

**RECOMMENDATION OF STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS  
REPORT NO. 7 - BARRY GRANVILLE WALLER**

*Motion*

Resumed from 15 August on the following motion moved by Hon Kim Chance (Leader of the House) -

That in accordance with the first recommendation of the Standing Committee on Environment and Public Affairs on the petition of Barry Granville Waller, this House now orders that -

- (1) not later than 5.00 pm on Tuesday, 26 August 2003, Michael James Murphy deliver to the Clerk of the Legislative Council at his office in Parliament House, Perth, any documents or other material in his possession or under his control that is evidence of the facts and allegations contained in his affidavit sworn on 13 June 2002 and tabled in this House on 18 June 2002;
- (2) the President, on request made by Mr Murphy at a time before the time fixed under paragraph (1), have power in his discretion to extend the period by a number of days not exceeding seven;
- (3) the Clerk is required to retain in his possession anything delivered to him under this order until further order of this House; and
- (4) the President inform this House at the sitting following the last day for complying with this order whether or not the Clerk has taken delivery of any document or other material delivered to him under this order.

**HON NORMAN MOORE** (Mining and Pastoral - Leader of the Opposition) [5.08 pm]: This matter was raised recently and I sought an adjournment of the debate to give me some time to ascertain the views of the Opposition. We are prepared to support the motion that Mr Murphy be required to deliver documents to the Clerk. The report of the Standing Committee on Environment and Public Affairs contemplates a situation in which Mr Murphy does not comply with a request. However, it does not say what would happen to the documents if he does comply. They would go to the Clerk, but the motion is silent about what happens to the documents at that point. One presumes that they would be made available to the committee for further consideration, if appropriate. I am interested to know from the Leader of the House what the intention is in the event that Mr Murphy complies and what will happen to the documentation; will it simply reside in the Clerk's office and go nowhere else or will it be provided to somebody else? Having read the report of the committee it is appropriate that we agree to find out whether Mr Murphy can substantiate the allegations that have been made on his behalf. The Opposition agrees that the motion should be passed to allow that to happen and it will take a great deal of interest in what happens from then on if Mr Murphy does or does not comply.

**HON DERRICK TOMLINSON** (East Metropolitan) [5.12 pm]: I find myself in a very difficult position because I heard the Leader of the Opposition say that opposition members had been consulted and that we had agreed to the position. I have considerable unease about this motion but not because it is unjustified - in normal circumstances I would have no difficulty in supporting it. However, I have a more relatively extended knowledge of the so-called Murphy interest. On 20 July 1998, Mr Michael J. Murphy, the administrator of the Murphy interest, contacted the then clerk of the Joint Standing Committee on the Anti-Corruption Commission advising him of action that he was going to take in pursuit of what he saw to be extended corruption at various levels of government and complicity of government ministers in failing to pursue what he believed to be his just cause. Along with the research officer of the Joint Standing Committee on the Anti-Corruption Commission, Alphonse de Kluyver, I met with Mr Murphy on 12 August 1998 to hear the nature of his complaint and to make a judgment about whether it was an appropriate matter for the Joint Standing Committee to consider. This was a procedure that the committee had adopted because often it received complaints from people who felt they had been unfairly treated by one government agency or another and made the mistaken assumption that, as the committee appointed to oversee the Anti-Corruption Commission, we were a conduit for the pursuit of their claims. To avoid wasting the time of the committee the procedure was that I, as chairman, and the committee research officer, would meet with the person and make judgment about whether the matter should be presented to the Joint Standing Committee for consideration.

Mr President, I am going to read from a letter attached to a bundle of papers from afar. I thereby expose myself to the demand that I table the documents. If I table the documents, I will be committing exactly the same fault that is the cause of this debate. These documents collectively make statements that are contrary to an undertaking. I make it quite clear that I have removed the letter for that reason. I wrote to Michael Murphy on 17 August 1998. I will selectively quote from the letter. I wrote -

Having read the documents, I believe the several matters raised are outside the terms of reference of the Committee I chair. Our brief is to monitor and review the performance of the Anti-Corruption

Commission; to monitor the effectiveness of official corruption prevent programs; and to assess the framework for public sector accountability to make recommendations for improvement.

The Committee's terms of reference preclude it from investigating matters relating to information received by the Anti-Corruption Commission; or from reconsidering decisions or actions of the Anti-Corruption Commission in relation to particular information received.

One of the matters that Mr Murphy claimed at the time he met with me on 12 August was that the Anti-Corruption Commission had failed to give proper consideration to the matters that he had placed before it. I then wrote -

The several matters raised by you require action by other agencies.

May I suggest the following:

- (i) Concerted crime on the Murphy Interest 1991-95 : 1998. If crimes have been committed, they should be reported to the WA Police Service, or alternatively the Australian Securities Commission. The matters raised involve many aspects of criminal law and corporations' law and should be investigated by the Police and The Commission as appropriate authorities.
- (ii) Dereliction of Duty by the Director of Public Prosecutions:  

This involves detailed matters of law which should be referred to the Attorney General and the Solicitor General. I note that Mr Meadows, the Solicitor General has been advised.

The matters might also be referred to the Anti-Corruption Commission, but given the investigative powers of the Commission and the prosecutorial powers of the DPP, I believe the matter might best be referred to the Attorney General.
- (iii) Claims of Compensation against the State of Western Australia:  

This is a clear matter for judicial decision. Whether to proceed with this action is a decision for you and I note your statement that you have until the end of the month to proceed.
- (iv) Select Committee Investigation:  

I do not comment upon the probity of such procedure. Whether a Select Committee should be appointed is a decision of either house of parliament. A motion would have to be moved by a member in one of the Houses. If he thinks appropriate, the Attorney General has the power as an MLC to move for the appointment of a Select Committee.

My understanding is that Mr Murphy acted on that advice. He did not refer the matters to the Police Service for investigation, because one of the matters that he was alleging was, of course, related to police corruption. He did refer the matter to the Solicitor General. I understand he referred it to the Attorney General. My memory is not quite certain, but I think he had already referred it to the Anti-Corruption Commission and said that he had tried that avenue and that it was not successful.

From time to time Mr Murphy wrote and I simply acknowledged and thanked him very much for the receipt of his letter and filed the documents. I was somewhat surprised when the matter was raised in the petition. Having read the committee's report, I came to the conclusion that two foolish things had been done. I do not want to argue about questions of law; I will leave that for other people. The first foolish thing done was for Mr Murphy to prepare this affidavit, because the affidavit is a sworn statement that is nothing more than Mr Murphy's recollection of events and constructions that he places upon those recollected events. If Mr Murphy, as he claims, has had experience as a legal practitioner, I am sure that he would understand the foolishness of an affidavit that states as fact assumptions that are retrospective constructs of recollected events that he cannot prove. It was foolish.

The second foolish act was the tabling of that affidavit by the honourable member. It was foolish. I do not say that in any pejorative sense to say that the honourable member was a fool. Perhaps a better way to say it is that it was unwise. When presented with matters of this kind, as we all are from time to time, a wise practice is to confirm the veracity, or to try to confirm the veracity. Sometimes the matters presented to us reaffirm our own prejudices. We respond to them because they are consistent with things that we believe to be so. However, when we table a document in this House, a different responsibility applies, and that is to ensure that the matters contained therein can be substantiated by fact. That is the responsibility upon us. For example, shortly after the report was debated, Mr Murphy contacted my office, and an appointment was made for me to meet with him on 4 August this year. As it turned out, I had a select committee meeting at that time, and so I changed the meeting to 5 August. I met with Mr Murphy for five hours, at the end of which Mr Murphy gave me what he called a dossier and asked me whether I would table the dossier on his behalf. I said that before I gave that undertaking, I would read the dossier carefully and make a judgment about whether it should be tabled. I read the dossier and

its seven or eight accompanying attachments, I read the report of the committee, I searched my own files on The Murphy Interest, and I came to the conclusion that were I to table that dossier, I would be unwise, because the dossier contains, in part, a restatement of some of the matters that were the subject of Mr Murphy's retraction. He should not, in the terms of that retraction, have perpetuated those allegations - certainly, not publicly - and it was not appropriate that those allegations be perpetuated under the guise of parliamentary privilege. I sought the advice of the Clerk, who confirmed my position. I have not, and will not, table that dossier. I sincerely hope that no member jumps to his or her feet and requests me to table that document because, I believe, I would breach privilege by doing so.

This unfortunate situation is characteristic of those situations that I have come to use frequently the categorisation of Bill Thomas, the former member for Cockburn: the mad, the bad and the sad. The mad are those people driven by unstable intellectual judgment; that is, they pursue matters that are without any logical defence, but they do it anyway. They are indefensible but they believe them. They are mad. The others are bad - that is, people who pursue matters with malicious intent. They make accusations against others with the deliberate purpose of discrediting them. They might pursue matters in Parliament, or have matters tabled in Parliament, with the deliberate intent of discrediting certain people under the protection of privilege. They are bad. The third category is the sad. Unfortunately, the sad category very often is the consequence of inaction by government agencies to resolve matters quickly and decisively. I refer to people who have genuine complaints and take their genuine complaints to the appropriate authorities, which do not properly attend to the complaint. Very often the complaint is against an action by an officer or office of an agency. The complaint goes to the officer complained of. Of course, the officer complained of explains that the petitioners is either deluded or mistaken. So the complainant complains again, by which time the officer about whom he has complained has been promoted. The complaint is then referred on and so it goes on. The complaint is never properly addressed. The previous Ombudsman was at pains to get government agencies to establish complaints handling procedures consistent with Australian standards. They never did. Government agencies are not good at dealing with complaints.

Debate interrupted, pursuant to sessional orders.