

## **WHEN TRUST DESERTED QUEENSLAND GOVERNANCE INJUSTICE WAS INEVITABLE**

**W**hen those in whom trust is legally reposed in the performance of their public office - and by the expectation of the people they are supposed to serve impartially and honestly - are permitted to judge their own conduct behind closed doors as to whether or not they may have acted improperly, then civil society is cast into grave jeopardy.

On 24 October 2017, the Parliamentary Crime and Corruption Committee (PCCC) published unedited "Heiner affair" whistleblower Kevin Lindeberg's 15 October 2017 public submission addressing his concerns about the operation of section 329 of the *Crime and Corruption Act 2001*. It is attached and published under parliamentary privilege by the PCCC.

<https://www.parliament.qld.gov.au/documents/committees/PCCC/2017/Review%20of%20Section%20329/submissions/001.pdf>

For the thousands who follow this matter, it is reasonable to suggest that by bringing the material in the most recent postings of this unresolved scandal together, an obvious and disturbing picture emerges. <http://www.heineraffair.info/main.html>

It is a picture showing that government and public administration in unicameral Queensland has reached the unhappy state of crisis and in desperate need of a comprehensive overhaul so that public confidence can be once again restored to the affairs of government.

## **MIRROR, MIRROR ON THE WALL, WHO IS THE MOST ETHICAL OF THEM ALL?**



Under the rule of law, it is long settled and accepted that no person may judge in his own cause (let alone do so in secret). If judgements are to be accepted as fair, obeyed and respected by aggrieved parties and civil society at large, any and all lawfully appointed decision makers must be free from real or perceptions

of apprehended bias and prejudice so that they may come to the matter at issue impartial, and act in the public interest.

If untrustworthy decision-making were to exist with the approval of "the governors", it would challenge the very validity of the irreplaceable "trust" principles/values which underpin and sustain the relationship between free peoples and their governments. Such a challenge would graphically demonstrate that those principles/values no longer mattered to "the governors", and could not be relied on by the people, "the governed".

*Were this situation to exist then surely justice and decency ought to decree that it would be too dangerous and unthinkable to ignore, not unless the swamp's putrid stench were to have become so entrenched and pervasive that by delusional thinking it was thought to smell like roses by those in authority who had a greater vested interest in the swamp's continuing longevity for their own survival instead of being fully drained and replenished with clean water to serve the interests of justice for all?*

Obviously, when "trust" becomes meaningless then arbitrary imbalance in favour of "the governors" must inevitably occur. It's because they are the decision-makers who have the coercive levers of power and the financial resources of the State at their disposal - and, without proper constraints in place and adhered to, power to exercise power can and does lead to abuse of power.

Such arbitrariness will have replaced commonly accepted and expected norms of conduct founded in our Westminster system of government under the Crown of "*checks and balances*" - inherent in the doctrine of the separation of powers - without which "the governed" will have nothing to rely on civilly to protect themselves from oppressive government and unfettered abuse of trust in public office.

History shows that when the ends of justice are constantly interfered with by the creation of a logjam of either acts or acts of omission by "the governors" in their own interests and to the known disadvantage of "the governed", then such "*a swamp of injustice*" will be cleaned out sooner or later because when freedom and justice are at stake, silence or denial is no answer for the oppressed. History also shows that whenever public trust in public office is violated and then covered up because of the high status of those whose conduct needs reviewing, it always comes with a high cost to be paid sooner or later.

Western civil societies like to pride themselves in the level of trust their free peoples repose in their public officials by having a visible and inner belief that their rights and liberties shall not be abused by their public officials. This is because relevant laws - defining what is acceptable and unacceptable conduct in public office - mean, and do, what they say having been predicated on the democratic principle of equality before the law and ignorance of the law not being an excuse for anyone.

It follows, therefore, that since time immemorial trustworthiness is central to everything we say and do in life, even more so when it concerns conduct in the affairs of government.

*Accordingly, to knowingly violate "trust" in public office has therefore never been and can never be an inconsequential act without penalty if our past struggles against tyranny and abuse of power, hard won democracy and government by the rule of law truly matter.*

Clearly, when trustworthiness concerns public officials performing their public duties, the stakes cannot get higher. When trustworthiness deserts the field of operation, it adversely impacts on everything due to

the interconnectedness of the three arms of government (i.e. Legislature, Executive and Judiciary) under our Westminster system of government.

Public officials' statutory functions are brought into existence by democratically elected parliaments of, by and for the people's good. *Inter alia*, these functions generally benefit and secure welfare, justice, commerce and individual rights. The system authorises governments and associated entities (like the CJC/CMC/CCC, police *et al*) to administer and enforce laws honestly and impartially, in some cases, reinforced by the public official swearing an oath or affirmation to faithfully and impartially uphold and enforce the law before taking up the public office. In turn, the system authorises courts to independently interpret a law's meaning and validity in certain circumstances, and to adjudicate on breaches of the law by governments, individuals or other entities by means of a fair trial conducted openly and by fearless privileged adversarial advocacy presenting arguments to a judge whose probity ought not to be in doubt.

When taken together, these things form the protective umbrella that maintains and safeguards "ordered and free society for all". Consequently, it must lead to the only reasonable conclusion open that any such breach of public trust is a clear and present threat to the very essence of what civil society means and what it properly expects of its civil servants in their daily duties.

*It needs to be restated that being a civil servant is not just an honourable job and worthwhile career to pursue, but it comes with a constant duty of trust that carries with it a heavy price if and when breached. It would be perverse in the extreme to suggest that trustworthiness in public office in a democracy is so nebulous and elastic in its meaning to tolerate blatant dishonesty and deception in public office when the moment or circumstance suits the political or administrative purpose.*

Civil society relies on consistency and trustworthiness in the functioning of government by the rule of law; whistleblowers take this belief to heart. They act on it. In doing so, they risk career, security, health and family either by subsequent acts of reprisal (in its many forms) or tainted investigations of their disclosures (in its many forms).

*Maintaining public trust in the functioning of public office by their holders, at whatever level but especially in high public office where example is set, is therefore a non-negotiable principle/expectation/duty if the government by the rule of law truly matters.*



Lord Chief Justice Mansfield



Lord Bingham of Cornhill

The expectation and importance of trustworthiness in public office is long settled legal history, as well as its seriousness if and when violated. Over 230 years ago, Lord Mansfield<sup>1</sup> in *R v Bembridge* (1783) 22 State Trials 1, 155-156 ruled:

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<sup>1</sup> <https://www.britannica.com/biography/William-Murray-1st-Earl-of-Mansfield>

" [F]irst ..., if a man accepts an office of trust and confidence, concerning the public, ... he is answerable to the king for his execution of that office; and ... in a criminal prosecution. ... [Secondly,] where there is a breach of trust, a fraud or an imposition in a subject concerning the public, which, as between subject and subject, would only be actionable by a civil action, yet as that concerns the king and the public (I use them as synonymous terms), it is indictable".

And finally, the great 20th/21st century common law English jurist, Lord Bingham of Cornhill<sup>2</sup> in *Magill v Porter* (2002) 2AC 357 (Court of Appeal),<sup>497</sup> said this about public trust:

***"...Statutory power conferred for public purposes is conferred as it were upon trust not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended ..... it follows from the proposition, that public powers are conferred as if upon trust, that those who exercise powers in a manner inconsistent with the public purpose for which the powers conferred, betray that trust and so misconduct themselves". (Underlining added)***

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In reading this posting and Lindeberg's 15 October 2017 published submission to the PCCC, it is suggested that readers put themselves in the shoes of this whistleblower. [http://www.heineraffair.info/PDF Store/CCC-2016 Engame Posting and attachment 14%20Dec 2016.pdf](http://www.heineraffair.info/PDF%20Store/CCC-2016%20Engame%20Posting%20and%20attachment%2014%20Dec%202016.pdf) Imagine yourself sitting opposite the most powerful law-enforcement public official in Queensland in his CCC office, looking each other in the eye across a table while the official tape recording is rolling and notes being taken down, and knowing that you must be truthful and honest in what you say and do, just as you expect of the high-ranking public official sitting opposite. Judge for yourselves whether or not you think that the following conduct in high public office was 'fit and proper' or was it naive and foolish on your part to expect such fidelity to the duty of "trust in public office" given Queensland's current state of governance:

- *After years of mistrust of the CJC/CMC/CCC, you decide to place your trust in the Head of the CCC and met with him on several occasions with your documented public interest disclosure about a systemic cover-up of alleged corrupt conduct involving abuse of power across whole of government including by former officers inside the CJC/CMC (which inter alia also concerns alleged wrongdoing against certain sitting judges and others in high public office). You know, as does the CCC, that your serious concerns enjoy the public support of some of the nation's most eminent jurists and others calling for a proper independent investigation;*
- *Following taped meetings, it is agreed (both legally and ethically) by the CCC Chair and its Board and put in writing to you that an interstate retired Supreme Court judge is a necessary appointment to ensure an impartial review (i.e. of process and outcome) of "the allegations in the Heiner affair papers" under the Crime and Corruption Act 2001. You are given to believe that his signed agreement is being fully honoured throughout the entire review (which is carried out in secret), and because you trust the CCC to do what is promised, you honour an agreement to remain silent.*
- *After the review is completed, you find out via other sources that a secret switch has taken place with the appointment of a retired senior Queensland judge by the CCC which materially breaches the key precondition of the signed CCC agreement and which the CCC knows you would never have agreed to as being legally/ethically valid and would have immediately withdrawn from the process, if not also informed the media about the egregious betrayal of trust. And, when you challenge the alleged deceptive conduct, the CCC responds by simply saying that it just changed its mind about the signed agreement.*

**Full Public Lindeberg/PCCC Submission No1 & Whistleblowers Action Group Queensland's submission No 3 here >>>>>.**

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<sup>2</sup> <https://www.theguardian.com/law/2010/sep/12/tributes-lord-bingham-judge-dies>