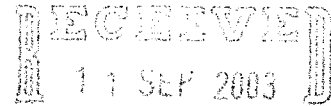


September 2003

Committee Secretary
House of Representatives Standing Committee on Legal and Constitutional Affairs
Inquiry into Crime in the Community
Parliament House
CANBERRA ACT 2600



Dear Sir / Ms

BY:

ALLEGED CRIMINAL ACTS TO DESTROY EVIDENCE AFTER LEGAL ACTION WAS AFOOT FOR BREACH OF FEDERAL LEGISLATION

Position

I have initiated legal action against the Queensland Government for breaches of the Federal legislation, namely the Defence Re-establishment Act 1965.

I have attached information and supporting enclosures tending to show that the officers of the Qld Public Service (and certain private citizens) have acted to dispose of documents that would assist me in that legal action. The basis of my case is that I have been disadvantaged in my employment in the Qld Public Service because of my obligations to serve in the Defence Reserve Forces. The documents disposed of have been described as performance reports on me that criticise me for my absences on Defence Service.

Destroying evidence relevant to legal action, either impending or afoot, is a criminal act under section 39 of the Commonwealth's *Crimes Act 1914*. Section 39 reads:

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, intentionally destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of an offence.

I notify your Inquiry of the alleged criminal actions by the Qld Government officers and former officers (now private citizens). I have done this on advice that, because certain actions constitute obstruction of justice within the Federal jurisdiction (the Defence Re-establishment Act is a Federal Act), the criminality is against the Federal *Crimes Act*.

Problem

The situation with my disclosures to Queensland authorities is that the Queensland Criminal Justice Commission did not investigate the matter. The CJC opined that the failure to provide me with access to the documents may be maladministration, not official misconduct. More recently, the Parliamentary Commissioner (Ombudsman) decided not to investigate the matter because the Ombudsman opined that the allegations may be official misconduct, not maladministration. Each authority is saying that the allegations are within the jurisdiction of the other. The matter is in a 'catch 22' position that artfully avoids any action by any Queensland authority.

I wish to persuade Federal authorities that there is no option for me other than to take the allegations to the Federal jurisdiction. Legally, that is a correct thing to do, and pragmatically, the State system is closing out all consideration of the alleged offence.

I may have difficulty convincing Federal authorities of the degree of corruption of the justice system in Queensland. In particular, the Queensland Government and its officers are capable of repeated criminal actions when it comes to destroying evidence relevant to legal actions being taken or likely to be taken against the State Government.

I judge that a full appreciation of this capacity for criminal behaviour by a State Government is relevant to your Inquiry into crime in the community. It is also relevant to the type and level of support that, I submit, an individual citizen might need from the Commonwealth Government in opposing the rogue behaviour of a complete justice system intent on disregarding a Federal law. It was my Defence service obligations imposed on me by an Act of the Commonwealth Parliament that was the issue that affected my employment relationship with the State Parliament.

Possibilities

I understand that your Committee has taken an interest in the alleged criminality by the Queensland Government in destroying the evidence of pack rapes and other forms of child abuse that occurred at a Qld Government Institution, the John Oxley Centre. The evidence was collected in the papers of a Commissioner Heiner, whose Inquiry took evidence of these pack rapes and abuses. The scandal is known as the Heiner Affair or as 'Shreddergate', and has been much documented within authoritative texts on managing archives¹, a Justice Project website at the University of Queensland, and a QC opinion² given to Premier Borbidge that has not been acted upon by Premier Beattie.

The submissions that your Committee has received on the Heiner Affair, assisted by your public hearings in Brisbane, may bring you to a full appreciation of what the Queensland government is capable of in defending itself against legal actions.

Your Committee might come to a position where it might be of assistance to me. Your Committee may be able to explain to Federal authorities that they should not reasonably leave it to me alone to pursue, with one part of the Queensland Government, breaches of the Federal *Crimes Act* by another part of the Queensland Government.

You should note that the four Queensland Government decision-makers that have denied me an investigation of the disposal of the evidence relevant to my legal proceedings have one thing in common. The four were all CJC decision-makers during the CJC's handling of the Kevin Lindeberg disclosures over the Heiner Affair. These officers were M. Barnes and D. Bevan, both principals from the Misconduct Division of the CJC and signatories to documents refusing any investigation into the Lindeberg disclosures, B. French, a Commissioner during the Senate Standing Committee hearings into the Lindeberg whistleblowing, and P. Anderson, the Whistleblower Support Coordinator during the same time.

Please note that I disclosed to the Senate Standing Committee on Public Interest Whistleblowing the difficulties that I was having in the Queensland Public Service over my Defence Service obligations. That Committee recommended that my allegations be given an independent investigation³. When this investigation was refused me by the Queensland Government, the Senate Standing Committee on Unresolved Whistleblower Cases recommended that I be given legal assistance to take my allegations before a Court⁴.

My situation, involving alleged obstruction of the course of justice with respect to the Federal Jurisdiction and to a Federal Act of Parliament, is a legitimate interest of a Standing Committee of the Federal Parliament.

My situation demonstrates how the system of justice within Queensland has been greatly diminished, and widely diminished, by the failure of the authorities to enforce the law over the destruction of the Heiner papers. The carry-over of the treatment of the Lindeberg disclosures to the treatment of my disclosures explains clearly the dangers to our social structure when a blind eye is turned to breaches of the criminal law.

Twisting the interpretation of the law to protect one group of government ministers and bureaucrats from prosecution, has corrupted the law of Queensland for us all.

I am looking to the enforcement of relevant Commonwealth law to restore justice to me, my family, my Reservist colleagues and my fellow professional public officers.

Proposal

I request that your Committee include my submission in the Committee's consideration of the Lindeberg disclosures over the Heiner Affair. I am prepared to participate in any public hearings held in Brisbane by your Committee.

I request that your report confirm the difficulties, identified by the Senate Standing Committee, that I have had and will have trying to secure justice within the Queensland justice system. I would also appreciate a recommendation that I receive legal assistance in pursuing my complaints before the Courts.

I further request that your Committee recommend that the appropriate Federal authorities respond to the evidence of alleged breaches of the Federal *Crimes Act 1914*.

This letter and the attachment are offered for publication. The names of persons involved in alleged offences have been encoded in the attachment. The enclosures of documents that evidence the allegations (mailed separately) are offered on a confidential basis.

Yours sincerely

G. MCMAHON

**NOTIFICATION OF SUSPECTED CRIMINAL ACTS:
DISPOSAL OF EVIDENCE OF BREACHES
OF THE DEFENCE RE-ESTABLISHMENT ACT**

1. I refer in turn to documents tending to show the alleged crime:
 - The action lodged by me on 20 Feb 1995 before the Supreme Court of Queensland, claiming damages for disadvantages that I had suffered in my employment with the Queensland Public Service because of my obligations for Defence service (**Side flag A**)
 - A report to Mr Fenwick (at that time Director-General, Department of Primary Industries) and Mr McGaw (Equity Commissioner, Office of the Public Service) by Investigating Officer Mr Ross Pitt, dated 15 Mar 1996; Mr Pitt's interim report described the existence of performance reports concerning me that I had not seen. These reports are described as criticising me for my service in the Defence Forces (**Side flag B**). Such documents were evidence of the claims that I had brought before the Supreme Court. One such report was attributed, by Mr Pitt, to Person A (the other was attributed to Person B). Person A was a public officer and my supervisor when he wrote the performance report, but his tenure as a public officer was terminated in early 1996, such that he no longer was a public officer of the Queensland Public Service.
 - A faxed memo by Person C to Person D, dated 10 Sep 1996, advising Person D that Person C had sent one of the performance reports on me to Person A and had not kept a copy (**Side flags C1 and C2**). The particular report was the one that was written by Person A (hence termed the 'A document'). At the time of posting, Person A was a private citizen.
2. I disclose that this disposal is an act tending to obstruct / prevent / pervert / defeat the course of justice. The disposal did this with respect to the Supreme Court litigation that I had initiated many months earlier under a Commonwealth Statute, namely the Defence Re-establishment Act 1965. The actions dispose of evidentiary material relevant to litigation already afoot.
3. I refer also to the documents tending to show the alleged cover-up of the alleged crime:
 - Requests properly made to the Department of Natural Resources by me and my union, both before and after the secret disposal of the A document, for access to the A document (**Side flags D, E and F**). Access was requested by me under Regulation 103 (earlier numbered

Reg 65, later numbered Reg 16) of the Queensland Public Service Regulations issued under powers derived from the Public Service Management and Employment Act.

- Letters by Person C, then by Person E, attempting to obstruct the course of justice further by seeking to deceive a plaintiff into accepting other documents as the documents sought by the plaintiff. They attempted to deceive me into accepting that a second document, one that I had seen (and signed) and that did not contain any criticism of my performance based on my Defence service, was the A document that Mr Pitt referred to in his 15 Mar 1996 report (**Side flags G and H**).
- Action by the Department of Natural Resources (Person F) and Crown Law (Person G) in Feb 1997, to trick me out of access to the 10 Sep 1996 document. The action also tricked me out of knowledge of the reference in the 10 Sep 96 fax to the secret disposal of the A document. These tricks occurred during discovery procedures for a judicial review application that I lodged. DNR and Crown Law effected these tricks by affidavit claiming that the 10 Sep 96 document was subject to legal professional privilege (**Side flag I**).
- A report by Person D to the Office of the Public Service, dated 10 Sep 1999, offering the opinion that the A document was probably no longer held by DNR. Person D reported this when Person D had been informed by Person C, and thus knew, that Person C had disposed of the A document and had not kept a copy for DNR. Person D knew that the A document was not with DNR, and knew specifically how this came to be, but Person D represented to the OPS that the absence of the A document was a probable outcome from 'various departmental reorganisations' (**Side flag J**).
- The failure to advise the Minister that the A document had been disposed of by Person C, when briefing the Minister about my claims of the breach of Regulation 103 (**Side flag K**).
- The suppression of the letter from Person C to Person A, referred to in letter of 10 Sep 96 (**Side flag C1**), with which the A document was enclosed when Person C posted the A document to private citizen Person A.

4. With respect to the failure by the Queensland Government to give access to documents held on one of its officers when access is requested by the officer under Regulation 103, the Premier of Queensland has received legal opinion from a QC. That QC opinion was that denial of such access is a criminal offence (**Side flag L**, an extract from the full report). This report followed allegations that the Queensland Cabinet had allegedly authorised the destruction of such documents sought by a public officer under the same regulation, after the public officer had advised, through his solicitors, that he was going to initiate legal proceedings based in part on those documents.

5. On 6 Dec 2002, the Court of Appeal of the Supreme Court of Victoria made rulings concerning the destruction of evidence required or likely to be required for legal proceedings {BATASvCowell [2002] VSCA 197(6 Dec 02)}. The decision also recited precedents concerning fraudulent replacement of documents relevant to legal proceedings with forged documents, and the situation where a party to a legal proceeding has a history of misconduct including destroying documents required for litigation. The Court

- Confirmed that both destruction and also suppression of documents, required for legal proceedings, were attempts to pervert the course of justice and / or contempt of court
- Confirmed that fraudulent conduct designed to mislead the court by production in the course of discovery of documents that the party knew to be fraudulent was a plain case of the party attempting to pervert the course of justice
- Confirmed that destruction of documents likely to be required for future litigation before that litigation is afoot could constitute an attempt to pervert the course of justice
- Confirmed that attempting to pervert the course of justice and contempt of court are criminal offences

6. I disclose to you my belief, reasonably held, that the above documentation is information tending to show that Persons A, C, D, E, and F may willfully have committed criminal acts. I believe this allegation may also be true of their superiors who were continually in conference or correspondence with these officers about my complaints, namely Persons H and I. They may have been doing this by acting in ways that attempted to obstruct, prevent, pervert and or defeat the course of justice, and in ways that denied me knowledge that these attempts had been and or were being made. They may have acted in furtherance of this overall plan and strategy by denying me thorough, fair and impartial investigation of my complaints related to the mismanagement of the documentation pertaining to my employment, and related to the mistreatment of me in my employment that the same documentation described. They in turn failed to record and report my Public Interest Disclosure to the Queensland Parliament, and denied me a fair trial in the judicial review that I had initiated. They may all have been playing their part in an overall plan or strategy to achieve this obstruction, prevention, perversion and or defeat of the course of justice, though not all may have known all aspects to the total plan or strategy. The information thus is tending to show complicity and / or conspiracy to achieve these ends.

7. I further disclose to you my belief, reasonably held, that these public officers were denying me the A document (and the B document) and / or knowledge of its disposal and / or knowledge of the cover-up of the disposal because of my legal actions already afoot and anticipated from me. I hold that

these officers held an expectation that, if I had this knowledge or these documents, I would make public interest disclosures about these matters in my court actions (and in any administrative appeals or grievance procedures that I was allowed).

8. I am thus making to you a Public Interest Disclosure of a reprisal / reprisals made by these officers against me.

9. I am notifying the House of Representatives Standing Committee of these alleged criminal acts because the actions are tending to obstruct / prevent / pervert / defeat the course of justice with respect of legal action afoot under Commonwealth legislation, namely the Defence Re-establishment Act 1965.

G. MCMAHON

Endnotes

¹ Richard J Cox and David A Wallace, *Archives and the Public Good*, Quorum Books, 2002

² Anthony J H Morris QC and Edward J C Howard, *An Investigation into Allegations By Mr Kevin Lindeberg and ... Mr Gordon Harris and Mr John Reynolds*, Report to the Hon the Premier of Queensland and the Queensland Cabinet, 8 October 1996

³ The Parliament of the Commonwealth of Australia, *In the Public interest*, Report of the Senate Select Committee on Public Interest Whistleblowing, August 1994

⁴ The Parliament of the Commonwealth of Australia, *The Public interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995

