

**JOINT STANDING COMMITTEE ON THE  
CORRUPTION AND CRIME COMMISSION**

**THE USE OF PUBLIC HEARINGS BY  
THE CORRUPTION AND CRIME COMMISSION**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 28 SEPTEMBER 2011**

**CLOSED SESSION**

**Members**

**Hon Nick Goiran (Chairman)  
Mr John Hyde (Deputy Chairman)  
Mr Frank Alban  
Hon Matt Benson-Lidholm**

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**Hearing commenced at 10.26 am****The Witness****Name and address suppressed, examined:**

**The CHAIRMAN:** On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today. The purpose of this hearing is for the committee to speak with today's witness for the purpose of gathering evidence in aid of the committee's inquiry into the use of public examinations by the Corruption and Crime Commission.

At this stage I would like to introduce myself and the other members of the committee here today. To my left is Hon Matt Benson-Lidholm, MLC, the member for Agricultural Region, and to my right is Mr Frank Alban, MLA, the member for Swan Hills. Unfortunately, the committee's Deputy Chairman, Mr John Hyde, MLA, the member for Perth, is unable to be with us today and has asked us to express his apologies.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a closed hearing and Hansard will be making a transcript of the proceedings. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record. Before we proceed to any questions we may have today, I need to ask you a series of preliminary questions. Have you completed the "Details of Witness" form?

**The Witness:** Yes.

**The CHAIRMAN:** Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

**The Witness:** Yes, I do.

**The CHAIRMAN:** Did you receive and read the information for witnesses briefing sheet provided in advance of today's hearing?

**The Witness:** Yes, I did.

**The CHAIRMAN:** Do you have any questions in relation to being a witness at today's hearing?

**The Witness:** No.

**The CHAIRMAN:** There may be some questions that the committee has for you today. In a moment I will invite you to make any opening remarks or opening statement to the committee in relation to this matter. I want to indicate at this point that it is the intention of the committee when it reports to Parliament on the evidence given this morning that it will suppress your name and any details that might lead to your identification or that of your family.

**The Witness:** Good. Thanks.

**The CHAIRMAN:** On that basis, I invite you to make any opening statement that you might like to make to the committee.

**The Witness:** It goes on a bit so you will have to bear with me.

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Mr Chairman, with respect to the general question of public and private hearings, no better example of the attitude of the CCC about the issue and its determination to hold public hearings and have its day in the sun can be given than that of the disgraceful conduct of the CCC in my husband's case. In spite of the CCC coming to the conclusion from evidence obtained through its telecommunication intercepts that there was a real possibility that my husband was going to commit suicide, it dismissed any idea of postponing the public hearings or converting the public hearings to a private hearing. When deciding what, if any, action to take about the clear evidence my husband was contemplating suicide, the Acting Director of Operations wrote a paper as to what options the CCC had with respect to the matter. The options paper did not even include changing my husband's public hearing to a private hearing. The thought of having a private hearing was not even an option. This was in spite of the fact that the CCC act provides that all hearings are to be in private unless the CCC concludes that it is in the public interest to hold public hearings.

Further, as the committee knows, even if the CCC somehow concludes that it is in the public interest to hold a hearing in public, the act specifically gives the CCC power to close a hearing for a particular purpose. The CCC apparently equates public interest to interest of the public. The simple truth of the matter is that Mr Roberts-Smith, knowing of the imminent prospect of my husband committing suicide, did not even give thought to my husband's possible death being more important than the CCC's need for publicity. In self-serving and convenient evidence to the parliamentary inspector, the Acting Director of Operations said that he thought the option of changing the public hearing to a private hearing had been considered even though it was not an option on his written list and he had no clear memory of it being discussed. Such was the weight of the CCC's determination to hold a public hearing that the Acting Director of Operations could not remember whether such an obvious option as applying the relevant sections of the act had been considered. The unassailable truth of the matter is the Acting Director of Operations never contemplated the possibility of changing my husband's public hearing to a private hearing, otherwise it would have been one of the first things on his options list. It beggars belief that he honestly thought it had been considered when it was not on his options list and he cannot remember the matter being discussed. The same man owned up to the truth when, in justification for the private hearing option not being on his options list and not ever being discussed, he told the parliamentary inspector that, in any event, he believed the prospect of a public hearing was not a real factor of worry to the witness and that the concern would have been the same whether his examination took place in private or public. I am perfectly entitled to ask: What medical qualifications does the Acting Director of Operations have to make that life-and-death assessment? What skills in psychiatry does he have that allows him to decide the state of my husband's mind?

The matter of the CCC's failure to even consider the option of converting the public hearing to a private hearing would not be complete without recording the equally appalling self-serving and, to me, disingenuous content of a letter later written to the parliamentary inspector by the then commissioner, Len Roberts-Smith, in an apparent retrospective attempt to justify his tragic failings. Mr Roberts-Smith told the inspector that the question whether the witness may have been contemplating harming himself because of a fear of being called for public examination and so whether that could be allayed by directing that his examination or the hearings generally be conducted in private were threshold questions for me and were discussed once the topic of suicide arose. They remained ever present in my mind to the end but so far as I can recall there was no further discussion about changing the public examinations generally or that of the witness specifically to private examinations because that was not the point of his concern. There is not a skerrick of evidence in the parliamentary inspector's report to support the commissioner's claim that the matter of converting the public hearing to a private hearing was ever discussed; quite the contrary. Equally, what Mr Roberts-Smith conveniently claims were threshold questions for him and what he claims were ever present in his mind do him no credit. On the other hand, postponing the public hearing was on the options list. However, we are told in the report that, apparently again

exercising his own medical knowledge and expertise, the Acting Director of Operations did not favour this option because although that option may take pressure off him, the witness, temporarily, it would not achieve more than that. What the CCC seems to be saying is that while postponing the public hearing may give temporary mental relief to my husband—and, I interpose, give him a chance to return to Perth to his own home and family and for me to get him urgently needed help—in the end this would achieve nothing, so why bother? This is a cavalier way of dealing with my husband's life.

The commissioner told the parliamentary inspector that the public hearing should proceed as scheduled because we were all of the very firm view that what the witness was worried or stressed about was not the fact that he had been summonsed to a public hearing but that the commission had or was obtaining evidence of his conduct and that he would be convicted of serious offences, sent to prison and have his criminally obtained assets confiscated. Mr Chairman, I find it inexplicable that Mr Roberts-Smith and his colleagues, when confronted with first-hand evidence of the very likely prospect that one of their witnesses was going to commit suicide, played both medical expert and God and decided that they knew what was in the mind of my suicidal husband.

Did Mr Roberts-Smith get medical advice? Did he play safe with my husband's life? Did he take all steps to prevent his suicide? Did he take any steps to prevent his suicide? Did the Corruption and Crime Commission put my husband's life ahead of their hearings? The answers are no, no, no, no and no. If the answers were yes, yes, yes, yes and yes, what would have been the implications for the CCC and its functions? Absolutely nothing. The CCC could have still had its hearings in private or public at a later date. It seems to me that the CCC would not change my husband's public hearing to a private hearing or postpone his public hearing while he was planning his suicide but instantly postpone the hearings once he had committed suicide. The decision confronting the CCC in helping my husband with his obvious mental state was not one of foregoing justice or even compromising it in the slightest. The cruel and bitter truth is that the CCC simply wanted its moment in the sun and it was going to be deterred, even at the risk of a man's life. The disgraceful conduct of the CCC in this matter is compounded by the fact that the CCC officer waited three days to report that my husband had been accessing suicide websites. In defending this unforgivable failure as not unreasonable the CCC included in its excuses the fact that the analyst was required to make a judgement in off-duty hours. This was one of the hundreds of decisions taken each week with respect to investigations underway, and such decisions occur in the context in which other activities are also occurring and the individual may be distracted from the task in hand. In any event, the CCC says it was not then known, as opposed or suspected who in the witness's household had been accessing the websites, an extraordinary explanation for doing nothing. They could have had a pretty good guess at who in the household was likely to be looking up suicide websites.

Mr Chairman, I have read Mr McCusker's evidence to your committee. He addressed what I find a compelling question. Should public hearings be held when the CCC has sufficient evidence to lay charges? Mr McCusker told your committee

Taking matters that might lead to a criminal charge and, ultimately, a trial, there is a real concern if all the matters that might lead to that are exposed to the public in advance in a public hearing. And it prejudices the fair trial of the individual.

In his evidence before your committee, the parliamentary inspector, Mr Steytler, said —

A more recent example comes out of the death of a witness, which achieved some publicity at the time. I have said to this committee that it seems to me that that was a plain situation in which section 144 should have been made use of and in which the witness should have had his inquiry held in private and should have been told at once that that was going to be the case. It also seems to me that that inquiry provides an example of the kind of inquiry in which there was no basis for having a public hearing or indeed any hearing. By the time the commission's preliminary investigations had concluded and the hearings had started—I was

told this after the event, rather than before the event by the former commissioner—the commission had what it believed to be overwhelming evidence.

Mr McCusker is saying that in my husband's case public hearings should not be held. Mr Steytler is saying that in my husband's case there was no need for either private or public hearings. The most deplorable fact to come from Mr Steytler's evidence to your committee is that Mr Roberts-Smith disclosed to him that the commission had, at the time it refused to postpone the public hearing or convert it to a private hearing, overwhelming evidence for charging my husband. I am entitled to ask at this hearing: for what reason did Mr Roberts-Smith intend that my husband be publicly examined when he already had all the answers. When, as he claims in his evidence to the parliamentary inspector, that "the question whether the witness may have been contemplating harming himself because of a fear of being called for public examination and so whether that could be allayed by directing that his examination or the hearings generally be conducted in private were threshold questions for me." What overpowering reasons compelled him to throw aside any thought of even postponing the public hearing? What overpowering reasons were on his mind that he would not be moved from having public hearings and not private hearings? What option did the CCC settle on to address the likely tragedy that they and only they knew about and which was inexplicably linked to their investigations? The option they settled on was to send two CCC officers out to my home to inform me that my husband was at serious risk of suicide. This visit came less than 12 hours after the CCC had allowed my husband to leave Perth for his employment off the coast of Western Australia. The option chosen by Commissioner Len Roberts-Smith and the Acting Director of Operations for protecting my husband from fatal self-harm was to wait until my husband had left our home in Perth and had travelled back to his employment on a remote and isolated island off the north coast of Western Australia surrounded only by other workers, removed from all medical help and physical and emotional support and assistance from me, and then to send two officers out to tell me they were concerned for my husband's wellbeing.

The second step was to also tell my husband's employer. How was I told? Two officers came to my home to inform me that my husband had been accessing suicide websites, had tried to buy a scalpel and that he had checked his insurance policy. When I asked them how they knew about my husband preparing to commit suicide, they refused to tell me and just said that they had credible evidence. When I asked the officers what they were accusing my husband of that would make him suicidal, they informed me that they did not know as they were not involved in the case. Rather than conduct my husband's examination in private, the sum total of the steps taken by the CCC to intervene in my husband's impending suicide was to inform his employer and tell me, his wife, when I was impotent to do anything about it and to tell me to ring beyondblue and Crisis Care. The CCC never spoke to my husband. My husband committed suicide eight days after flying back to his employment, just two days before his public hearing.

It is blindingly clear that Len Roberts-Smith was prepared to jeopardise intervention in my husband's planned suicide just so the commission could strut its stuff in a public hearing. It was reckless, selfish, self-serving behaviour which decent people should condemn. In my view, the CCC has demonstrated that it is not fit to retain the discretion it presently has in deciding whether to hold public or private hearings. As we know, following my husband's suicide, the public hearings of witnesses were postponed for two months. It seems apparent from these hearings that the postponement in no way affected, impeded or compromised the CCC's investigation into this matter. There does not appear to be a scrap of evidence that now justifies or vindicates the decision of Mr Roberts-Smith and his colleagues in refusing to countenance the postponement of my husband's public hearing, a heartless decision which snuffed out any chance of me obtaining medical help for him.

In respect of the matter of the two CCC investigators refusing to disclose to me the source of their information and therefore the seriousness with which I should take it, the decision was a deliberate one made by the commissioner. As Mr Roberts-Smith told the parliamentary inspector, they were

dealing with the risk of self-harm. That was one of a number of possibilities. The investigation was still ongoing. If nothing were to eventuate in terms of that risk or if it were to prove unfounded, the commission investigation might still retain some benefit from TI even if the witness and others believed the commission was doing that. A belief or suspicion is one thing; official confirmation by the investigating agency is another.

[10.45 am]

I find this excuse for not giving me a proper sense of the authenticity and force of the seriousness of my husband's peril as very odd. The CCC came to my house just 10 days before my husband's public hearing, and we now have the commissioner telling Mr Steytler at that very moment the CCC had overwhelming evidence against my husband. Further, a series of private hearings had been completed and the CCC also knew that my husband was aware that his telephones were being monitored. We now know that the CCC intended to publicly disclose these telephone intercepts in public hearings due to start in just 10 days ahead of the CCC's visit to my home. It seems most odd that Mr Roberts-Smith could justify the CCC giving me an obscure and clouded message as to the state of my husband's risk on the basis that "the commission's investigation might still retain some benefit from TI even if the witness and others believed the commission was doing that. A belief or suspicion is one thing; official confirmation by the investigating agency is another." It is also odd that the commissioner, in making this statement, claims he had in mind an operational consideration, although he cannot specifically recall any discussion concerning it. Also, the acting director of operations does not recall any discussion concerning this, nor, strangely, does the executive director mention any such discussion.

In terms of the question of whether disclosure of the material was permitted under the act, the acting director does not recall any discussion. The executive director has no recollection of any discussion concerning the possible application of the act, but kindly accepts that the issue may have been discussed. According to the inspector's report, there are differences in recollection concerning whether or not the two investigators who came to my home were told not to reveal the source of the material information—one says they were and one says they were not. The analyst in the meeting with the two officers is not "100 per cent sure" of his recollection. The case manager at the meeting does not remember saying what one of the visiting officers claims was said. I trace these matters because it indicates to me that these CCC people either have appalling memories, were not being entirely honest, or were not telling the truth. If this level of evidence had been given by a witness in a public hearing of the CCC, who was being ambushed with questions, the CCC simply would not believe him and, in all probability, make adverse comments to the effect in a report. These CCC officers knew exactly what they were to be questioned about and had an excellent idea of the questions to be put to them. It is little wonder that I neither trust nor have faith in anything the former commissioner says about my husband and the proposed hearings. With very good reason I have absolutely no faith or confidence in the ability of the Corruption and Crime Commission to competently or fairly judge when hearings should be in public or to provide information which leads to the publication of reports. For example, I refer to the report of the Joint Standing Committee on the Corruption and Crime Commission entitled "Death of a Witness" tabled in the state Parliament on 24 February 2011. I believe that public hearings heighten the temptation for the CCC to construct leading and damaging questions and make assertions to reflect on the witness. To put the worst possible interpretation of motives upon my husband's actions, knowing it would be included in a public report, the Corruption and Crime Commission grouped the following statements in a manner to give clear understanding that each was part of a process to escape the law.

On 26 July 2010 the witness changed his name and collected an application for a new passport. Neither action taken by my husband had anything to do with him escaping from the law. My husband changed his name to shield us, particularly our young son, from the publicity. My husband told me the reasons why he changed his name. He also told two of his friends that he was changing his name for the hearing so that the family would be protected. My husband's collection of a

passport application was equally for an entirely innocent purpose. The truth is that the passport was for our son. He had recently travelled to Bali, and while allowed to depart, was apparently informed by Customs that travellers are required to have passports valid for six months or more when departing. My husband was doing no more than collecting a renewal application for our son. The report also states that the CCC determined that the person who had been accessing suicide websites on our home computer must have been my husband, because, to quote the CCC, “the person who had accessed the websites had, during the same period, used the computer to purchase an e-book reader and it had become apparent that it was the witness who had purchased the e-book reader.” Again, this is simply not true. I ordered the e-book reader for my husband for his birthday. It sits at home with all of his other birthday presents and cards which we never got to give him. He committed suicide on his birthday. Apparently, had the CCC realised that it was me who was accessing the internet to purchase the e-book reader, they may not have taken any action in respect to the suicide signals emanating from the conduct of my husband. In other words, had the CCC not stupidly waited until it thought it had definite proof that of the three people in our home—my husband, me or our 12-year-old child—it was my husband who was accessing suicide websites, and then having equally mistakenly concluded that it was my husband who had purchased the e-reader, they would never have even taken the superficial steps it took about my husband’s likely suicide.

I can only begin to describe to you the complete and utter devastation my husband’s suicide has had on my family and me. He was everything to us. He was the centre of our family. He was a wonderful husband who made me feel loved every day. He idealised our children. Nothing was too much trouble for him when it came to helping them. My 13-year-old son is under the care of a psychologist. He has made a shrine to his dad next to his bed. My husband’s 81-year-old dad and 80-year-old mother will never recover. When did it become more important to destroy someone’s life than save it? In appearing at this private hearing, I am accepting in perfectly good faith that my evidence will be published.

**The CHAIRMAN:** Thank you, Madam Witness. The committee would like to perhaps adjourn for five minutes before we proceed with a few questions we have for you today. Thank you.

**Proceedings suspended from 10.52 am to 11.04 am**

**The CHAIRMAN:** Madam Witness, the committee wants to thank you for your evidence before us this morning and the very comprehensive, compelling and frank testimony that you have given to the committee. There is one question that I want to ask in relation to the committee’s inquiry. As you know, the inquiry that the committee has on the go at the moment relates to the CCC’s use of public hearings. At one point during your testimony this morning you indicated that you do not feel that the CCC is fit to retain its current discretion as to whether to hold public hearings or not. I wanted to get you to confirm if that is a fair summary of your position with regard to the CCC holding public hearings; that you do not think they should have that discretion any longer which they currently have?

**The Witness:** No, I do not. I think they should have to go to a higher authority and somebody independent should make the decision whether a public hearing needs to be held or not. [...] I do not feel that they deserve the right to make that decision, because I think in this case it has proved that their public hearings are more important to them than a man’s life. Even to postpone it—they were not even prepared to postpone my husband’s hearing.

**The CHAIRMAN:** If I can just ask this further question; I am sorry to be so clinical and academic about this in the context of very difficult evidence you have had to give this morning: if I understand what you are saying correctly, you are saying that the CCC probably has a role in terms of investigating matters but then the decision as to whether to unveil that evidence in a public forum should be done by someone independent of the investigation. So the CCC should focus on investigation and the unveiling of evidence should be done by somebody independent—is that what you are saying?

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[...]

**After considering the uncorrected transcript of evidence, the Witness requested that the following sentence be added as a supplementary submission to her evidence:**

**The Witness:** Yes, I believe that the CCC should focus on investigation and education while an independent body unveils evidence.

**The CHAIRMAN:** To conclude, Madam Witness, I want to indicate to you that your evidence this morning is part of a large inquiry that the committee is currently undertaking into the use of public examinations by the CCC. The committee has received quite a number of submissions in relation to this inquiry and will be holding a number of further hearings to take further evidence. It is most likely that the tabling of a report on this matter will only take place in the new year, given the amount of witnesses that we still need to go through. I just wanted to give you that indication in terms of timeframe, in terms of a final report appearing in Parliament. Before I conclude, is there anything further you want to state or to ask?

**The Witness:** No thanks.

**The CHAIRMAN:** In which case I want to thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission to the committee for its consideration when you return your corrected transcript of evidence. Thank you.

**Hearing concluded at 11.09 am**

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