

COURTS LEGISLATION AMENDMENT (MAGISTRATES) BILL 2021

Second Reading

Resumed from 15 February.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [4.21 pm] — in reply: I will resume where I finished last night, when I spoke about the Crawford and Quail litigation that was raised by Hon Nick Goiran in his contribution to the second reading debate. He spoke at length about the litigation between Magistrate Crawford and Children’s Court President Quail that preceded this bill being brought to the Legislative Council. I do not intend to speak in great detail about that litigation, but I have a number of important points to make about the significance of it and what can be taken from what the member read into *Hansard*. I certainly do not intend to engage with any of the extensive quotes that the honourable member read from a secret court transcript that he was not prepared to table. The member explained that he would substantiate all the things he had said about these two judicial officers by reading directly from the court transcript.

However, the member has refused to table that secret transcript. Members of this place have no way of knowing if the things that were said by the member actually reflect what was said in the proceedings. The member informed Parliament that there were three days of hearings, which the transcript relates to—that is, three days of submissions being made by the parties and oral evidence given in the Supreme Court proceedings—yet the member thinks that it is acceptable to read extracts from those three days and rely on those extracts to support his apparent objection to the policy of this bill. Other members of the house might have gained some benefit from the transcript and might have had the opportunity to actually make their own conclusions, but they are not in a position to do that because the member failed to table it. Even from what the member verbally indicated, he was reading large extracts from opening arguments made by only one side of a dispute. It should go without saying—I think most people have watched enough *LA Law* and other legal programs to know—that in legal proceedings, there are always two sides to a story. I think *LA Law* is a bit of a dated reference, actually —

Hon Alannah MacTiernan: It was a very good show!

Hon MATTHEW SWINBOURN: Was it?

Hon Alannah MacTiernan: It was obviously written by people who worked in the law.

Hon MATTHEW SWINBOURN: Excellent.

As I said, there are always at least two sides to a story in legal proceedings. The member quoted from what I presume were the opening submissions by the plaintiff or applicant in that matter and did not have any regard to any submissions that were made on behalf of the respondent and did not recognise that in respect of the way in which the proceedings proceeded, those submissions and the evidence that was given by Magistrate Crawford were not tested under cross-examination. That is an important part of our legal process—the testing of evidence given by cross-examination. I am sure that the shadow Attorney General, Hon Nick Goiran, will wholeheartedly agree with me that drawing conclusions from untested evidence in court is dangerous in terms of those outcomes. We heard the member quoting from opening submissions by Grant Donaldson, SC; we did not hear anything about the counsel for what the president had to say.

As I said, if members were reflecting on the contribution by Hon Nick Goiran in terms of having some impact upon their decision, I would seriously caution them against that without having the opportunity to read through the transcript themselves. Again, the transcript and the proceedings themselves, although connected to this bill, are not determinative in any matter, because the issue is a structural issue about the Children’s Court.

I should pause to observe here the bizarre situation in which we find ourselves, in which the honourable member is referring to a Supreme Court matter heard in open court and, I am told, reported widely in the media and then transcribed. The shadow Attorney General now has that transcript, but tells us that it is confidential. How could the hearing be open to the general public and the media, but a document that recorded what was said be confidential? I know the member was reading from the transcript because he quoted to me the page number of the transcript that he was referring to. I can only imagine the outcry that would come from the other side of the chamber if the government were to read from a legal transcript of court proceedings for a public hearing and then refuse to table it when asked to, on the basis that the transcript was confidential.

That being said, regardless of whether the honourable member tables or refuses to table his secret transcripts, I do not intend to engage in speculation or discussion generally about the particular facts of the litigation in question. It would be unwise to do so when, by virtue of the case setting, there were no findings of fact made in that case, let alone any determination of law. Perhaps some scandalous allegations were made, and they remain untested. That is what they are—allegations.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: What I can say about that litigation, member —

Hon Nick Goiran interjected.

The PRESIDENT: Order!

Hon MATTHEW SWINBOURN: I can say about that litigation, insofar as it is relevant to the bill, that it brought to light the fact that there is currently ambiguity about the power of the president of the day to manage the workload of the court for which he or she is responsible, by statute, to administer, and that the Supreme Court in those proceedings did not decide that matter because the applicant withdrew her claim.

The bill before the house deals with important matters of administration for the Magistrates Court and the Children's Court that are required to recognise the role of the president as the principal judicial officer of the Children's Court, and ensure the efficient administration of the courts. It is true to say that it is common practice for governments to bring bills into Parliament and the legislature to enact reform from time to time in response to issues brought to their attention, whether through litigation or some other means. This bill is not unusual in that regard, and it will resolve for future purposes, beyond the tenure of Magistrate Crawford or President Quail or perhaps even the members of this esteemed chamber, issues about the scope of the powers of the President of the Children's Court and the Chief Magistrate.

Hon Nick Goiran helpfully made the point that the president has a large amount of work to do as a principal judicial officer of the court—this is, of course, the case for all principal judicial officers who have a significant workload as both administrators and judicial officers, so there is nothing particularly unusual about the Children's Court President's circumstances vis-a-vis that of the Chief Justice of the Supreme Court, the Chief Judge of the District Court or the Chief Magistrate himself.

Debate interrupted, pursuant to standing orders.

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