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Mr. Alister Sands,
Secretary,
Senate Select Committee on the Lindberg Grievance,
Parliament House,
Canberra, ACT 2600

By Facsimile Transmission: 02 6277 5809

Dear Mr. Sands,

Re: Response to the Lindeberg allegations

I refer to previous correspondence.

I thank the Committee for the provision of additional information and for its forbearance in receiving my response.

The material is voluminous. Much personal time has been spent in reviewing the documentation and in trying to understand what is being alleged against me. This exercise has left me with an abiding sense of bewilderment as to why the Senate has seen fit to inquire into this matter once again.

No disrespect intended

In responding may I make the point at the outset that I have the greatest respect for the Senate and the work it does as the States' House and as the House of Review in the Australian Parliament. I mean no disrespect to the Senate or to the members of this Committee by any observation I make hereunder. I am simply seeking to exercise my right to make forthright submissions in response to the grave allegations which have been made against me by Mr. Lindeberg in his submission and evidence to the Senate.

Succinct response

I do not intend to add significantly to the large volume of material that this issue has already generated before the Senate and elsewhere over many years. I propose only to respond to the significant issues.

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I am available to expand upon these comments should the Committee so desire.

Previous inquiries:

On my calculation, this matter has previously been before the Senate and several of its committees on four previous occasions, namely:

- The Senate Select Committee on Public Interest Whistleblowing;
- The Select Committee on Unresolved Whistleblower Cases;
- The Committee of Privileges in December 1996 (63rd Report); and
- The Committee of Privileges in May 1998 (71st Report).

On the last two occasions the Committee of Privileges considered complaints inspired by Mr Lindeberg that false or misleading evidence had been given to the Select Committee on Unresolved Whistleblower Cases. On each occasion the Committee of Privileges found that the allegations against the Criminal Justice Commission and its officers had been satisfactorily answered and that no contempt had been committed.

The Committee of Privileges incorporated into its 71st Report an extract from the CJC's submission to it. In doing so the Committee made clear that it does not normally incorporate in its own records submissions made by only one party to the matters referred. In this case, however, it said that it considered that the CJC's summary of the allegations, and the answers provided to those allegations, represented its own analysis and conclusions in relation to the matters before it (page 9).

The Committee of Privileges therefore concluded, inter alia, that:

- Mr Lindeberg's allegation that the CJC had not investigated the matter "to the nth degree" was trivial, based upon a mischievous misinterpretation of the evidence, and without foundation (page 5); and
- The expression of a genuinely-held legal opinion about the statutory role of the State Archivist, even if wrong, could never amount to providing false or misleading evidence (page 9).

In my respectful submission, both of these conclusions loom large in any fair and objective analysis of Mr Lindeberg's present submission to the Senate. Once again Mr Lindeberg is seeking to re-cycle previously canvassed material dressed up with slight variations to enable it to be presented as new material. In this regard the Committee of Privileges appeared to endorse the comments made by the CJC in its response to the Committee, namely, that it was:

...unfair to the Commission and to its officers, and a waste of your Committee's time, for the same allegations to be endlessly re-cycled, dressed up with slight variations so that Mr Lindeberg can claim that "fresh examination" is warranted (page 4).

Further, in delivering its 71st Report, the Committee of Privileges endorsed the comments made by the chair of the committee, speaking as a private senator when the matter was referred on 5 December 1997, that:

"This to me has been a waste of time and resources of the Privileges Committee once again".

It is my respectful submission to the Committee that the history of complaints to the Senate inspired by Mr Lindeberg should lead to a critical evaluation of such complaints, in particular, as to motivation as well as to substance. The point is best illustrated by using Mr Lindeberg's own words:

I am not filled with absolute bitterness towards the people who have thwarted me for years. (transcript page 21)

Senator Bartlett: *You are saying a contempt of the Senate is the same as a contempt of the court – and I appreciate the principle, believe me. The dilemma for us is, if we accept that as the same and as equally serious, the courts, as you said yourself, do send people to jail for that. What sort of punishment should we give?*

Mr Lindberg: *I think you have to do the same. (transcript page 22)*

Lack of objectivity

It is surely fair to suggest that most members of Parliament are widely experienced in the affairs of the community in general and their constituency in particular. They deal with many citizens from all walks of life every working day. I suggest that common sense and an ability to reason and negotiate underpins that rapport with the community which leads to their election to office and fits them to make our laws.

In my respectful submission, a Committee equipped with such skills must be able to observe that Mr Lindeberg's opening statement to the Committee and the manner of his submission demonstrates a lack of proportion and objectivity which should lead the Committee to critically examine the factual basis for Mr Lindeberg's assertions.

Mr Lindeberg has used extreme language in his opening remarks and in his submission to you. He suggests that his allegations equate, inter alia, with:

- The signing of the Magna Carta (transcript page 6);
- The American Declaration of Independence (transcript page 6);
- The signing of the Australian Constitution (transcript page 6);
- The Lord Jeffrey Archer case (transcript page 7);
- Watergate (transcript page 7);
- The Fitzgerald Inquiry (transcript page 7); and
- The Abu Ghraib Prison torture (transcript page 23).

Further, Mr Lindeberg asserts that his allegations are "brought about by providence" and that the "Lindeberg Grievance" embodies "great democratic issues" (transcript page 6).

In my submission, men and women of fairness, reason and judgment would be put on notice by such statements. This is especially so when a review of Mr Lindeberg's submission indicates that on critical questions his 'evidence' amounts to no more than expressions of opinion in support of serious allegations with no supporting factual material.

The Allegations

The right to be heard in response to adverse evidence is one of the fundamental pillars of natural justice and, as such, is recognised in the procedures to be observed by Senate committees for the protection of witnesses. An essential element of that right is the right to know with sufficient particularity the case you are being asked to respond to.

In *Muin v Refugee Review Tribunal*; *Lie v Refugee Review Tribunal*¹ the High Court of Australia found that the Refugee Review Tribunal had failed to afford the applicants natural justice because the applicants had not been given an adequate opportunity to prepare and present favourable material at a hearing or an adequate opportunity to respond to unfavourable material.

With all due respect to the Committee, it is simply wrong, even under the most basic precept of natural justice, that I should be told by letter dated 29 June 2004 only that:

"The Committee considers that evidence that has been given to the inquiry may reflect adversely on you."

Natural justice requires that I be given particulars of what I am alleged to have done wrong and the material which is said to support these allegations. Instead I have been left to try to discover for myself the allegations that are being made against me and what, if any, evidence has been adduced in support of those allegations.

The only particularisation of my alleged wrongdoing that I could locate in the documentation supplied (apart from incidental references in the transcript) is contained page 28 of Mr Lindeberg's submission:

Hence, one limb of the charge pertaining to the CJC and its officials suggests that it is open to conclude that section 129 of the Criminal Code (QLD) 1899 has been deliberately misinterpreted not only to unlawfully benefit another (i.e. the Goss Cabinet, senior bureaucrats, Crown Law legal officers and others) from facing possible criminal charges in respect of the shredding of the Heiner Inquiry documents (and disposal of the original complaints which prime facie falls on Mrs Matchett, certain senior public officials and certain Crown Law legal officers), but, by putting its known false and

¹ (2002) HCA 30

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misleading interpretation, the Senate may have been wilfully obstructed from making full and proper findings and recommendations and treated with criminal contempt in order to cover up crime and advantage the contemtor.

Section 129 of the Queensland Criminal Code provides:

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, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Further, I note that I have not been given access to all relevant material.

From my review of the material provided it would appear that there are two limbs to Mr Lindeberg's allegations against me, namely, that:

1. I am a party to a conspiracy to protect the Goss Labor Government by knowingly misinterpreting the legal effect of section 129 so as to prevent the members of the Goss Cabinet being charged (a crime under section 132 of the Queensland Criminal Code 1889); and
2. I am in contempt of the Senate by deliberately misinterpreting the legal effect of section 129 in evidence to the Senate Committee on Unresolved Whistleblower cases.

The Conspiracy

Mr Lindeberg identifies at pages 28 – 29 of his submission the following former CJC officials as parties to the alleged conspiracy:

- Michael Barnes – former CJC Chief Officer of the Complaints Section, now Queensland State Coroner;
- David Bevan – former CJC Deputy Director of the Official Misconduct Division, now Queensland State Ombudsman;
- Noel Francis Nunan – former briefed barrister, now a Stipendiary Magistrate in Queensland;
- Robin O'Regan QC – former CJC Chairman, former Dean of the Law School at the University of Queensland and former Chairman of the Red Cross;
- Frank Clair – former CJC Chairman, former Special Prosecutor and now Chair of the Queensland Mental Health Review Tribunal;
- Marshall Irwin – former CJC General Counsel, now Queensland's Chief Stipendiary Magistrate;
- Barry Thomas – former Crown Law Officer and CJC Executive Legal Officer, now at the private bar in Queensland; and
- Myself, former CJC Director of the Official Misconduct Division, now in private legal practice.

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The failure to list Sir Max Bingham QC

Significantly, Mr Lindeberg has spared Sir Max Bingham QC from being named as a co-conspirator. Sir Max was Chairman of the CJC at the time of the CJC's initial consideration of the Heiner matter and was fully briefed on and sanctioned the CJC's decision to employ Mr Nunan to review the matter. Indeed, Mr Lindeberg deals in some detail with Sir Max's involvement the briefing of Mr Nunan in his submission at pages 27 – 28 and later at pages 62 - 63 where he quotes extracts from CJC submissions to the Senate Select Committee on Public Interest Whistleblowing.

In the circumstances, it is surely a legitimate and highly relevant question to ask - how does Mr Lindeberg avoid listing Sir Max Bingham among the alleged conspirators? Clearly the answer is that it was a bridge too far even for Mr Lindeberg. How could he maintain with any shred of credibility that Sir Max, a former Attorney-General and Deputy Premier in a Tasmanian Liberal Party Government, was party to a monumental cover-up of Goss Labor Party Government wrongdoing?

Further, it is clearly nonsense to suggest that chairmen who came to the position years later, Robin O'Regan, former Dean of the UQ Law School, and Frank Clair, former Special Prosecutor are parties to a conspiracy allegedly formed and carried out in 1992. However, Mr Lindeberg is driven to the nonsense that they are co-conspirators after the fact (a legal and practical impossibility) to explain how they could sanction an interpretation of section 129 with which he disagrees.

In his submission Mr Lindeberg does not explain why so many officers of standing and seniority in the law would risk their reputations, their livelihoods and their freedom to engage in this conspiracy. Even the most casual observer of the relationship between the CJC and the Goss Government would perceive that it was anything but close and abiding.

Mr Lindeberg's conspiracy allegation draws still further parties into the plot. The former Crown Solicitor, Mr Ken O'Shea and his officers who rendered the original advice (pages 68-70) and the Director of Public Prosecutions, Mr Royce Miller QC who "incorrectly interpreted sections 119 and 129 of the Criminal Code" and decided not to charge the Director-General, Ms Ruth Matchett, because she had acted on the advice of the Crown Solicitor (pages 70-71). The worst motives are attributed to both honourable men because their interpretation of section 129 does not agree with Mr Lindeberg.

Unfortunately, Mr O'Shea has since died, but Mr Miller is not to be spared – his advice is characterised as corruptly derived - without a shred of evidence:

Consequently, it is reasonable to suggest that it may have been constructed for an improper purpose to knowingly cover-up a crime. (page 71)

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There appears to be little doubt that Mr Miller QC January 1997 advice is unlawful and covers up crime. (page 74)

This is truly awful stuff which I cannot believe that the Senate is prepared to lend its prestige and processes to – having seen previously the colour of this man's allegations and motivations time and again.

But it doesn't stop there. Anyone who disagrees with Mr Lindeberg is corrupt. The Information Commissioner and his officers are corrupt:

The simple point is that evidence of prima facie criminal conduct, including possible contempt to (sic) court, was always present "on the papers" but those public officials, who were duty bound to apply the law to the facts, like the Office of the Information Commissioner and his staff, failed to do so...

In my long dealings with the Office of Information Commissioner it has engaged in dissembling, delay and conspicuous avoidance of applying the law... (page 73)

The Queensland Police are corrupt or incompetent:

...the police could not apply the law equally, or at all; and, either through sheer incompetence or corruption, found relief from enormous political, constitutional and legal ramifications any finding of prima facie criminal conduct be(sic) bring... by writing it off using the findings for(sic) another investigation. (page 67)

The evidence of wrongdoing

Mr Lindeberg, who concedes that he has no legal qualifications, says that the legal position is so clear and that the CJC's interpretation of section 129 is so wrong that it must have been a conspiracy. For example:

That is why I am saying to you that any properly briefed lawyer would never have come to the Senate in 1995 and suggested to you that you can shred documents up to the moment of a writ being served. (transcript page 19)

The problem with Heiner is – and I will tell you quite clearly – there has been a cover-up. The system would not charge the cabinet. It fell in around it. I know it is a bold statement but I am saying to you that that is what happened. (transcript page 21)

I have attempted to discern the evidence upon which these most serious allegations are made. I can find nothing beyond Mr Lindeberg's assertion that my colleagues and I have mis-stated the law therefore, ipso facto, we have conspired to pervert the course of justice and obstruct the Senate.

Stripped of the rhetoric and the historical allusions, there is no evidence. There are no witnesses to this all encompassing conspiracy, no record of interview with or without

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admissions of wrongdoing, no overheard conversations, no clandestine meetings, no intercepted telephone calls, no collusive correspondence, no indemnified witness, no undercover operative, no money trail - not a skerrick of admissible incriminating evidence indicating, let alone proving, that a conspiracy to defeat the course of justice occurred. All we have is Mr Lindeberg's assertions based upon his view of the correct interpretation of section 129 of the Criminal Code.

An exchange which occurred before the Committee on 11 June 2004 between Senator Santoro and Mr Lindeberg succinctly illustrates what we, the accused, are facing:

Senator Santoro:

...Mr Lindeberg, do you think that it is feasible for these people (the alleged conspirators) to have believed, claimed or advised government or anybody else within government seeking advice that section 129 did not apply to the shredding of the Heiner documents? Do you think that any advice from any of these people to that effect would have any credibility?

Mr Lindeberg:

No. it would not -- not against the facts that they knew that the documents were required.
(transcript page 46)

It is difficult to believe that this sort of process is happening in a modern western democracy in the 21st century governed by the rule of law.

The sum total of the 'evidence' available to the Committee to support the allegation that this diverse group of individuals engaged in a conspiracy to cover-up and pervert the course of justice is Mr Lindeberg's opinion. No admissible evidence is produced, just Mr Lindeberg's unqualified assertions as to what the motives of those who had an involvement in the matter at some stage must have been. Mr Lindeberg is prosecutor, judge and jury.

But to spice things up and to raise the temperature Mr Lindeberg has now added a new element. Again without a shred of evidence:

Senator Bartlett: *Are you now saying a primary motivation was to cover up evidence of child abuse? Is that a different view to what you initially believed the motivation for the shredding was about?*

Mr Lindeberg: *Yes* (transcript page22)

This development is known to those who practice in the criminal law as 'recent invention'. Why, may I ask, has it taken over a decade for Mr Lindeberg to fix upon this highly emotive and damaging allegation as the motive?

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There is nothing wrong with bold statements as long as there is evidence to back them up. But to defame and vilify people, to destroy reputations, to injure careers and livelihoods without a skerrick of admissible evidence is grossly irresponsible and an abuse of process which, in my respectful submission, the Committee should not countenance. This obligation, in my submission, is even more compelling when the record shows that Mr Lindeberg has attempted to use the Senate repeatedly in a similar manner in the past.

If Mr Lindeberg was to make his allegations to any other body, the first question he would be met with is - what evidence do you have to support your allegations? Not - what do you think? What is your view? What is your opinion? What do you say? Surely other citizens have rights before a Senate Committee, especially those who are repeatedly defamed, have their reputations besmirched, their honesty impugned and are called corrupt in a high profile national public forum every few years? And what is their crime? They have tried to do very difficult jobs in the public interest to the best of their abilities.

Perhaps the more significant question is - what is their redress?

As the Committee of Privileges concluded in its 71st Report referred to above - the expression of a genuinely-held legal opinion, even if wrong, could never amount to providing false or misleading evidence. There is no evidence that these opinions were not genuinely-held, nor that there was any collusion among those who reached that view.

With all due respect to the Committee, it is submitted that an adverse finding by the Committee based upon this material would represent a travesty of justice.

The CJC's function

Despite the vindictive assertions by Mr Lindberg in both his submission and his evidence to the Committee, it remains clear on the face of the legal advice and the correspondence that the Crown Solicitor was engaged in a bona fide attempt to resolve a difficult legal and practical problem. It was not the role of the CJC to arbitrate between competing legal claims. What the Commission had to determine was whether the advice was properly derived.

In my submission, there is no admissible evidence to indicate that when the Queensland Government decided to shred the documents it had any reason to believe that it was acting unlawfully. It had cognisance of, and was acting in accordance with, legal advice provided to it by the Crown Solicitor.

In these circumstances, there was no possibility of convicting the members of the Cabinet with a criminal offence, nor as a consequence could they be found guilty of official misconduct. At this point the Commission had discharged its function.

In any event it is clear from the actions of the then Director of Public Prosecutions, Royce Miller QC, in January 1997 in refusing to prosecute Ruth Matchett that even if the

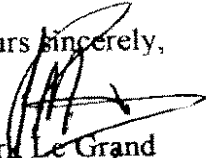
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CJC had found a prosecutable case against the Goss Cabinet for the destruction of the Heiner documents he would not have sanctioned prosecution.

Mr Lindeberg has sought to place store in the fact that the former Chief Magistrate Di Fingleton could not rely upon the fact that she acted upon advice from her solicitor to protect herself from being charged and ultimately convicted. In my submission the cases are distinguishable on many bases. For example, Ms Fingleton was an experienced lawyer who had been squarely put on notice by a senior fellow magistrate that what she was proposing to do was unlawful. There is no similar evidence in the Heiner case.

The CJC submission to the Committee of Privileges in 1998 concluded with a plea for some finality in this matter. I respectfully renew that request. For how many more years must we be dogged by Mr Lindeberg's obsession? At some point in the not to distant future, process, due or otherwise, will become persecution.

Yours sincerely,



Mary Le Grand