

The Senate

Committee of Privileges

Person referred to in the Senate

Mr Karl J. O'Callaghan, APM
Commissioner of Police, Western Australia

128th Report

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*Senator Johnston did not participate in any of the proceedings of the committee leading to this report

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REPORT

1. On 2 August 2006 the President of the Senate, Senator the Hon. Paul Calvert, received a submission from Mr Karl J. O'Callaghan, APM, Commissioner of Police, Western Australia, seeking redress under the resolution of the Senate of 25 February 1988 relating to the protection of persons referred to in the Senate (Privilege Resolution 5).

2. The submission referred to comments made by Senator David Johnston in the Senate on 14 June 2006 during discussion of matters of public interest. The President, having accepted the submission as a submission for the purposes of the resolution, referred it to the Committee of Privileges on 3 August 2006.

3. The committee met in private session on 10 August 2006 and, pursuant to paragraph (3) of Privilege Resolution 5, decided to consider the submission. The response, which the committee now recommends for incorporation in *Hansard*, has been agreed to by Mr O'Callaghan and the committee in accordance with Resolution 5(7)(b).

4. The committee draws attention to paragraph 5(6) of the resolution which requires that, in considering a submission under this resolution and reporting to the Senate, the committee shall not consider or judge the truth of any statements made in the Senate or of the submission.

5. The committee **recommends**:

That a response by Mr Karl J. O'Callaghan, APM, Commissioner of Police, Western Australia, in the terms specified at Appendix One, be incorporated in *Hansard*.

John Faulkner
Chair

APPENDIX ONE

RESPONSE BY MR KARL J. O'CALLAGHAN, APM COMMISSIONER OF POLICE, WESTERN AUSTRALIA PURSUANT TO RESOLUTION 5(7)(b) OF THE SENATE OF 25 FEBRUARY 1988

On 14 June 2006 Senator Johnston made a number of accusations against the Western Australian Police Service and me personally.

The central theme of the Senator's address was a desire to demonstrate that the WA Police Service is dedicated to engaging in partly politics.

In support of this theory, the Senator refers to five examples:

The Prosecution of Paul Omodei

Mr Omodei was prosecuted and convicted for an offence relating to an incident whereby Mr Omodei discharged a firearm which injured his son's thumb. Upon conviction Mr Omodei was fined and received a spent conviction.

The Senator argued that Mr Omodei should not have been charged because it was an accident. According to the Senator, the only reason Mr Omodei was charged was because he is a Liberal party politician.

I should point out that it is not my practice, nor is it the practice of any sensible Commissioner to interfere in decisions concerning who should be prosecuted. I was unaware Mr Omodei had been charged until after the fact. Once made aware, at no stage did I interfere in the process.

The Prosecutions of Jonathan Daventry

Mr Daventry works for the Federal Member for Curtin, Julie Bishop. Mr Daventry was charged following an altercation between Mr Daventry and a 72 year old constituent, who suffered a fractured skull.

The matter proceeded to trial in the District Court whereby Mr Daventry was acquitted.

The Senator maintains that the only reason Mr Daventry was charged was because it was "political". Once again I was only aware of Mr Daventry's case after publicity that he had been acquitted.

More importantly the Senator failed to inform the Senate that the Office of the Director of Public Prosecutions (DPP) had conducted the prosecution of Mr Daventry. Surely had the DPP formed the view that there was no prima facie case against Mr Daventry or no reasonable prospect of success, the prosecution would have been withdrawn.

The Prosecution of Mr McDonald

Mr McDonald is a union official for the CFMEU who was charged with making threats at a construction site in 2003.

After the case had been heard but prior to the Magistrate handing down her decision, the charge was withdrawn by a police prosecutor.

Mr McDonald was charged before I became Commissioner of Police. I was not aware that Mr McDonald had been charged until after the charge was withdrawn. Like the Senator, I too want answers as to why this case was withdrawn in unusual circumstances. The matter is now the subject of an investigation by the Corruption and Crime Commission. The one thing of which I am certain, however, is that I did not intervene in this prosecution in anyway. The Senator describes the police conduct as “corrupt”.

I can only assume, given the theme of the Senator’s address, that he believes that the charge against Mr McDonald was withdrawn because he is a labor party affiliate.

Interestingly, had I intervened to procure the withdrawal of the charge against Mr Omodei, as the Senator implicitly suggests should have occurred, I would have been subject to the very same allegation that the Senator levels against me with respect to Mr McDonald’s case.

It is not surprising that I deliberately do not involve myself in decisions about who gets charged and who does not. Those are matters for the investigating officers and the DPP, if need be.

Matt Birney

In 2005, Mr Birney was the Leader of the Opposition in Western Australia. In May 2005, Mr Birney undertook a preliminary breath test and was found to have exceeded the legal limit. Mr Birney was taken into custody and tested a second time whereby a reading of 0.047 was returned, which is under the legal limit of 0.05. Mr Birney was not charged with an offence. Mr Birney also made a complaint against the police.

There exists a long standing arrangement whereby the Police Minister receives briefing notes concerning any operational matter of interest. The fact that the Leader of the Opposition had been taken into custody and complained about the conduct of the police was considered of significant interest. The WA Police simply provided the briefing note to the Minister. The WA Police did not make the information public nor did they advise the Minister to make it public.

The Senator also sought to make much of my radio interview where I indicated that I was unaware who had provided the information about Mr Birney to the Police Minister.

The briefing note was sent by my Ministerial Liaison staff not by me personally. When apprised of that fact, I immediately confirmed that that was the case to set the public record straight.

As a consequence of the controversy surrounding the provision of the briefing note to the Minister, I sought advice from the State Solicitor's Office as to the propriety of the practice. The advice I received confirmed that the practice is legitimate.

Burglar Beware Advertisement

In 2004, I appeared on a television commercial informing the public that DNA testing would be carried out in relation to every burglary.

Unbeknown to me at the time the advertisement was shot, there was a backlog in the testing of DNA samples. While DNA testing was being carried out, for a range of reasons, some of which that did not involve the WA Police, the testing was occurring at a slower rate than intended.

This situation prompted the Senator to advise Parliament that the *“campaign was and continues to be founded upon a lie”* and *“amounts to a fraud being perpetrated upon the public of Western Australia.”*

Historically, Western Australia has had a high burglary rate. The campaign was designed to reduce burglary by a combination of deterrence in warning criminals of the risk of being caught and detection by implementation of the new technology.

Various strategies have been used to address the delay. Recently, in one week alone, 150 DNA matches for burglary related offences occurred.

Objectively, there is no basis on which it can be said the campaign is either a “lie” or a “fraud”.

Conclusion

It is of concern that the Senator did not see fit to afford me natural justice before publicly denigrating my reputation and that of the Western Australia Police.

Parliamentary privilege was designed so as not to stifle robust debate and to encourage candour. Its purpose is not to enable politicians to unfairly denigrate a person or bodies reputation by advancing an ill-conceived theory with impunity.