

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BUDGET ESTIMATES 2017

Family Court of Australia

Question No. BE17-206

Senator Watt, Murray asked the following question on 18 August 2017:

Senator WATT: At what date and at what time were you given notice of the cancellation of that scheduled hearing of a parliamentary inquiry into a better family law system to support and protect those affected by family violence?

Ms Christie: The cancellation was notified to the Chief Justice of the Family Court on the evening before the scheduled hearing.

Senator WATT: And who notified the Chief Justice of the Family Court?

Ms Christie: My understanding is that it was the chair of the committee.

Senator WATT: Was that Ms Henderson?

Ms Christie: Yes, that is right.

Senator WATT: The member for Corangamite. I think that is her electorate. Was the chief justice given reasons for that cancellation?

Ms Christie: My understanding is that the information provided to the chief justice was that the appearance at the committee had been deferred pending advice that was being sought from the Attorney-General in relation to the appropriateness or otherwise of that appearance.

Senator WATT: So the chair of the committee, Ms Henderson, advised the Chief Justice of the Family Court that the hearing scheduled for the next day was being deferred or cancelled?

Ms Christie: I would have to check. My understanding is it was deferred but can I not be completely sure of that.

Senator WATT: And the reason given was that advice was being sought by the chair from the Attorney-General as to what exactly?

Ms Christie: The appropriateness of the attendance by the Chief Judge of the Federal Circuit Court and the Chief Justice of the Family Court before the committee.

Senator WATT: Senator Brandis, did you or your office have contact with Ms Henderson about the potential appearance of judges at that inquiry?

Senator Brandis: I spoke to Ms Henderson.

Senator WATT: Did you initiate that discussion?

Senator Brandis: No; to the best of my recollection, she did.

Senator WATT: Did you express a view to her as to the appropriateness of—

Senator Brandis: I don't, as a rule, as a matter of practice, disclose private conversations with colleagues, but I can tell you what my position is. We have this constitutional principle in Australia called the separation of powers. One of the things it means is that the courts—the judicial arm of government—are not answerable either to the executive government or to the parliament. That's what the independence of the judiciary means. But because courts are public institutions that spend public money, there is a limit to that principle. For example, in relation to the functioning of the courts as institutions, there is a degree of what I might call administrative and fiscal accountability, which is why Mr Soden, for example, appears before Senate estimates committees, as he is appearing this morning. But it is also the reason why, when courts appear

before parliamentary committees, it is their chief executive who does the appearing, not the Chief Justice or the head of jurisdiction. That's the way in which the principle of the separation of powers is respected while ensuring that, in terms of administrative and fiscal accountability, the courts as institutions are appropriately accountable concerning the expenditure of public money. I took the view—and I take the view—that for heads of jurisdiction to be called before a parliamentary committee of this kind and for the purpose for which they were being sought to be called was entirely inappropriate, and I know that that view is shared by the heads of jurisdiction. Senator WATT: As in the chief justices themselves?

Senator Brandis: Yes.

Senator WATT: Is that your understanding as well, Ms Christie—that the chief justices of the Family Court and the Federal Circuit Court considered it was inappropriate for them to attend that hearing?

Ms Christie: I'm not able to answer that question.

Senator WATT: Because you don't know the answer?

Ms Christie: I've never had a specific discussion with the Chief Justice in relation to that.

The response to the honourable Senator's question is as follows:

Question: Senator WATT: So the chair of the committee, Ms Henderson, advised the Chief Justice of the Family Court that the hearing scheduled for the next day was being deferred or cancelled?

Ms Christie: I would have to check. My understanding is it was deferred but can I not be completely sure of that.

On 19 June 2017, the Chair of the Committee advised the Chief Justice of the Family Court, the Hon Diana Bryant AO QC, that the public hearing was being postponed pending advice sought by the Committee.