

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION AND
FINANCE**

LOCAL GOVERNMENT ACT 1995

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON FRIDAY, 3 OCTOBER 2003**

SESSION 3

Members

**Hon Barry House (Chairman
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

[12.22 pm]

CARLOS, MAYOR DON
Mayor, City of Joondalup,
Joondalup, examined:

The CHAIRMAN: I once again remind members of the public that unless you are accredited media personnel, you are not allowed to take notes during proceedings. You are very welcome here; however, they are the laws of the land.

Mayor Carlos, on behalf of the committee, I would like to welcome you to the meeting. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mayor Carlos: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mayor, welcome once again. Would you like to make an opening statement to the committee?

Mayor Carlos: Yes, I would. In December 1999, I ceased full-time work and decided to do some community work with people on low incomes and seniors. I joined the council at that time as I thought it would help me with that work. In 2000, I learnt that chief executive officers of councils were paid an enormous amount of money. I learnt that the CEO of Joondalup was paid the same as the Premier of this State. At that time, we spoke to the minister of the day and received approval to review the CEO's salary. We received a document from the Salaries and Allowances Tribunal suggesting a base salary of \$147 000. With that in mind, the mayor of the day and I had discussions with the CEO at the time, Mr Delahaunty. My view was that we were overpaying our CEOs. The mayor decided that we should advertise the position of CEO as Mr Delahaunty's contract expired in October or November 2001. This was done through Management Recruiters Australia. Mr Delahaunty agreed to a drop in his salary and to start a new contract so that there was no need to advertise the position. His salary was well over \$200 000, and he agreed to a total package of \$190 000. The mayor of the day decided that this was not good enough, so we went ahead and employed Management Recruiters Australia to find a suitable candidate for the job. I encouraged a number of people in the industry to apply for the job. We were finally given a list of nine applicants to review. I was on the interview panel. The interview panel reviewed the curricula vitae of those nine people and selected five for interview. Each of the nine people stated academic qualifications on their CVs. The qualifications of each were very impressive. We interviewed five people. Mr Smith was not selected as the number one candidate. Management Recruiters Australia, the HR manager and, I understand, the mayor were told to further interview the three applicants on the short list. A document was then presented to the council, stating that we should employ Mr Smith at a salary of \$225 000. As a result of this document, the council went behind

closed doors. We voted to appoint Mr Smith at a salary of \$225 000, notwithstanding that Mr Delahaunty was prepared to accept a \$190 000 package. Three councillors, including me, voted against that. We had nothing against Mr Delahaunty. We wanted a review of the salaries.

After the appointment, Warringah Council received a considerable amount of bad press in Western Australia. Claims of bribes, corruption, poor financial management and irregularities at Warringah were made in the New South Wales Parliament. A number of ratepayers wanted the mayor of the day to cease the employment of Mr Smith until all those matters were investigated. This did not happen. After the arrival of Mr Smith, some strange things happened in the council. A number of senior bureaucrats who were concerned about the irregularities at Warringah supposedly disappeared from the scene and were replaced with other people.

[12.30 pm]

During the period from February 2002 to February 2003, we had a very disruptive period in the council of Joondalup, in that the ratepayers were not happy with what was going on. The ratepayers signed a number of petitions requesting special electors' meetings, and the council was forced into having six special electors' meetings, attended by thousands of people. In one of them 1 500 people attended a meeting at an oval, and half of them could not get into the hall. Motions of no confidence were raised at some of these meetings. I think there were three in total. Generally speaking, the council had to back down because we were making decisions without consulting the people. When the article appeared on 20 November 2002 - about 12 months ago - stating that Mr Smith had lied about his academic qualifications - this was as a result of a court case in Sydney - I then sought information from the then mayor to find out what was really the truth. I still do not know the truth. In each council meeting ratepayers continually asked questions, but the mayor of the day ruled these questions completely out of order. It could be seen from the gallery that each time a question was raised about the CEO, the CEO would turn off the audio system, so that ratepayers could not hear the question from the dais.

On 20 December last year I wrote to the minister requesting an investigation of this whole matter, because I thought it had got out of hand. I thought the minister would take some type of action. I present this letter today, because I heard the evidence from the minister yesterday, and I thought the minister would have had enough evidence from what I gave him on 20 December last year to take some action. After being completely frustrated by the lack of accountability of the then mayor and his faction, on 18 February I moved a motion to stand down Mr Smith until we investigated the matter. This motion failed, and I was censured.

Early in March 2003, after being bombarded by ratepayers, I threw down the gauntlet and said that I would let the ratepayers decide. I entered the race to replace the then mayor, and let the ratepayers decide who should be the mayor. I defeated the sitting mayor in every ward. During my campaign I spoke to many thousands of ratepayers. Bear in mind that I do not have a full-time job, and I spent probably 12 hours a day canvassing people. I spoke to thousands of people, and the majority wanted this matter cleared up. I tried to do this after I was elected. I was elected on a Saturday night, and the following Monday I spoke to Mr Smith in my office and said "Now can I have a look at your qualifications so that we can put this matter to bed and get on with the running of this city?" Mr Smith refused to do this. However, he did show some documents to two of the new councillors, who reported back to me that they had seen the documents and that Mr Smith said that Management Recruiters Australia had made a mistake in the CV that was presented to the selection committee. I then rang Management Recruiters Australia and asked them if they had documentary evidence. This is one of the classified documents I have. It is dated 21 May 2003, and is clearly signed by Mr Smith and presented to Management Recruiters Australia. It clearly states that the man has academic qualifications. I have since been told that, after fraud squad investigations, we have now blamed Mr Smith's wife for typing the CV.

During the past 18 months a lot of documents have been sent to me from different people. They have fallen off the back of a truck, and have been sent to me in brown envelopes from people I do not even know. People want this matter cleared up. I have submitted to this committee the CVs presented by Mr Smith when he applied for the job at Coffs Harbour, and when he applied for the two positions at Warringah. He first went in as a services manager, and then applied for the general manager's job. I provided the committee with copies of CVs that were provided to the interview panel. It appears to me that these documents are false, because I have three letters, one dated October last year, one dated March of this year and one dated August of this year, from the University of Technology, Sydney, that clearly state the university has no record of a graduate by the name of Denis Smith with the academic qualifications stated on the CVs I have just mentioned.

Yesterday the issue of the performance review of last year was raised. I find it rather difficult to understand that a performance review can be undertaken by a mayor, a deputy mayor and a councillor nominated by Mr Smith. The report did not come to council and we did not approve any increase in salary, but in December last year the City of Joondalup granted Mr Smith an increase in salary from \$225 000 to \$236 000. As the popularly elected mayor, I am completely frustrated in that I cannot get on with the job. All I have ever wanted to is to find out the truth about what academic qualifications the man has, and whether he had lied to the selection committee to gain the position of chief executive officer.

The CHAIRMAN: How much money has the City of Joondalup spent on legal fees in relation to this matter?

Mayor Carlos: The exact amount I do not know but I would expect that it is well in excess of \$100 000. We approved last Tuesday night, behind closed doors, a further amount for Mr Smith to go and get further legal advice. That, I think takes his figure to well above \$30 000, but I am sorry that I do not know the exact amount. I can get that information, or one of the council officers here can give it.

The CHAIRMAN: How is the current controversy concerning Mr Smith impacting on the operations of the City of Joondalup?

Mayor Carlos: It has a detrimental effect, I believe, in that we should be getting on with managing the city. The city is fairly large, with a population of 160 000, and we have a lot of projects on our books. We wish to develop a marina and a performing arts centre. We are also the learning city. I recently attended a "town and gown" session with all the universities in Western Australia, and a vice-chancellor there said to me "How can you, the mayor of Joondalup, say that you are learning city, when you have a CEO who obviously has falsified his CV?"

[12.40 pm]

The CHAIRMAN: Mr Carlos, you have covered some of these points but you may wish to add to them as I run through the questions. Please explain the role of the selection committee in the appointment of Mr Smith as the chief executive officer of the City of Joondalup.

Mayor Carlos: The selection committee was decided by council. Seven councillors and the mayor were on the selection committee. We were given a presentation by Management Recruiters Australia before its officers went around Australia looking for candidates. My recollection of one of the things that we were told is that they did not believe it was necessary to advertise, because in advertising we would have had to state the salary of the position. I understood that this was one of the reasons we did not advertise. The council authorised Management Recruiters Australia to provide a short list, which it did. It came back with nine candidates. Some were from Western Australia, but the majority were from the eastern States. We then selected five to interview.

The CHAIRMAN: You have already covered part of this matter, so I will ask a couple of questions. Did the selection committee ever discuss the relative benefits of advertising the CEO position widely, versus undertaking a highly secretive headhunting selection process? Did the

selection committee ever discuss the essential and desirable qualifications and experience for the CEO position?

Mayor Carlos: It is my recollection that we did discuss the desirability of having academic qualifications. I came out of the mining industry, and it was an essential criterion for senior management positions within the mining industry. I was insistent on that. However, the document that was raised as the specification by the human resources manager had the word “desirable” and not “essential”. When Mr Smith applied for jobs at Coffs Harbour and Warringah, both councils listed academic qualifications as being essential, which I have presented to you in my documentation.

The CHAIRMAN: What documentation was provided to the selection committee in relation to each of the candidates for the CEO position before the appointment was made?

Mayor Carlos: Management Recruiters Australia provided a curriculum vitae for all candidates. They all looked the same. All the candidates we interviewed had a CV that looked exactly the same; it listed academic qualifications, previous jobs and what they had done. Bear in mind that people write their CVs and put them into a format. However, Management Recruiters Australia took that information from documents that were provided to them by the applicants.

The CHAIRMAN: Did the selection committee ever discuss the content of the CEO’s contract of employment before it was signed?

Mayor Carlos: Not to my recollection. The contract was never presented to council.

The CHAIRMAN: Just for the record, could you outline the names of the people who were on the selection committee? You mentioned that the former mayor and seven councillors were on the selection committee. Can you recall the names of those people?

Mayor Carlos: Councillor Walker, Councillor Hollywood, Councillor Kadak, Councillor Baker, and, I believe, Councillor Kenworthy. I am sorry, that is all.

The CHAIRMAN: And yourself?

Mayor Carlos: Yes.

The CHAIRMAN: Thank you. Prior to the revelations about Mr Smith’s qualifications, which arose from New South Wales court proceedings for a defamation action involving the Warringah council, did you have any reason to suspect that Mr Smith was not appropriately qualified to perform his duties as CEO?

Mayor Carlos: I knew nothing about the situation that occurred in the court. I did have some doubts about Mr Smith, because it seemed that factions had developed within council. This was borne out by an affidavit that was given to me that stated that some councillors were saying that they controlled the Joondalup City Council.

The CHAIRMAN: What steps have you taken to verify the qualifications and experience of Mr Smith?

Mayor Carlos: I have written on two occasions to the University of Technology Sydney and have received two letters back. I have also had discussions. There is an e-mail in the documents that I sent to you from RMIT University, which states that it has no record of a graduate by the name of Denis Ian Smith. It would like some documentation, which it would check. The University of Technology Sydney would also like the documentation that allegedly has been shown to some councillors. I have spoken to Mr Smith on a number of occasions to try to resolve this matter. I also sent e-mails to the previous mayor after the press release of 20 November last year.

The CHAIRMAN: What assistance has the Department of Local Government and Regional Development provided to your council in the light of the controversy concerning your CEO?

Mayor Carlos: That is rather difficult, because my initial reaction was to say, "Very little". I wrote to the minister last November seeking help. I did not get any result from my letter to him. I will present that letter to you. After the discussions you had with the minister yesterday I thought I should pull it out. I have a copy of that letter, which I will present to you.

The CHAIRMAN: Would you like to table it now, Mr Carlos, or at the end of the session?

Mayor Carlos: I brought 10 copies, as requested.

The CHAIRMAN: Thank you.

Mayor Carlos: There are some other documents as well.

The CHAIRMAN: Do you wish to table them now?

Mayor Carlos: Yes.

The CHAIRMAN: Thank you.

Mayor Carlos: Right from the very beginning I felt that the minister could have acted on the letter that I sent to him on 20 November last year. I also felt that he chose not to because we were coming up to an election in May 2003. The Monday after the election was the second time on which I have ever spoken to the minister. The minister rang me on the Monday after the election and congratulated me on being elected mayor. He said words to this effect: "I hope you solve the problem with your CEO." He left it up to me to do that. He said, "If you need any assistance, please call the director general and she can advise you on which way to go if you need any technical advice." I had a meeting on one occasion with Cheryl Gwilliam and two of her colleagues. Both her colleagues were in the committee room yesterday. They really left it up to me to solve the problem, even though I clearly said to them that I was having difficulty getting to the truth. That is all I have ever said I wanted - the truth.

[12.50 pm]

The CHAIRMAN: What would you regard as an adequate remuneration package for a chief executive officer in a local government the size of the City of Joondalup?

Mayor Carlos: At the very beginning, I think I said it would be a base salary of \$147 000, which is what the Salaries and Allowances Tribunal recommends, plus a car and superannuation, which brings the package up to \$177 000. Having worked in the mining industry - I think you gentlemen and ladies know that the mining industry pays very well - and based on what I saw there, and on what a CEO does, \$177 000 is a very generous salary.

The CHAIRMAN: What would you regard as the essential attributes and skills that a CEO of a large metropolitan local government should have, and do you believe it is possible to impose minimum qualifications by way of regulations that would satisfy these essential attributes and skills?

Mayor Carlos: There should be minimum qualifications. In today's society, when all the people reporting directly to the CEO have academic qualifications, I find it to be a strange situation. I believed at the very beginning that the CEO had qualifications. Even though I did not agree with his appointment, but only based on salary, I felt that he had academic qualifications, and, yes, he could lead a team of local government public servants. However, without that, I believe it is a farce.

Hon MURRAY CRIDDLE: Mr Carlos, you said that the minister was not prepared to have an inquiry, which is why we are here. What is the current position with the assessment processes - you were here yesterday and you would have heard them mentioned - and are they covering any points that you would like raised?

Mayor Carlos: I do not know what they are doing. That was the first time I heard about it.

Hon MURRAY CRIDDLE: Why have you had so much difficulty progressing any further inquiry into this issue?

Mayor Carlos: I do not have numbers on council, which is a matter that popularly elected mayors face; that is, if they do not have the numbers on council or if they remove a mayor that has the numbers on council. It comes down to a matter of numbers.

Hon MURRAY CRIDDLE: Finally, what regulations or legislation would you like to see in place that might overcome the current situation?

Mayor Carlos: If the job had been advertised and if we had ensured that he had the qualifications that he quoted, the situation might have been different. If a doctor, a dentist or a lawyer says that he has qualifications, people get them checked out. There are organisations that check out this information. The selection committee accepted what was on the piece of paper he provided us; that is, that he had a degree, diplomas and certificates. We now know that he does not have a degree or diplomas, only because of the written evidence that I have given you. This is information that the selection panel did not have and information we were told he had by Management Recruiters Australia. I can understand why we were told that because people who apply for jobs do not want their current bosses to know that they have applied for a job. It can be detrimental. A CEO from a council in this city applied. If we had gone out and started an investigation, it would have made his position in that council with the mayor and councillors unacceptable.

Hon MURRAY CRIDDLE: The point that I was making is what process can you put in place to overcome that because obviously there was a lack of information in this case. We are being asked to recommend a process that overcomes that problem. Do you have a view as to how you would overcome it?

Mayor Carlos: Management Recruiters Australia and the human resources manager of the City of Joondalup have a lot to answer for. These matters should have been checked out before the applicant was appointed. I have worked for a large company and this information is checked out long before a letter of offer goes to the applicant.

Hon DEE MARGETTS: I asked Allison a question earlier and I will ask you a similar question. Given the opposition on the selection committee and the candidates that were presented to you by the Management Recruitment Company, can you state categorically that not having those stated qualifications would have impacted on your views about the selection of Denis Smith for the position of CEO? Secondly, how would that influence any decision about what is reasonable to offer a candidate if those qualifications were not verified?

Mayor Carlos: Firstly, when we were given the list of nine candidates to consider and to short list who we would interview, if what was on that document was the truth - do you have a copy of the document that lists the nine candidates given to us by Recruiters Australia?

The CHAIRMAN: I do not think we have seen it.

Mayor Carlos: I have a copy of that document in my car.

The CHAIRMAN: Perhaps you can provide it to the committee at some later time.

Mayor Carlos: The nine candidates on that list all had academic qualifications and very impressive summaries of their curriculum vitae. If Mr Smith had told the truth I suggest that he would not have been selected as one of the people that we interviewed. We had so many other people listed with academic qualifications.

Hon DEE MARGETTS: Following from that, a number of people might be of the view that the most important thing is how the person does the job and their relevant experience, which might be a relevant view. However, were aspects of the kind of qualifications that were represented on the CV, or absence thereof, you believe are evidence of the job that that CEO does?

Mayor Carlos: I am sorry. The main point is whether he has the qualifications and the fact that he had to falsify his CV to get an interview. If we had then investigated that he had three years experience at Warringah Council, three as the CEO, and then three years as a director at Coffs Harbour City Council, but no qualifications, we may still have interviewed him. However, the quality of the other candidates was so good. I suggest that if a person embellishes his CV, he has no right to be interviewed. I think Joondalup's recruitment document says that if you state something on your CV that is wrong you will be up for dismissal. I think you have a copy of that document.

[1.00 pm]

The CHAIRMAN: Is the document being circulated the one you referred to?

Mayor Carlos: That is the document I was referring to.

The CHAIRMAN: We have got a copy of that.

Mayor Carlos: I thought you had.

Hon KEN TRAVERS: I just wanted to clarify that. It is item 3 in the submission.

Hon JOHN FISCHER: Can you confirm or not whether at any stage you were informed that Management Recruiters had not checked the credentials of Mr Smith thoroughly?

Mayor Carlos: At the stage when we were selecting the candidates to interview, yes, that was in the document. I think it is a copy of that document that was just shown to me. There was a statement that these have not been verified at this time, but we expected them to be verified when we first of all selected the shortlist and then we selected the final shortlist for interview.

Hon JOHN FISCHER: Who actually denied you access to any reference documents regarding Mr Smith? I know you mentioned that earlier on in the position of mayor you called Mr Smith in, but prior to that - I am not sure whether it was prior or not, but I believe a motion of confidence was passed in Mr Smith.

Mayor Carlos: Yes.

Hon JOHN FISCHER: Moved by Councillor Baker. Prior to that taking place, can you recollect anyone asking to view a copy?

Mayor Carlos: I had asked to view a copy.

Hon JOHN FISCHER: At that particular meeting, I mean, when that motion was going through. Am I correct in saying that that motion was voted on by councillors who were totally aware that Mr Smith had not verified any of his accreditations?

Mayor Carlos: I am sorry, I do not know that that is correct. I do not think that was even discussed.

Hon JOHN FISCHER: Your answer is that they voted for the confidence of Mr Smith -

Mayor Carlos: Yes.

Hon JOHN FISCHER: Without bothering at any stage to ask for confirmation of references, after they had had a letter that initially told them that Management Recruiters had not checked on his accreditations?

Mayor Carlos: That is right.

Hon JOHN FISCHER: Would you consider that to be a lack of duty of care by your councillors?

Mayor Carlos: Yes, I would.

Hon JOHN FISCHER: Who were the people who moved the motion of confidence?

Mayor Carlos: I think it was Councillor Baker and the majority of the councillors. There was only a small minority of councillors who voted against that.

Hon JOHN FISCHER: Had the numbers changed? You referred to a numbers game and not having the numbers. Had the numbers changed since -

Mayor Carlos: May 3.

Hon JOHN FISCHER: 14-2 defeat; correct me if I am wrong -

Mayor Carlos: They have changed slightly.

Hon JOHN FISCHER: At council when you moved a motion for the vote of no confidence?

Mayor Carlos: I moved a motion to stand Mr Smith down until the matter was fully investigated. That was on 18 February. That was defeated and as a result of that I then decided - and the motion of confidence in Mr Smith was moved by Councillor Baker at the same time.

Hon JOHN FISCHER: At the same meeting?

Mayor Carlos: Yes.

Hon JOHN FISCHER: Knowing full well that there was no verification of his accreditations?

Mayor Carlos: That is right.

Hon KEN TRAVERS: Was that the first time there was either a motion of confidence or no confidence at the council?

Mayor Carlos: No, there was a further one after I became -

Hon KEN TRAVERS: The one we were just talking about was the first time?

Mayor Carlos: Yes, that is right.

Hon KEN TRAVERS: In terms of the council's operations, what is the normal standard practice if the council is delegating authority to the officers or committees? Is there a standard process that you go through when you are delegating authority?

Mayor Carlos: There is a delegated authority manual for processes within the council that you can delegate to the CEO, you can delegate to the council officers.

Hon KEN TRAVERS: The first time you are delegating an authority to a subcommittee or a committee of the council, is there a process that is followed in terms of the documentation that is provided, or an explanation, or is it made clear?

Mayor Carlos: No, it is not made clear.

Hon KEN TRAVERS: There is no set procedure when that occurs. Is there a requirement for an absolute majority?

Mayor Carlos: In the committee?

Hon KEN TRAVERS: When you are delegating an authority off to a subcommittee?

Mayor Carlos: No. All the committees are only committees of the council and even when a committee makes a decision it still has to come back to be ratified by the council and, as we have seen in this council, a committee can decide in committee that we agree with something and then it comes into council and now you have the full council there, and councillors change their minds. That has happened before.

Hon KEN TRAVERS: So if a committee of the council is given the responsibility, it is never delegated authority of the council?

Mayor Carlos: No.

Hon KEN TRAVERS: Were you ever given any explanation by any councillors who opposed your motion for an investigation into why they opposed it?

Mayor Carlos: They believed that Mr Smith was doing a good job, notwithstanding that we had had six special electors' meetings and the ratepayers were up in arms with us. They felt that he was doing a good job and they did not believe that standing him down would achieve anything until we had completed an investigation.

Hon KEN TRAVERS: How much did the council pay to Management Recruiters Australia?

Mayor Carlos: To recruit Mr Smith, somewhere in the vicinity of \$30 000, but since then we have put a lot of work their way and I do not know the figure since 2001.

Hon KEN TRAVERS: I think you interviewed three recruitment companies. When you were choosing those, was the cost an issue? Did you look at what the respective costs would be?

Mayor Carlos: We did look at the costs but it was only part of the process. We looked at what they could do and the presentation that they made and the data bank that they said they had, and generally the fact that we were convinced by Management Recruiters Australia who was going to do it and that person -

Hon KEN TRAVERS: When you selected Management Recruiters initially, was it the intention that they would be advertising for the position?

Mayor Carlos: Management Recruiters Australia, as part of their recommendation, said no, that they had so many people on their books that it was not necessary to advertise.

Hon KEN TRAVERS: When the council has made decisions to fund legal advice for Mr Smith, has it outlined the purpose of the funding of the legal advice?

[1.10 pm]

Mayor Carlos: No. After I moved the motion that he be stood down, that was when the first motion was moved that he be given the opportunity to seek legal advice to take action against me if it was deemed appropriate. I understand letters from his lawyers have gone to certain newspapers - weekend newspapers - it is an interesting thing - and to me. I must have eight, nine or 10 letters from his solicitors telling me to cease and desist.

Hon KEN TRAVERS: There have obviously been a number of other occasions when there has been approval for the funding of legal advice.

Mayor Carlos: Yes.

Hon KEN TRAVERS: Are you aware of what the purpose of that funding was for on each of those occasions?

Mayor Carlos: To stop people from talking about his qualifications. I cannot give you any other reason. I can never understand why council had to. We have had lawyers since yesterday morning for the other councillors. The council is funding lawyers for councillors. I am not using the council lawyers.

Hon KEN TRAVERS: Does the council receive an itemised account of the expenditure on that legal advice?

Mayor Carlos: No.

Hon KEN TRAVERS: No councillor would be aware of the purpose for which the legal advice has been provided?

Mayor Carlos: It is just a one-liner: for legal services.

Hon KEN TRAVERS: Just across the board; no explanation or reason?

Mayor Carlos: No. I have looked at these documents because they are public documents. They are invoices provided by the lawyers to the council. I note that the recent ones we approved on Tuesday night are now in Mr Smith's name. Prior to that, they were in the council's name. He was

going to the lawyers even before we approved it. The bills would come in and documents were written for the council to approve this.

Hon KEN TRAVERS: It was effectively an ex gratia payment to him?

Mayor Carlos: You said that and I must confirm it.

Hon KEN TRAVERS: In terms of when the salary packages were presented - that is, the total salary packages being requested - I think you got down to three candidates whom you were trying to choose between. Is that correct?

Mayor Carlos: Yes.

Hon KEN TRAVERS: Was the total salary package, including benefits and remuneration, considered a part of the decision as to which one of the three the selection committee would choose?

Mayor Carlos: When we looked at the three of them, each one of them had their current salary package on the Management Recruiters' summary of each person. This was taken into consideration. When we eliminated one of the nine people, there was someone on over \$300 000. We eliminated that person because we said that we could not afford that person. The interesting part of this was, after we had selected the first person - Mr Smith was not the first person on the selection panel's list - Management Recruiters Australia was to go and discuss it with the three of them and come back to us with a salary package and with the best person for the job. Management Recruiters Australia then came back and wrote a glowing report on Mr Smith and then said he would be prepared to come to Western Australia on the same salary package that he was on in Sydney. It has since been discovered that he was never on that salary package. That was also a situation. He was on a much lower salary than the \$225 000.

Hon KEN TRAVERS: In terms of the final decision, if one of those three candidates had been on a package that was \$10 000 or \$15 000 less or more than the other candidates, do you think that would have influenced the final decision of the council?

Mayor Carlos: The final report left us with only one choice.

Hon KEN TRAVERS: But when you were trying to choose between the three, do you think the remuneration was a factor if one of them had been out by \$10 000 or \$15 000?

Mayor Carlos: I think each councillor rated the candidates we interviewed. Each councillor rated them and then, as a result of the ratings of the councillors, it was Smith. I think the applicant from South Australia came first and Smith was second.

Hon KEN TRAVERS: Their salary package did not play a part in it at all?

Mayor Carlos: It did not play a part - well, it could have by individual councillors.

Hon KEN TRAVERS: The three that got up were all presenting a package. Management Recruiters presented it to the council but they were all on a similar package?

Mayor Carlos: That is right.

Hon KEN TRAVERS: I guess the final question I have is do you think the failure to have this matter resolved and for it to be made clear one way or the other - regardless of whether the majority of the council want to continue to employ the CEO - and the failure to disclose and make that public have been in the best interests of the council?

Mayor Carlos: No, definitely not.

Hon ED DERMER: I would like to go back to the point when the selection panel was considering the nine summations provided by the recruiting company. If I understand correctly, Mr Carlos, you said earlier that at the point when you were presented with the nine summations, you were told by

an officer of the recruiting company that they would go through a verification process of the claims of each of the candidates. Is that correct?

Mayor Carlos: I was of the belief that either our HR manager or Management Recruiters Australia would be doing two things: checking references and verifying qualifications.

Hon ED DERMER: You were of that belief. I am trying to establish how you came to that belief, if you can recollect.

Mayor Carlos: Specifically, no, I cannot. Having been involved in a number of recruiting exercises, this is the normal practice for an HR manager before someone is appointed, to prevent what we have got here.

Hon ED DERMER: To the best of your knowledge, did the HR manager of the council or an officer of Management Recruiters Australia ever report back to the selection panel or the council that they had completed any of those checks?

Mayor Carlos: No.

Hon ED DERMER: When the final report came in from Management Recruiters Australia, it was considered and adopted or accepted by the full council?

Mayor Carlos: No - oh, sorry, the full council. As I said to you before, three councillors voted. They came with a report recommending Mr Smith. A report was then written by council officers. This came to council and three councillors voted against this, mainly on salary. There was considerable debate behind closed doors that we should employ the current CEO, who was prepared to drop his salary below \$200 000. There was very little, in my view, wrong with the current CEO. My concern right from the very beginning was the high salary we were paying these people.

Hon ED DERMER: So after that report was received by the council and accepted by the council - as you explained - am I correct in understanding that the mayor at the time and others were delegated the task of finalising the details of the employment contract by the council?

[1.20 pm]

Mayor Carlos: I understand that the mayor, the acting CEO and the HR manager were given the task of finalising it. I believed at the time that it was going to come back to council before it was approved, but it never, ever came to council.

Hon ED DERMER: When you say you believed it was going to come back to council, did someone suggest that to you? Do you recollect how that came to be in your mind?

Mayor Carlos: I think it was suggested in the council meeting that the contract, when it was written, would come back for approval by council, but it never, ever did.

Hon ED DERMER: When that was suggested at the council meeting, you understood that that meeting was going to occur, and the people with responsibility understood that they would be bringing it back to council?

Mayor Carlos: Yes.

Hon ED DERMER: You raised a point earlier, and I want to confirm it. You said that for each of the candidates on the short list, you would have advice as to their current salary package. If I recollect correctly, the then salary package for Mr Smith was \$225 000 per annum.

Mayor Carlos: That is right.

Hon ED DERMER: This was information presented to the selection panel by the recruiting company?

Mayor Carlos: That is right.

Hon ED DERMER: Do you now understand that it was Mr Smith who provided that information to the recruiting company, and it then provided it to the selection panel?

Mayor Carlos: I understand that all of the information that we received was given to Management Recruiters Australia by Mr Smith, and he then passed it on to us. There are a couple of letters in existence that say it was \$225 000.

Hon ED DERMER: You were assuming that these facts had been verified?

Mayor Carlos: Yes.

Hon ED DERMER: But you now understand that they were not?

Mayor Carlos: I now believe that they were not.

The CHAIRMAN: Were you absolutely clear in your mind about what criteria had been given by the council to Management Recruiters Australia for the CEO position?

Mayor Carlos: Yes, I was, and I think Management Recruiters Australia was also because in the middle of May of this year, one of the things that Mr Warren Reynolds said to me over the phone was that part of his selection criteria was to look for someone with academic qualifications, and that is what he presented to us. A councillor came to me at that time and said, "Do not worry about that CV that Management Recruiters Australia provided to us. It is all wrong. Denis has said that they have made a mistake." That is when I went, as I was now in the position of mayor, back to Management Recruiters Australia and asked them whether they had made a mistake, and they said flatly, "No. You already have a copy of the CV that Smith gave to us." That is the document that was signed on 21 May 2001. At that time, I went to three of the council officers - Mr Clayton Higham; Mr Loader, our HR manager; and Mr Kevin Robinson - and said "I am told that we have a document within this council signed by Denis Smith that says he has got these qualifications. Have we got it?" They looked rather shocked, because they believed that Management Recruiters Australia had made a mistake. I asked for that document, and it took about five days for it to be given to me. It did not come out of our own records. It came from Management Recruiters Australia. That document clearly states that it came out of the office of the Warringah Council. It is signed by Denis Smith, and it went to Management Recruiters Australia.

The CHAIRMAN: I want to differentiate between two things. The first is the criteria for the CEO's position that the Joondalup council set for its recruitment agency. Is there a written document?

Mayor Carlos: Yes, there is. You have that document.

The CHAIRMAN: The second is qualifications. During the selection process did you, or any other member of the selection committee, ask for proof of any of the candidate's qualifications?

Mayor Carlos: We are talking about a couple of years ago. I have been asked that question before, and I have to say I have always been very conscious that we need people with academic qualifications. I believe I did ask the question a number of times to three or four of the applicants. I cannot remember specifically asking Denis Smith. The fraud squad asked me exactly the same thing, because one other councillor had said to me that he heard me say it to Smith. I have got to say to you I cannot remember specifically asking Smith. I did ask some of the candidates. I believed what was on the document because I knew it was going to be checked. I thought I knew the process. With regard to did I specifically ask Smith, I am sorry, I cannot answer that, because I cannot remember.

The CHAIRMAN: Did you ask for proof of the qualifications?

Mayor Carlos: No. I never asked for proof, because I thought that was going to be done at a later time by either the HR manager or Management Recruiters Australia.

The CHAIRMAN: When the matter came to full council, did you ask the same questions again about proof of qualifications?

Mayor Carlos: No. I honestly believed that this action had been taken and someone had verified that he had these qualifications.

The CHAIRMAN: Can I take it from that that you accepted the process and you made your decision based on the information before you?

Mayor Carlos: I voted against the appointment of Mr Smith, but not on those grounds because I believed that it had been done. I based my decision on the fact that we could have gotten the CEO who was in the job, and at a much lower salary. Councillors on the night spoke about why should we not just retain the current CEO.

The CHAIRMAN: When this matter came back to full council, there were some closed sessions, I understand, at which it was discussed.

Mayor Carlos: That is right.

The CHAIRMAN: Are those sessions taped?

Mayor Carlos: I believe they are, but you would have to ask the council officers specifically. All closed-door sessions are taped, and the tapes are retained. The only tapes that have not been retained was when we had some discussions with some lawyers in May. The discussions were taped, and the tapes were given to the lawyers.

The CHAIRMAN: Presumably those tapes are available to this committee if we request them?

Mayor Carlos: I do not see any reason why they should not be available to you.

The CHAIRMAN: Did you request the police investigation?

Mayor Carlos: No, I did not.

The CHAIRMAN: Have you seen a copy of the police report?

Mayor Carlos: The only report I have got is a copy of what the commissioner wrote to me as the mayor.

The CHAIRMAN: Who requested the police investigation? Do you know that?

Mayor Carlos: I believe another councillor went to the public sector investigation unit to request an investigation. The fraud squad then investigated me after that.

The CHAIRMAN: Are copies of those reports included in your submission to our committee?

Mayor Carlos: No. I have a copy of what the commissioner said. That document has been leaked all over Western Australia, because the Press has got it - the *Wanneroo Times* and the *Sunday Times*. It has been leaked by someone within council. What is in that document has even gotten into *The Sydney Morning Herald* and *The Manly Daily*. Nothing is sacred in Western Australia, I can assure you.

[1.30 pm]

The CHAIRMAN: That is what you might call a public document.

Hon JOHN FISCHER: I would like to clarify who knew what. In *The West Australian* on Thursday, 20 February there was an article regarding the council rejecting the bid to stand down the CEO. Councillor Chris Baker is reported as saying that he understood that all councillors had had an explanation of Mr Smith's qualifications from the recruitment agency, which helped him get the job. When they had sighted documentation, they were satisfied that he did have the qualifications that were set out in his application. In your opinion, is that a false or misleading public statement?

Mayor Carlos: That is a misleading public statement.

Hon DEE MARGETTS: I want to follow up on a statement you made that left me perplexed. If I recall, you said that Management Recruiters Australia said it had so many people on its books that it was not necessary to advertise. I presume this was fairly early in the piece before Management Recruiters Australia gave advice that it did not need to advertise. How could it have had people on its books specific to the needs of the Joondalup council before it gave advice to the selection panel and then use that as the basis to say later that it did not have enough people on its list who fitted within the salary criteria? I find that perplexing. The shire gave Management Recruiters Australia salary guidelines. Management Recruiters Australia said it did not need to advertise because it had enough people on its books and then it said that if you pay peanuts, you get monkeys - having not advertised to see whether other people would respond. Is that a correct reading of it?

Mayor Carlos: No, I am sorry. The salary I talked about before was what we got from the Salaries and Allowances Tribunal, which was \$147 000 and which was increased to \$177 000 with a car. That is what the Salaries and Allowances Tribunal told us. We were told that we should pay for a CEO's position at the City of Joondalup, and we were at that stage. A man called Mr Delahaunty was the CEO and he was paid the same salary as the Premier at that time. At no time, to my recollection, did we ever say to Management Recruiters Australia that we wanted someone to fit within the salary package.

Hon DEE MARGETTS: Were there some guidelines?

Mayor Carlos: No figure was given. I cannot recall giving that letter that we received from the Salaries and Allowances Tribunal. I cannot recall whether we even gave the tribunal that letter. We discussed the salary but the mayor and the councillors wanted a high-profile CEO who could handle the job in Western Australia. Management Recruiters Australia told us that to get the right person we might have to go above that amount.

Hon DEE MARGETTS: Above that amount? Whatever that amount was.

Hon KEN TRAVERS: Earlier, you mentioned that a councillor told you that MRA had made a mistake. Which councillor was that?

Mayor Carlos: Councillors Prospero and Brewer. They said that is what Mr Smith had told them. That was about 3, 4 or 5 May. The election was held on 2 May and on the following Monday, Tuesday or Wednesday they went to see Mr Smith and asked him to show them some documents, which he did. During the same week two other new councillors went to see the documents but Mr Smith failed to show them the documents. He said he was taking legal advice about why he did not want to show them. He refused to show me the documents but two of the new councillors were shown the documents. I do not know what those documents were. I have since received a letter from the University of Technology Sydney that says he does not have those qualifications, so I do not know.

Hon KEN TRAVERS: Was the fee structure of Management Recruiters Australia cheaper if the position was advertised rather than if it conducted a national headhunting selection process?

Mayor Carlos: I cannot recall that.

The CHAIRMAN: We are well and truly over time. Is there anything you would like to say in conclusion?

Mayor Carlos: I would like this matter put to bed. I believe the truth should come out so that the City of Joondalup can move forward. Since being elected mayor, I have attended Lions Clubs, football matches, senior citizens areas and Rotary Clubs. Every day many people ask me when the problem will be resolved and when something will be done about the person who falsified his CV. All I have wanted is for the truth to come out and to be published so we can get on with running the city.

Proceedings suspended from 1.36 to 2.01 pm.