assess the child's protection and needs.^[26] The child's wishes may be known to the court.^[27] Before long term guardianship is made, the court must be satisfied there is no parent able or willing to protect the child in the foreseeable future.^[28] The court may order that the parent has no contact or grant long-term guardianship of the child to the chief executive or a suitable person.^[29] The orders made by the court may be varied or revoked by the child or the child's parent.^[30]

It is important to note that no Children's Court proceedings were taken by the Department against [REDACTED]. Officers from the Department wrote to [REDACTED] advising that that if [REDACTED] persisted in trying to recover [REDACTED] they would consider making [REDACTED] malicious and vexatious notifier.

[REDACTED] had made numerous complaints to former Executive Government Members of Premier Bligh's Cabinet.

[REDACTED] was seriously sexually assaulted by [REDACTED]. [REDACTED] injuries were very serious, and [REDACTED]. On [REDACTED] the [REDACTED] Service Centre [REDACTED] made a decision to stop working towards reunification to a parent and to apply for a long term guardianship Child Protection Order to the Chief Executive. The Department made the decision without contacting [REDACTED] who had lived at the [REDACTED].

When notified of the attack on [REDACTED] [REDACTED] told the Department that he was willing and able to look after [REDACTED]. The Department already having made its decision not to look at reunification then subjected [REDACTED] to a premeditated and demeaning attack. After a court case, the decision of the Children's Court Magistrate made it clear that reunification was the only option for the Department.

During the prosecution of the case in the Children's Court it became clear that the prosecutors and department officers were emotionally enmeshed into believing [REDACTED] was responsible for [REDACTED] serious injuries. [REDACTED] the [REDACTED] had used the threat of force to stop [REDACTED] from having a relationship with [REDACTED] [REDACTED] had not been able to contact [REDACTED] as [REDACTED] did not know [REDACTED] whereabouts. [REDACTED] case makes it clear that there has to be a separation between the investigative and assessment roles within the department. The blurring of these roles and subsequent prosecution in the Children's Court creates a negative attitude towards any positive outcomes for the advancement of children in the Department's care. In essence the Department sets people up to fail.

(c) Identify the ambit of the authority to appear which that person seeks by reference to whether:

i. authority is sought to cross-examine witnesses and if so which witnesses;

Authority is sought to cross-examine witnesses and should include such witnesses as deemed necessary, and who can provide particular evidence in each of the individual cases. In the case of Annette McIntosh and Shelley Farquhar the following witnesses could possibly be:

1. Mr Bruce Grundy
2. Mr Coyne then Manager of the JOYC in Annette's time
3. Mr McIntyre then Manager of the JOYC in Shelley's time.
4. All other persons whom the Commission believes could provide evidence.

In the case of [REDACTED] and [REDACTED], officers within the Department who had involvement in the matter.

ii. authority is sought to contend that witnesses should be called and if so which witnesses; and

Authority is sought to contend that witnesses should include such witnesses as deemed necessary, and who can provide particular evidence in each of the individual cases. In the case of Annette McIntosh and Shelley Farquhar the following witnesses could possibly be:

5. Mr Bruce Grundy
6. Mr Coyne then Manager of the JOYC in Annette's time
7. Mr McIntyre then Manager of the JOYC in Shelley's time.
8. All other persons whom the Commission believes could provide evidence.

In the case of [REDACTED] and [REDACTED], officers within the Department who had involvement in the matter.

iii. authority is sought to make final submissions.

Authority is sought to make final submission on all matters and of matters arising after cross-examination.

We await your consideration.

Yours faithfully

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[1] Letter from [redacted] Department Communities (Child Safety Services) on [redacted]
[2] The Department does not have custody or guardianship and did not place [redacted] with [redacted] pursuant to Section 82. Rather, [redacted] self-placed with [redacted] and the Department, upon investigation, has formed a view that [redacted] appears to be safe in [redacted] care.

[3] The word "emancipation" literally means to become free from the control or restraint of another. In the context of emancipated minors, emancipation is essentially a legal procedure whereby children become legally responsible for themselves and their parents are no longer responsible (financially or otherwise) for their children. Thus, emancipated children are freed from parental custody and control and essentially become "adults" in many ways.

[4] *Child Protection Act 1999* Section 14.

[5] *Child Protection Act 1999* Section 18.

[6] *Child Protection Act 1999* Section 18 (5).

[7] *Child Protection Act 1999* Section 15.

[8] *Child Protection Act 1999* Section 18 (7) (a).

[9] *Child Protection Act 1999* Section 18 (7) (b).

[10] *Child Protection Act 1999* Section 21 (2).

[11] *Child Protection Act 1999* Section 21 (5) (b).

[12] *Child Protection Act 1999* Section 22.

[13] *Child Protection Act 1999* Section 24.

[14] *Child Protection Act 1999* Section 25.

[15] *Child Protection Act 1999* Section 25 (2).

[16] *Child Protection Act 1999* Section 25 (3).

[17] *Child Protection Act 1999* Section 29.

[18] *Child Protection Act 1999* Section 25.

[19] *Child Protection Act 1999* Section 34.

[20] *Child Protection Act 1999* Section 44.

[21] *Child Protection Act 1999* Section 45.

[22] *Child Protection Act 1999* Section 51B.

[23] *Child Protection Act 1999* Section 51C.

[24] *Child Protection Act 1999* Section 51D.

[25] *Child Protection Act 1999* Section 51E.

[26] *Child Protection Act 1999* Section 59.

[27] *Child Protection Act 1999* Section 59 (1)(d).

[28] *Child Protection Act 1999* Section 59 (4).

[29] *Child Protection Act 1999* Section 61.

[30] *Child Protection Act 1999* Section 65.