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, 30 NOVEMBER 2011

SESSION ONE

Members

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

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Hearing commenced at 10.14 am

ALLEN, MR MICHAEL ROBERT, examined:

The CHAIRMAN: Before we commence, Mr Allen, I have agreed to the media photographer to be present for the first one or two minutes, while I read the opening statement, to take some photographs.

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 Mr Mike Allen 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. Mr Allen appeared before a public examination conducted by the Corruption and Crime Commission in December 2006 and he provided a submission to the committee in aid of this inquiry earlier this year.

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 public 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 the questions we have for you today, I need to ask you a series of preliminary questions. Firstly, have you completed the "Details of Witness" form?

Mr Allen: Yes; I have.

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

Mr Allen: Yes, I do.

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

Mr Allen: Yes, I did.

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

Mr Allen: No, thank you.

The CHAIRMAN: Mr Allen, we have a series of questions for you today, but before that I want to note for the record that the committee has received a very comprehensive submission from you dated 9 August 2011, which was received by the committee on 12 August. You can take it that the committee has noted the content of that submission. In light of that, would you care to make an opening statement to the committee this morning?

Mr Allen: Yes, I would, please. First of all, thank you very much for the opportunity to appear before you in this public hearing. I believe public hearings of the CCC should not be held. While the CCC has the discretion to hold public hearings, to date it has repeatedly and recklessly abused that discretion. However, if the CCC and public hearings continue to exist there need to be some fundamental changes. At the very least, the CCC act should define the public interest and state compelling reasons as to why that requires the public hearings to be public rather than private.

In 2008 the CCC sought an injunction in the Supreme Court to prevent the former parliamentary inspector tabling a report about Stephen Lee in Parliament that was critical of the CCC, because it was concerned about and I quote "prospective damage to the reputation of the Commission and, if the report is published, damage will be caused to the reputation of the Commission, which can never be restored." While the CCC may have been in contempt of Parliament by seeking this injunction, I want you to contrast this with the CCC's lack of concern for individuals with its treatment of witnesses during public hearings and its defamatory reports. It has no qualms about damaging people's reputations, which can also never be restored, while being gravely concerned about its own reputation. I believe the hearings should be conducted based on all of the Salmon principles of procedural fairness. The issue of procedural protections in public inquiries was considered in the United Kingdom by the Salmon Royal Commission on Tribunals of Inquiry in 1966. This produced six principles concerning procedural fairness, now commonly referred to as the Salmon principles and I understand these principles are generally used in public inquiries in Australia, including royal commissions. They have also been given statutory force in the Commissions of Inquiry Act in Tasmania. The conduct of the CCC's public hearings blatantly ignores these principles.

I understand that if you have public hearings according to administrative law, principles of procedural fairness must be adhered to. Witnesses are told why they are there and this, I believe, is a fundamental human right, which is completely contravened by section 138 of the CCC act, and the substance of the allegations against them. Witnesses should be able to cross-examine, be cross-examined and to call witnesses. The CCC denied me procedural fairness by not taking into account the statement provided by Barbara Pederson during the Smiths Beach inquiry, that the CCC obtained before the tabling of the Smiths Beach report. If procedural fairness had been followed I would not have be called to a public hearing in the first place. I would have had the opportunity of a private hearing where I would have been advised what I was accused of and given an opportunity to prepare and answer the allegations prior to a public lynching. Appropriate witnesses would have been called; I would have been able to nominate witnesses I thought appropriate; and I would have had the opportunity to cross-examine any evidence appropriate to me. I would have been given an opportunity to put my case. I would not have been cross-examined by overzealous criminal prosecutors with no understanding of the planning processes they were trying to question me about. All of the requirements of procedural fairness were denied to me.

Clearly different treatment is applied to different people depending on who your friends are because I want you to contrast my treatment with that of Neale Fong, who had admitted he lied about the extent of his dealings with Brian Burke, yet was given a private hearing. As well, he had no criminal charges laid against him thanks to the infamous Cock doctrine of, "He's suffered enough". In terms of the protection to reputations, how can the CCC claim, as it did in its evidence to this committee, there are sufficient safeguards in place, when the Smiths Beach public hearings were across the front page of local and national newspapers and on television news bulletins. The media reports simply repeated the unfounded allegations thrown at me by the CCC during the public hearing. While the allegations, in fact, were wrong, as was conclusively demonstrated by subsequent events, there was no opportunity at the time of the public hearing for me to provide a contrary viewpoint. Explain how a front page article with a picture of me being described as one of "The losers" protects my reputation or being described as "a person who knew the generals"; that is, Messrs Brian Burke and Julian Grill, or "were seeking to further their career"?

In my opinion the CCC in fact colluded with the media to ensure widespread adverse publicity during the public hearings of the Smiths Beach inquiry. I challenge former Commissioner Hammond to publicly state all the meetings or contacts that the CCC had, especially with Sean Cowan of *The West Australian* during the Smiths Beach inquiry and the public hearings. The CCC explained in its appearance before this committee that public hearings are part of the investigative process. What new information completely unknown to the CCC prior to the public hearing was

revealed at a public hearing? I seriously doubt there were any, especially in the Smiths Beach inquiry. Counsel assisting based their questions on telephone intercepts, secure in the knowledge that they, therefore, knew what the answer from a witness should be and when the right answer was not given, the entrapment process was complete, leading to criminal charges being laid against me and others. The vindictiveness of those pathetic charges has been laid bare by the subsequent dismissal of every single charge of giving false testimony, with one exception that is currently the subject of an appeal. Therefore, what was investigative about this process? The Smiths Beach public hearings were just a shameful kangaroo court designed to entrap.

Stephen Hall, counsel assisting, said at the end of the first round of the Smiths Beach public hearings, and I quote "Some witnesses who appeared to date have been less than completely frank and honest in their evidence." He went on, "If witnesses persist in deliberate untruthfulness, they should also appreciate that it is very much in their own interest not to aggravate their position by continuing to maintain a false story." Hall has been criticised in the report provided to this committee by Acting Inspector Chris Zelestis, which was tabled in Parliament on 1 September this year, for contravening the provisions of section 23 of the CCC act by implicitly raising the prospect of criminal charges being laid.

While that is serious enough, Hall's statement demonstrates absolutely he thought he knew what people should have said in answer to his questions because his questioning was based on telephone intercepts. How could counsel accuse me of lying when I was never informed that I was under any suspicion of wrong doing? The public hearing subjected me to an absurd test of trivial details—a memory test. It was a grotesque, staged drama for the glory of the CCC. The problem with the questioning and presupposed judgements of guilt by Hall is that they were based on the pathetic, inadequate, incompetent and biased investigation by the CCC. All this serves to emphasise the one-sided and biased nature of public hearings. They are fatally flawed and incapable of determining the truth of any matter.

[10.25 am]

The reprehensible Smiths Beach public hearing process to which I was subjected could not have been more unfair. It was a stitch-up. In my case vital material witnesses were not called. Instead, the CCC relied on hearsay evidence contained in a conversation between someone with a vested interest in what was being said—namely, Brian Burke—and his client. The failure to call material witnesses confirms the incompetence of the investigation undertaken by investigator Ingham and counsel assisting Hall, and Philip Urquhart. It is a fundamental principle of law that even when hearsay evidence is admissible, an investigation should always go to the primary source of the evidence if it is available. The CCC demonstrably failed to call the primary sources. I was accused of getting Barbara Pedersen to write a report at the behest of Mr Burke, to the exclusion of other officers in my department. She was not called as a witness to the public hearing. She was interviewed later and before the Smiths Beach report was released, and denied absolutely what the CCC alleged. The other officer I was supposed to have excluded from the process, Stephanie Clegg, was never interviewed by the CCC or called as a witness. These people, and several other pertinent witnesses, should have been called to the public hearing. How could a process which fails to call or interview the most relevant material witnesses be called an investigation? The former inspector, Malcolm McCusker, said at a breakfast hosted by Curtin University in February 2009, "These people were not called because their evidence would not fit what the CCC was trying to prove." The CCC accepted the suppositions of Mr Burke that he thought that Pedersen would write a report because it suited their purpose. Burke's understanding of her role was contradicted by the McCusker report about me, released on 7 March 2008. The CCC pointedly did not want to know what her role was.

The CCC has continued to conduct public hearings when, I would suggest, it already had sufficient information on which to lay criminal charges. The inquiries into the health department contract and

the City of Stirling cases would be examples of that. It is my understanding that at common law an inquiry is unable to require a person to answer questions that are directly relevant to matters that are to be the subject of criminal proceedings being conducted at the same time, and, in this context, criminal proceedings, in my view, includes the formal investigation that the CCC was undertaking. In my opinion the decision of the CCC to hold public hearings as part of the Stirling–Curtin language school–health department inquiries, when they already had possible evidence enabling criminal charges to be laid, constitutes a contempt of court because of the risk of prejudicing the right of witnesses to a fair trial. I suggest that the CCC might need to be investigated for these possible instances of contempt. There also needs to be an opportunity provided to review the outcomes of an inquiry. The principal reason for this is that it goes to the heart of accountability. As it stands, in my view the CCC is not accountable. Neither the inspector nor this committee has the power to direct the CCC or to overturn findings.

In addition to the Stephen Lee case as an example of the bizarre lengths the CCC will go to to avoid scrutiny by the inspector, its reaction to the report produced by Malcolm McCusker about me in 2008 is another. It produced nothing more than a diatribe masquerading as an administrative report that was critical of the inspector and contained highly critical and defamatory remarks about me. It contained completely false statements; for example, claiming that I had a continuing relationship with Messrs Burke and Grill. This is categorically not true. Under the section of the CCC act that that report was tabled—namely section 88—I had no opportunity to make submissions on its content. Not giving me that opportunity is a breach of the CCC act, so again I was further defamed and denied procedural fairness. The former commissioner, in my opinion, breached the CCC act in tabling his report and should have been censured by Parliament and this committee, and asked for his resignation. It was a completely inappropriate use of the act. The report should not have been accepted by the Parliament. It showed a complete lack of integrity on his part and was a disgraceful use of his office.

An even more concerning aspect of this administrative report is this statement, where the CCC attempts to justify why the public service disciplinary investigation into me came to a different conclusion to the CCC. I quote —

> The review also identified two issues with the provision of information to agencies arising from Commission investigations. First, the Commission was unable to make available to the DPI investigator a range of material due to legal constraints. Second, the Commission should have provided more detailed analysis and briefings to assist the DPI investigator.

That last sentence reads like an attempt to interfere in a process independent of the CCC. It was the CCC that recommended the disciplinary investigation be undertaken. It would have been completely inappropriate to "brief" the investigator. In my opinion, that sounds like an attempt at bullying and intimidation. When the very processes it recommends are followed, and come to different conclusions, the CCC refuses to accept an alternative outcome. How ironic it is that the CCC seeks to improve the standards of integrity among public officers when itself so categorically fails that test. Any authoritative body or person with a closed mind, and unprepared to admit error, is a serious danger to our system of justice. The CCC should be made to justify and be accountable for its processes. With public hearings, that would mean not only that its opinions can be overturned upon review, but also include demonstration that its investigations are adequate by collecting all relevant material, interviewing or calling all material witnesses, as well as giving due notice of any suspicions or wrongdoing they may have. It would also include justifying who is, and is not, called up to public, as opposed to private, hearings, and how it applies all the principles of procedural fairness I have already mentioned.

Its opinions based on the balance of probabilities tests should also be subject to review. This test should be clearly spelt out in the CCC act. As it is, in my opinion, the CCC failed in the Smiths Beach report to meet the balance of probabilities test as set out in the High Court case Briginshaw

v. Briginshaw from 1938. This case sets out the standard to be met when determining the balance of probabilities: the evidence should be clear and compelling with no other likelihood. This is a basic principle of law ignored by the CCC.

This brings me to the integrity of the CCC and its officers. The lack of integrity was evidenced by the behaviour of investigator Ingham when he apparently failed to draw to the attention of people writing the Smiths Beach report that the statement provided by Pedersen completely contradicted the adverse finding the CCC concocted about me. I refer the committee to the report tabled by former inspector Malcolm McCusker on 7 March 2008 which provides the evidence to support what I am saying. Ingham admitted the standard of investigation was not as thorough as would have been the case in a criminal trial. Perhaps the CCC should be made to come to its conclusions based on "beyond reasonable doubt" rather than the lesser and more subjective test of "on the balance of probabilities", and findings on this basis should not be published until after the disciplinary process is complete. Ingham was one of two CCC officers against whom several allegations were made as to their conduct in the Smiths Beach inquiry. Their alleged behaviour was the subject of a year-long inquiry by Mr Chris Zelestis, QC, only part of whose report was contained in a report released by this committee.

Regarding the public interest that I have already referred to, surely the outcome of a report into the alleged misconduct of CCC officers, when those allegations were essentially that they tried to manufacture evidence during the Smiths Beach inquiry, is of the utmost public interest. We are constantly bombarded by the CCC and current and former politicians about the need to maintain the highest standards of integrity in the public service—I agree. The same standards of integrity should apply to the CCC. Why was the full outcome of the Zelestis inquiry not published? Why did Mr Zelestis not want anything published? How can we have a published report which "focused on alleged misconduct of commission investigators during the Smiths Beach investigation" and yet the tabled report contains not one word about the alleged misconduct? Did the officers concerned engage in the misconduct which was alleged or not? If so, what consequences have they faced? If not, why has that not been announced and their names cleared? Currently we have the situation where these allegations remain, together with serious questions of bias, which, apart from being completely unsatisfactory, means that any investigation involving those two officers is discredited and the conclusion is legally unsafe because of the integrity of those investigations and the methods used. These investigations should be the subject of independent judicial review because this goes to the heart of the CCC's integrity.

[10.35 am]

There is also a chronic misunderstanding of what the CCC can produce from its inquiries, including the public hearings. It produces opinions based on findings of inquiries; it may make recommendations as to what further action should be taken. However, the media, the public at large, many politicians, and, worst of all, the former commissioner himself, still have the view that any decision of the CCC is an end in itself—it is a verdict. They report decisions in terms of guilt or innocence. In my case, the CCC rightly referred the matter to the director general of my department to consider taking disciplinary action. The matter was then investigated by an officer from Premier and Cabinet. It was instructive to see the reaction from very senior figures, including the then Leader of the Opposition, Troy Buswell, to the finding of the Premier and Cabinet investigation that I had no case to answer. It was one of amazement, because he viewed it as overturning the finding of the CCC, and he found the process to be unbelievable because how could any subsequent investigation come to a different conclusion? In other words, he viewed the CCC finding as being akin to a verdict. This appalling ignorance of the processes set out in the act by publicly questioning the outcome of the investigation was, in my opinion, both defamatory of the investigator and of me. The findings were different because the DPC officer interviewed material witnesses, and the CCC did not; it is that simple.

Your inquiry has asked for alternative approaches to be examined. In Queensland I understand the practice is to devolve investigations of misconduct to the appropriate department or agency, and the Crime and Misconduct Commission then monitors the outcome. Only when the investigation has concluded may a public hearing be considered. According to the Queensland legislation, a CMC officer is civilly liable if they have acted not honestly or have acted negligently; the WA legislation does not allow for any appeal for negligence in relation to its investigators. There is a guideline called "Facing the Facts" produced by the CMC to assist public sector investigators. It defines procedural fairness and also explains that for a case to be proved on the balance of probabilities, the evidence must establish that it is more probable than not the alleged conduct occurred. In relation to me, the CCC relied solely on hearsay, opinion evidence and supposition. As these guidelines state, "a witness's opinions about a person or about what happened or should have happened are irrelevant to your inquiry". The CMC does not express findings or opinions that misconduct has occurred in its report; it sets out the evidence that has been uncovered by its investigation, together, if appropriate, with a recommendation that prosecution proceedings or disciplinary action should be considered. Likewise, the CCC should keep its unsubstantiated opinions to itself. This would then avoid all the misunderstandings that currently exist in relation to CCC opinions. In Queensland, if an investigator finds that misconduct has occurred, I understand the aggrieved party can appeal to the Queensland Civil and Administrative Tribunal, which is able to review and overturn decisions in a fair legal process. Where are the avenues of appeal in the CCC act?

In conclusion, the CCC operates under a shamefully inadequate and unfair piece of legislation that contains no opportunity for redress or the review of flawed opinions. Its public hearings are nothing more than kangaroo courts, designed to humiliate and embarrass witnesses, even at the risk of jeopardising fair trials. They are not part of a proper investigative process. It also has not helped that members of Parliament from all sides of politics have displayed extraordinary ignorance of CCC processes. They have also failed to grasp the seriousness of what is wrong with the CCC, or to do anything, for fear of giving the impression they might be sympathising with Brian Burke. To start to partially restore the integrity of the CCC, the full Zelestis report should be released to see whether or not the allegations of misconduct against CCC officers have been sustained. The era of the CCC has been a very dark one in terms of justice and principles of fairness in this state, exemplified by the disgracefully unfair public hearing process. This must change.

The CHAIRMAN: Mr Allen, thank you for your evidence this morning. I want to refer you to your written submission that you have provided to the committee, and in particular I note at page 47 of that submission—paragraph 261—you indicate what you have articulated this morning, which is —

> I do not believe the CCC should maintain a statutory discretion to conduct public hearings …

You then go on in the submission, at paragraph 263, and say the following —

> If the CCC conducted itself in a manner conducive to procedural fairness using procedures and practices similar to the Queensland CMC, ASIC or as suggested by the Ombudsman, then there is an argument that it should maintain its discretion in relation to public hearings.

You have given your evidence in your submission and also this morning, I think it would be fair to say quite forcefully, that the CCC should not maintain statutory discretion to conduct public hearings. Are you in a position to indicate what you say is the argument that could exist that they should maintain that discretion?

Mr Allen: The fundamental principle I would start from, Mr Chairman, is that they should not have the discretion. Only if the safeguards I have indicated this morning and in this written submission are in place and they form part of the legislation, only then would it be possible, in my opinion, to consider the CCC retaining the discretion to have public hearings.

The CHAIRMAN: Would you agree that no safeguard is foolproof?

Mr Allen: No safeguard is 100 per cent foolproof, but there are no safeguards under the CCC act at the moment, so they have an awful long way to improve.

The CHAIRMAN: So, if there are no safeguards that are foolproof, and therefore the consequence could be an impact upon someone's reputation, what would be the argument for maintaining discretion to hold public hearings?

Mr Allen: Very little. I think the initial hearing should always be in private, and the process of investigation should be maintained, as it were, behind closed doors. Only at the end of that process, if there is a need for public hearings—for the life of me I cannot see why there would be—only then should they be held, and only then should they be held based on all the principles of procedural fairness that I have articulated.

The CHAIRMAN: So that I have it clear, Mr Allen, your submission at paragraph 263 is that if the CCC conducted itself in those manners that I indicated earlier, there is an argument that it should maintain its discretion, but I am hearing from you now that there is no argument and there is no basis to have public hearings?

Mr Allen: I really cannot imagine occasions where there would be justification for public hearings.

The CHAIRMAN: Mr Allen, are you familiar with the case that most people tend to refer to as the tasering matter of Mr Spratt?

Mr Allen: Yes.

The CHAIRMAN: To date, I have yet to hear any criticism in any quarter that that particular incident should not have been investigated by way of public hearing by the CCC; in fact, if there has been any criticism I have heard to date, it has been that the CCC took too long to take over the investigation from the WA Police and should have held it themselves. Of what you know of that matter, would you say that that is an example that should be dealt with by way of public hearing, or not?

Mr Allen: Well, my view on that one is that the publicity that was given to all of the videos from the police lockup showing Mr Spratt being tasered had such an impact that it would have been, I suspect, difficult for a whole range of reasons for some public process not to be followed. But the counterargument to that, in my view, would be that everybody knew what the evidence was because they had seen it on the TV; the police lockup video was available to all. Therefore, I come back to the point that I made before: what new evidence, unknown to the CCC, would have been revealed at a public hearing? I suspect that there was no more information, in terms of video evidence, than had already been seen by all and sundry.

The CHAIRMAN: I suspect we will know the answer to that question in the fullness of time, when the CCC hands down its report on that matter.

Mr Allen: Yes.

The CHAIRMAN: I am interested by your comment, if I understand it correctly, that you think that the matter was of such a high profile in the public that it really would have been inconceivable for such a thing to be investigated in private or in secret; it was just so compelling that it had to be done in public circumstances. Are you indicating that that might be an example where the CCC needs to maintain its statutory discretion?

[10.45 am]

Mr Allen: I remember listening to the former inspector Malcolm McCusker's evidence, when you asked him pretty much the same question and I think he conceded that in a situation like that you probably should have the discretion to hold public hearings. But those sorts of instances are so rare that it is almost a shame that you have the discretion because of those very rare examples rather

than you have the situation where you would call a royal commission to respond to an instance like that. Otherwise, the CCC would act on the basis of private hearings.

The CHAIRMAN: Mr Allen, thank you for referring to the evidence of Mr McCusker; in particular, I note that in his evidence at a public hearing before this committee on 22 June he said the following —

> … I totally agree with the opening remarks made by Mr Steytler, QC, in his evidence given last week …

That was on 15 June 2011; and that in particular he agreed —

> … with his view that it would be a very rare case in which a public hearing could be justified in the public interest.

Mr Allen: Yes.

The CHAIRMAN: Am I hearing from you that you also concur with Mr Steytler and Mr McCusker that there is a need to retain a discretion by the CCC, but that it would be a very rare case in which it should be used.

Mr Allen: It would be a very rare case. I suppose my view on this comes back to: what is the purpose of the CCC and why does it need to have on a permanent basis essentially the powers of royal commissions? Royal commissions by their very nature are rare beasts, and they are called for exceptional matters to be investigated. I would have thought that if there are exceptional matters that the CCC needs to investigate, such as the tasering incident, you would do that by way of a royal commission rather than say that the CCC has the ability to call public hearings for those rare occasions.

Hon MATT BENSON-LIDHOLM: Mr Allen, I just want to focus again on what the Chairman has talked about in relation to the former parliamentary inspector and I just want your point of view about this. I will give you the quote first, which comes from Mr McCusker, again on 22 June 2011, and is predicated on public hearings continuing. I am just trying to find a fallback position. We have talked about tasering but I will just get your comment about this. Mr McCusker has said —

> I would, however, suggest a further provision, requiring the Commissioner, before any public examination of any person is to be held, to prepare and sign a statement, justifying that decision, to explain why the public interest outweighs the potential for prejudice or privacy infringements arising from a public examination of that person.

Would you like to make a comment? Is there any value in that particular comment by the former parliamentary inspector?

Mr Allen: I would never say that anything that Malcolm McCusker says has no value! Of course, what he said is absolutely right. In fact, right at the start of my statement this morning I did say that the CCC act should define the public interest and state compelling reasons why it needs to have hearings in public rather than in private. Indeed, this public interest test is a remarkably obscure beast and has, I think, been used in the past to justify public hearings when there is the interest of the public involved rather than the public interest; and I would suggest to you that those two things are not the same.

Hon MATT BENSON-LIDHOLM: Okay.

The CHAIRMAN: I probably have one further question for you and that is—just taking our discussion further, I hear you saying that there will be some rare circumstances in which the CCC will need to hold a public hearing, but that it should not have that discretion on a permanent basis. It should be authorised to do that in circumstances as they arise. I guess the question I have for you is: who should be the arbiter or the decision maker in terms of when those circumstances exist?

Mr Allen: That is a reasonable question and my immediate reaction to that would probably be "an external judicial body". I suspect that the default position should be this committee on behalf of the Parliament, but the reasons for suggesting a public hearing may involve matters of law and those sorts of fairly technical issues that probably require a judicial view of the matter to be provided by way of justification for a public hearing.

The CHAIRMAN: Given that the previous immediate-past commissioner of the CCC was a former Supreme Court judge and the newly appointed commissioner to the CCC is a District Court judge, would that not qualify those individuals to make that decision?

Mr Allen: No, because once they assume that position they are obviously in a position of a vested interest, notwithstanding, obviously as judges they are required to be terribly objective and all that sort of stuff. But I think once they assume a position of commissioner, their view of things quite naturally would be changed.

The CHAIRMAN: So your evidence then is that there is no doubt that the individuals concerned have the judicial skill to be able to make the decision, it is that because they are now a commissioner of the CCC they in effect have a conflict of interest as to this decision —

Mr Allen: Yes.

The CHAIRMAN: So therefore it needs to be some other independent person with the requisite judicial skill to make the decision.

Mr Allen: Yes.

The CHAIRMAN: Can I suggest to you that a person like the parliamentary inspector might be such an individual who has the judicial skill but is not a member of the Corruption and Crime Commission and therefore would not have that conflict of interest?

Mr Allen: It is possible that the parliamentary inspector could fulfil that role—yes.

The CHAIRMAN: So then the only difficulty I can see arising out of that is people complaining about the decision of the parliamentary inspector to grant the CCC the right to hold a public hearing—who then do people complain to after that?

Mr Allen: As has happened in a number of instances when the parliamentary inspector has for whatever reason been involved in matters that then come under some scrutiny, an acting parliamentary inspector can be appointed to deal with specific matters such as the one you have raised.

The CHAIRMAN: Would those circumstances still exist if the CCC had the ability to have an acting CCC commissioner or a deputy CCC commissioner?

Mr Allen: No, because they are still —

The CHAIRMAN: A part of the organisation.

Mr Allen: Yes, acting as the head of the organisation.

The CHAIRMAN: Gentleman, is there anything further? No. Mr Allen, is there anything further that you would like to bring to the attention of the committee this morning?

Mr Allen: No; just to thank you once again for the opportunity to present my evidence.

The CHAIRMAN: In which case, I thank you for your evidence before the committee. 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 for the committee's consideration when you return your corrected transcript of evidence. Thank you.

Hearing concluded at 10.54 am