

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Australian Building and Construction Commission

Department of Employment Question No. EMSQ17-004191

Senator Cameron asked on 30 May 2017 on proof Hansard page 115

Question

ABCC - Prosecution of CFMEU officers

Senator CAMERON: I want to go back to Justice North. Justice North questioned the way in which you performed your duties in a prosecution of CFMEU officers over a cup of tea. Are you aware of that?

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...

How many days did this investigation take?

Mr Hadgkiss: I will take that on notice.

Senator CAMERON: How many court days, including preliminary hearings?

Mr Hadgkiss: I will take that on notice.

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Senator CAMERON: How much have you spent on this case?

Mr Hadgkiss: I will take that on notice.

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Senator CAMERON: Can you provide a breakdown of the cost by the investigation costs, the internal legal costs, the external legal costs and any other costs?

Mr Saeedi: We will endeavour to do so.

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...

Senator CAMERON: I want the investigation costs—so how much you actually spent on your investigation—your internal legal costs, your external legal costs, and any other costs.

Mr Hadgkiss: Yes. We will take that on notice.

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Senator CAMERON: and you have to give us the advice on expenditure.

Mr Saeedi: And we will certainly do that.

Senator CAMERON: Do you accept that?

Mr Saeedi: We will endeavour to do that, absolutely.

Senator CAMERON: What was the cost of the briefed silk?

Mr Saeedi: I will have to take that on notice.

Senator CAMERON: How many were on the ABCC legal team?

Mr Saeedi: We will take that on notice.

Senator CAMERON: What was the total cost to the ABCC of attending the court days?

Mr Saeedi: I will take that on notice.

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Senator CAMERON: How many AFP officers were involved in the investigation and the hearings?

Mr Hadgkiss: I understand that there were four. Four attended the scene. How many gave evidence, I am not sure. I would have to take that on notice

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Senator CAMERON: How many interviews were conducted at the site?

Mr Hadgkiss: At the site? I would have to take that on notice.

Senator CAMERON: How many interviews were conducted by the ABCC in relation to this matter?

Mr Hadgkiss: Again, we will take that on notice.

Senator CAMERON: How many witnesses were called at the hearing?

Mr Hadgkiss: Again, we will take that on notice.

Answer

The investigation relating to Federal Court proceeding VID333/2015 was over the period 17 June 2014 to 3 November 2014. This covers a period of 139 days. Activity was not undertaken on each day. There were two court days.

The total external legal costs to date for this matter is \$184,965.78 (ex GST). The ABCC commenced internal time costing of matters from 16 December 2016. From 16 December 2016 to 10 March 2017, a nominal internal cost of \$9,772.39 was linked to this matter. The total external costs include \$36,923.41 (ex GST) for the cost of the briefed silk.

The legal team with carriage of this matter comprised two internal lawyers, two counsel, and a lawyer from a firm of solicitors. One ABCC lawyer attended the first hearing day on 6 December 2016 and two ABCC lawyers attended the second hearing day on 10 March 2017. The total nominal cost for the ABCC attending these Court days was \$1,501.12

Four AFP officers attended the location of the incident on the day. No AFP officers were called to give evidence by either party.

Three interviews in total were conducted by the ABCC in relation to this matter; two of which were conducted on site. The third interview was conducted at the contractor's premises.

Six witnesses were called at the hearing; three by the ABCC and three by the respondents.

In this matter the ABCC alleged that, on 17 June 2014, two union officials Mark Travers and Adam Hall entered a construction site located at Melbourne Airport. The ABCC adduced evidence before the court that the officials:

- entered the site without providing 24 hours' notice to the occupier;
- refused to leave the site when asked to do so;
- remained on the premises until the police arrived;
- conducted discussions with an employee outside of his lunch break; and
- one of the union officials made a threat of retaliatory action if the occupier called the police.

The ABCC submitted that, on the basis of the evidence before the court, the two union officials had acted in an improper manner while exercising their right of entry in contravention of section 500 of the Fair Work Act 2009, and, in addition, one of the officials had contravened section 348 of the Fair Work Act 2009 by making a threat of coercion. The court has reserved its decision in this matter.

Mark Travers and Adam Hall have previously been involved in the following cases –

Mark Travers

- *Gregor v CFMEU & Anor* [2011] FMCA 562 – Mr. Travers was ordered to pay a \$1,000 penalty for contravening s 767(1) of the *Workplace Relations Act 1996*. Whilst exercising a right of entry at the Melbourne Airport Tullamarine construction project, Mr. Travers acted in an improper manner by entering onto site, without authorisation, for a stop work meeting with workers. He then refused to leave, despite repeated requests to do so, and swore at management.
- In *John Holland Pty Ltd v CFMEU & Ors* [2009] FMCA 1248 – the CFMEU was ordered to pay two penalties for conduct engaged in by Mr. Travers, as well as two other CFMEU officials, at two building sites managed by John Holland at Melbourne Airport. Mr. Travers' and the other officials' conduct involved encouraging and directing a work stoppage at the sites. The CFMEU was found to have contravened s 38 of the *Building and Construction Industry Improvement Act 2005* by engaging in unlawful industrial action on two occasions resulting in two penalties of \$11,500 against the CFMEU.

Adam Hall

- *ABCC v CFMEU (the Webb Dock Case)* [2017] FCA 62 – on 8 February 2017, Justice Jessup made declarations that Mr. Hall contravened ss 340, 343, 346 and 348 of the Fair Work Act 2009. He was ordered to pay a \$4,500 penalty for his contravention of s 348. The Court found Mr. Hall had intended to coerce a building contractor to make an enterprise agreement by organising, coordinating, inciting and participating in action which blocked entrances to a building site and prevented access to that site by employees.