

Senate
Commonwealth of Australia

THE
R F GREENWOOD QC
SUBMISSION
ON
THE
LINDBERGH GRIEVANCE
&
THE
HEINER AFFAIR

SENATE HANSARD 28 JUNE 2001

ADJOURNMENT: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (3.08 a.m.) —I seek an indication from the chamber whether all senators' adjournment speeches will be incorporated.

The PRESIDENT —It would be a matter of the speeches being shown in advance to the whips, and it may have been agreed or not have been agreed. I do not know. You have the call, Senator.

Senator HARRIS —I have seen no adjournment speeches, Madam President.

The PRESIDENT —You have the call to speak if you wish, Senator.

Senator HARRIS —I rise to table a grievance—dated 9 May 2001—this evening on behalf of Queensland Mr Kevin Lindeberg and compiled by Mr Robert F. Greenwood QC, in respect of a charge that the Senate was gravely misled by the Queensland government and the Queensland Criminal Justice Commission when it took evidence in the Heiner affair in 1995 before the Senate Select Committee on Unresolved Whistleblower Cases chaired by Senator Shayne Murphy. The grievance is addressed to Senator Margaret Reid, President of the Senate. Honourable senators should know that, after considering the matter, the President declined to table it but she invited the interested parties, Messrs Lindeberg and Greenwood, to see if any senator would. After an approach and careful consideration, I have agreed to do so. Under normal circumstances I would respect the President's discretion but on this occasion, regretfully, I cannot.

The grievance does bring serious new evidence and critical insights into the notorious Heiner affair which I believe must be appropriately considered by this chamber. Disturbingly, it reveals for the first time that allegations of child abuse brought about the Heiner inquiry, and that the shredding unacceptably aided in covering up the abuse. This chamber knows that I, along with all other senators, have a longstanding interest in eradicating child abuse, no matter where it exists, who has engaged in it and who has covered it up.

To reiterate, the new evidence reveals what can be reasonably assumed to have been shredded, namely, evidence of abuse of children in that state run institution, and it throws a new and disturbing light on the thousands of dollars of public money paid by the Queensland government to a public servant to buy his silence about the child abuse and related matters. The critical evidence appears to have been deliberately withheld from the Senate at the time when it was considering the Heiner affair. Contempt may therefore have been committed. Given the time constraints, I seek leave to table the grievance and its attachments so this chamber may consider the content during the winter recess.

Leave not granted.

Senator HARRIS —It is my intention to speak more comprehensively, when the Senate resumes, on the grievance and how I believe its serious issues should be addressed by the Senate. To repeat: I have considered the grievance carefully; it is not done lightly. It is not a rehash of old material but a grievance which highlights new evidence and how this chamber may have been seriously misled when making findings in the Heiner affair. Left unaddressed, in the face of this new evidence, those findings may bring disrepute on the Senate and may let a serious possible contempt occur with impunity. I indicate to the Senate that at an appropriate time in the new session of parliament I will read into *Hansard* the documents which the opposition has declined to give leave to incorporate.

SENATE HANSARD 8 August 2001 P25783

MATTERS OF PUBLIC INTEREST: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (1.14 p.m.) —I raise as a matter of public interest the grievance of Mr Kevin Lindeberg. I will quote from a document that was written to the President of the Senate by Greenwood QC. My references to the President will be in the context of reading from that document, Madam Acting Deputy President. I quote from the document written by Greenwood QC dated 9 May 2001, addressed to the Hon. Senator Margaret Reid, President of the Senate, Parliament House, Canberra:

RE: A MATTER OF MISLEADING THE SENATE IN RESPECT OF THE HEINER AFFAIR

We act for Mr Kevin Lindeberg of 11 Riley Drive, Capalaba, Queensland 4157.

We know that the Heiner Affair came before the Senate in 1994 and 1995 for the purpose of drawing lessons from the case to enhance the formulation of national whistleblower protection legislation. We understand that such legislation has not advanced to date, with a question concerning its current status recently raised by Queensland Senator Andrew Bartlett during the late-November 2000 Question Time to then Justice Minister the Hon Senator Amanda Vanstone.

In light of fresh and compelling evidence in the Dutney and Forde documents which provides a deeper understanding of the Heiner Affair, we have re-examined material placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995 and the Senate Committee of Privileges in 1996 and 1997/98 and their respective findings, and now suggest that it is open to conclude that:

- (a) both Committees of the Senate were misled by both the Goss Queensland government and Criminal Justice Commission (CJC); and
- (b) the findings of both Committees, in particular matters, are unsafe and cannot be allowed to stand; otherwise:
 - (i) the Senate will be brought into disrepute; and
 - (ii) an injustice will have been inflicted on our client, as a witness before the Senate, of such an unconscionable nature as to undermine public confidence in the workings of the Senate's committee system.

We acknowledge that certain evidence was put by Mr Lindeberg to the Senate Committee of Privileges in 1996 and 1997/98 that the CJC had misled the Senate, and, on both occasions, the CJC was found to be not in contempt because his complaint could not be sustained.

We submit, however, that both those findings are unsafe. We ask that the matter be revisited for reasons set out below.

Firstly, this grievance is lodged because of our discovery of new and compelling evidence which indicates that both the Goss Queensland Government and CJC *knew existed at all relevant times but failed to reveal this evidence, or, with that state of knowledge, went on to knowingly mislead the Senate in a significant manner.*

In the case of the CJC, it failed to inform the relevant Senate Committees of its true state of knowledge in either oral and or written submissions when it had an obligation to do so.

This had the effect of:

- (a) knowingly misleading those committees and their findings to prevent or attempt to prevent adverse findings being made against itself (the CJC) and others;
- (b) causing a detriment to our client;
- (c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights, including the rights of children; and
- (d) undermining the Australian Federal Government's commitment to relevant United Nations' Human Rights conventions and treaties e.g.:
 - International Covenant of the Rights of the Child;
 - International Covenant on Civil and Political Rights;
 - The Right to Organise and Collective Bargaining.

Regarding the Goss Queensland Government, it withheld highly relevant evidence which had the effect of:

- (a) knowingly misleading those committees and their subsequent findings to prevent adverse findings being made against the Goss Queensland Government;
- (b) causing a detriment to our client;
- (c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights;
- (d) undermining the Australian Federal Government's commitment to relevant United Nations' Human Rights Conventions and Treaties as mentioned above.

Our concern that the Senate may have been misled is shared by Queensland Senator John Woodley in his comments in *The Queensland Independent* October 2000 edition (See Attachment A).

Of particular relevance to this submission, Senator Woodley outlined his concerns in the aforementioned article:

- (a) Senator Woodley was a member of a 1995 Senate inquiry into the shredding of the Heiner documents and said he was sure that the inquiry would have drawn different conclusions had they seen the Dutney document (a fundamental component of our new evidence) "along with a number of others".
- (b) Senator Woodley said the subsequent Senate Privileges Committee inquiries also may have drawn different conclusions if the documents, including the Dutney memorandum, dated 1 March 1990, (See Attachment B) been revealed at relevant times.

In our opinion the Goss Queensland Government and CJC may be in breach of the *Parliamentary Privileges Act 1987 (C'wealth)*, which, in turn, if sustained, may warrant further investigation by an appropriate Federal agency to address obstruction of justice.

As to whether the matter should be reconsidered by a new Senate Select Committee or the Senate Committee of Privileges is something which the Senate must decide for itself as it rightfully protects its own privileges and immunities. Nevertheless, we respectfully submit that the Senate Committee of Privileges may be obliged, in the interests of procedural fairness, to recognise the existence of apprehended bias, given that our client placed certain new documents of a compelling nature before it in 1999 only to have it noted when we believe it warranted action. In other words, prejudgment towards further inaction may exist

within that committee to our client's detriment, and procedural fairness may not be afforded to him.

Additional to the aforementioned fresh evidence, we have just accessed two Exhibits tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions in February 1999 by Counsel for Mr Coyne. They are identified as Exhibits 20 and 31 and copies are enclosed (as Attachments C and D respectively) with this grievance.

We submit that conclusions which can be reasonably drawn from their content add weight to our call that the Senate cannot leave matters as they stand.

We suggest that the conclusion reached by the Murphy Select Committee in its October 1995 report *The Public Interest Revisited* that the shredding was an "...exercise in poor judgment"⁴ is inappropriate. We suggest that it brings disrepute on the Senate, especially in light of what we now know was the Goss Government's true state of knowledge at all relevant times concerning the legal status of the records in question, and what had been going on at the John Oxley Youth Detention Centre during and before the time the Heiner Inquiry sat.

It is simply untenable to permit the shredding of public documents containing evidence of alleged child abuse in a State-run institution and required for court action to be described by the Australian Senate solely in political terms while ignoring its legality or otherwise.

Our democracy requires that political decisions can or should be taken only within the framework of upholding and respecting the rule of law. In this regard, the Senate, as its view stands concerning certain conduct by Government and other public officials in the Heiner Affair, appears to suggest, on the Parliamentary record, that Executive decree can be placed above both legal considerations or consequences when arguably it is open to conclude that certain sections of the *Criminal Code (Qld)* may have been breached⁵ in respect of those same Cabinet and related decisions.

Such a notion is a danger to Australia's liberal Parliamentary democracy and the individual rights of all Australians enjoyed under our Constitution.

Forde Inquiry Exhibit 20, dated 7 April 1989, reveals *prima facie* admissions of the most serious kind concerning unlawful assaults against children held in the care of the State at Sir Leslie Wilson Youth Detention Centre and John Oxley Youth Detention Centre (JOYC). We submit that the submissions should have been thoroughly explored by the Forde Inquiry but they were not, even after the exhibit was tabled and when both Messrs Peter Coyne (former JOYC Manager) and Frederick Feige (Senior Youth Worker) were under Oath in the witness box during its February 1999 public hearings.

We submit that what makes Exhibit 30 so disturbing is that Mr Feige, to the best of our knowledge, still works at the Centre and continues to be paid from the public purse. He appears to have never been questioned over his submissions of possible unlawful assaults on children in care as set out by Mr Coyne. Left unaddressed, we suggest that Mr Feige has neither:

- (a) been able to clear his name pursuant to procedural fairness principles in respect of himself;
- (b) been able to allay departmental, public and court concern that his professional conduct concerning the care of children held in a State-run institution acceptable; nor has he
- (c) been held to account for his actions if found to be true.

Forde Inquiry Exhibit 31 is a summary document prepared by Mr Coyne on 29 September 1988 for his departmental superiors. It reveals the calibre of the staff, according to his assessment, with whom he was required to run the John Oxley Youth Detention Centre. We acknowledge that it is his assessment alone and is therefore open to challenge by those affected pursuant to procedural fairness considerations.

As we now know that evidence such as this was withheld from the Senate, then it is reasonable to suggest that other incidents of alleged child abuse may remain hidden but the Senate was entitled to know about when considering the Heiner shredding and related matters.

We therefore suggest that:

- (a) as Mr Coyne's findings are so serious against a set of criteria (e.g. Point 4: 'does not verbally, physically or sexually abuse resident children') that it is reasonable to believe that as a responsible manager of this juvenile justice institution and aware of the employee rights under relevant law and awards, he would have been obliged to reach his conclusions by carefully considering and preserving documented supporting evidence so that if the Queensland Government decided to implement his recommendations it could defend any dismissal before any tribunal or court should an affected (sacked) Youth Worker wish to challenge his or her dismissal;
- (b) it is incomprehensible and *prima facie* negligent that the Forde Inquiry, given its Terms of Reference, did not fully explore Mr Coyne's findings once his Exhibit was tabled, especially when it was known that at least one of the Youth Workers (and possibly more) continued to work with children at the Centre and gave sworn evidence to the Inquiry as a witness;
- (c) it is unacceptable for such vital evidence, as the Dutney Memorandum and Exhibits 20 and 31, *always held* by the Queensland Government, to have been withheld from the Senate in 1995 by the Queensland Government for its own political ends;

I conclude my quotation from the document at this point and seek leave to have the remainder of the document incorporated in *Hansard*.

Leave not granted.

SENATE HANSARD 20 AUGUST 2001 P26003

ADJOURNMENT: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (9.45 p.m.) —I rise in this adjournment debate to continue to read into *Hansard* the legal opinion of Greenwood QC. I continue from the previous debate and commence at item (d).

- (d) other incidents of child abuse may exist and remain unaddressed;

and consequently, it may be open to conclude that the Queensland Government *knowingly* obstructed justice and obstructed the Murphy Select Committee from properly fulfilling its commission as set by the Senate in December 1994.

We are highlighting that there was knowledge within the Queensland Government and CJC in 1995 that what lay at the heart of the Heiner Inquiry was alleged misconduct of certain JOYC staff (and possibly others) engaging in suspected child abuse.

It is our strong view that the new evidence is so serious that it cannot be merely noted in 2001 but should be subjected to a fresh independent Senate examination.

For the benefit of the Senate, and prospective Federal whistleblower protective legislation, we have decided not to touch on every aspect of our concerns but to concentrate on the more substantial parts which go to supporting our position.

We submit that it is unconscionable conduct for any State or Federal Government, which claims to respect the rule of law and fundamental human rights to:

POINT 1:

knowingly order the destruction of public records containing evidence of the alleged abuse of children while in the care of the State or Commonwealth so that the evidence cannot be used, for whatever reason, in particular, holding public officials who were or may have engaged in such alleged misconduct to account (including their superiors who may have been aware of such conduct).

In this regard, there is evidence (yet to be fully explored by an appropriate body) suggesting that the Goss Government acted in an unconscionable and illegal manner when it knowingly destroyed relevant evidence for the purpose of affording protection to certain accountable Youth Workers and Mr Coyne over alleged offences of criminal assault against children (by whomsoever) placed in the John Oxley Youth Detention Centre by order of the courts or by statute. The law required that their known alleged misconduct be properly and impartially addressed.

POINT 2:

knowingly order the destruction of public records in its possession and known to be required as evidence for foreshadowed court proceedings for the purpose of preventing those records being used in those proceedings.

POINT 3:

deliberately withhold or conceal relevant information concerning the real status of public records during an appraisal process from its State or Federal Archivist in order to achieve its desire to have such records destroyed by using the archivist's deceptively obtained approval to destroy such records when knowing that access to them is being sought by a citizen pursuant to law.

POINT 4:

buy the permanent silence of any public official from the public purse in a Termination State or Federal government Deed of Settlement about known alleged abuse of children in a State-run institution for the rest of his or her life.

In this matter, the Deed of Settlement of 7 February 1991 used as the instrument to terminate Mr Coyne's employment specifically made such demands.

At the time this matter came before the Senate, it was not disclosed that the following form of words in the aforesaid Deed of Settlement "the events leading up to and

surrounding his relocation from the John Oxley Youth Detention Centre” was about or could be argued to cover incidents of alleged child abuse in the period before the Heiner Inquiry was established.

Unquestionably the Goss Queensland Government knew that abuse of children was an issue of concern at the Centre. On 1 October 1989, the Hon Ann Warner, when Opposition spokesperson for Family Services, cited specific incidents of alleged child abuse in *The Sunday Sun* (1 October 1989 p 19), calling for the incidents to be investigated.

These incidents led directly to the establishment of the Heiner Inquiry, but it seems that other grievances of a similar kind going back to 1988 may have been aired at the Inquiry.

The drafting and use of such an instrument, coming from any government with the assistance of the Office of Crown Law, in effect, indirectly or directly authorises, or, at the very least, condones the abuse of children in State-run institutions.

We suggest that any Minister/officer or agent of the State/Crown, who possessed knowledge of the nature of these alleged unlawful events which they then specifically required not to be broadcast by inserting prohibiting clauses in a State/Crown Deed of Settlement, would be acting outside the law, and would be engaging in *prima facie* abuse of office, obstruction of justice and misappropriation of public monies for an illegal purpose if public monies were to change hands as part of such a termination of employment arrangement. The facts show that former Minister the Hon Anne Warner and her then Director-General Ms Ruth Matchett possessed such knowledge when executing the February 1991 Coyne/State of Queensland Deed of Settlement.

In all these respects, the law is clear. It prohibits such conduct.

We also suggest that it is open to conclude that the contrived nature of Mr Coyne's so-called involuntary retrenchment pursuant to section 28 of the *Public Service Management and Employment Act 1988* may have knowingly breached *the Income Tax Assessment Act 1936* such was the Queensland Government's rush and desire to rid themselves of him, and consequently may invite Federal intervention at that level alone.

By way of additional evidence showing the contrived and *prima facie* illegal nature of Mr Coyne's retrenchment, on 7 February 1997, Solicitors and Notary John Katahanas & Company, acting for Mr Coyne, lodged Writ (No 1130 of 1997) in the Supreme Court of Queensland.

Mr Coyne claimed against the State of Queensland:

- (a) damages for breach of contract, (b) damages for wrongful termination of employment, (c) damages for breach of statutory duty, (d) damages for deceit, and (e) damages for negligence;

against Ms Ruth L Matchett:

- (a) damages for inducing breach of contract, (b) damages for breach of statutory duty, (c) damages for malfeasance in public office, (d) damages for termination of employment, (e) damages for deceit;

and against both Defendants:

(a) interest on the moneys claimed in paragraphs (1) and (2) hereof pursuant to the provisions of section 47 of the *Supreme Court Act 1965*, (b) costs, (c) such further and other orders as may be just in the circumstances.

While Mr Coyne seems to have dropped the action after several months, we submit that the lodging of such a Writ in the Supreme Court of Queensland itself gives rise to the existence of suspected misconduct surrounding the manner in which his career was ended in February 1991. As far as we know, no out-of-court settlement was reached pursuant to the aforesaid Writ.

We request that this grievance be placed before the Senate as soon as possible for consideration. Should the Senate decide to revisit the matter, then we would be pleased to provide a more detailed submission (supported by relevant case law), and, if necessary, to provide oral submissions, as would our client, Mr Kevin Lindeberg.

Yours sincerely

GREENWOOD QC

9 May 2001.

Madam President, I have risen to speak on this issue and read that QC's opinion into the *Hansard* because the Labor Party refused me leave to table it or incorporate it.

Hansard records that the former Democrat senator John Woodley spoke passionately on this matter. Senator Woodley said about the Heiner shredding:

“... it is totally unacceptable for any Australian government to send to the international community a signal that shredding public records to stop their use in court proceedings or to stop lawful access to them is acceptable conduct in our public and legal administration or in any aspect of public life at all. It brings our reputation as a nation governed by the rule of law into unacceptable disrepute.”

I totally—100 per cent—support Senator Woodley's comments there and commend that the Senate accept Greenwood QC's legal opinion in the spirit that it has been read into *Hansard*, therefore accepting that the only way to assess whether the Senate has been misled or held in disrepute is to initiate an inquiry.

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