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From: Ellery, Sue
Sent: Friday, 10 June 2022 11:02 AM
To: president@parliament.wa.gov.au; aclohesy@parliament.wa.gov.au
Subject: Matter of Privilege - Hon James Hayward
Attachments: MC-AM-2021-3568-PER-20220509-00001-00007.pdf

Dear President

I write to provide further information in respect of the matter of privilege I raised in the House on 19 May 2022 in respect to media reports that the Hon James Hayward had advised the Magistrates Court of WA that his bail conditions ought be varied to allow him to travel out of the state as part of his duties as a member of a select committee. Those reports indicated the Member had told the court that if he could not travel with the committee he could not fulfil his duties and would have to resign as a member of the committee.

In my capacity as Leader of the House I requested and have been provided with a copy of the transcript of the bail variation hearing I referred to on 19 May 2022.

I have attached that transcript for your consideration. You will note at page 4 of 7; the Magistrate says *"Parliament has authorised a committee to travel to Queensland to investigate the use of and legislation surrounding medicinal cannabis in other jurisdictions with Australia. Four other members of the committee and two parliamentary staff will be travelling, in addition to Mr Hayward, and he has said in his affidavit that if he is not permitted to attend the trip, he will be unable to fulfil his responsibilities as a member of the committee and will have to resign as a committee member"*.

I trust this is of assistance to your consideration and I advise my intention to table it when the Legislative Council resumes.

Yours sincerely,

Sue Ellery.

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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CRIMINAL

PE 49698-49702 of 2021

WESTERN AUSTRALIA POLICE

and

JAMES DORRIN HAYWARD

MAGISTRATE H. WATSON

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 9 MAY 2022, AT 10.02 AM

MS A. ZAVIER, with her MR G. TUCKER, appeared for the prosecution.

MS A. BLACKBURN appeared for the accused.

COURT ORDERLY: H list, Hayward, James Dorrin Hayward.
You can just come around and take a seat, please, Ms
Dofferson.

HER HONOUR: Are you James Dorrin Hayward?

ACCUSED: I am.

HER HONOUR: yes.

BLACKBURN, MS: Ms Blackburn, your Honour, for Mr Hayward,
if it please you.

HER HONOUR: Yes. Thank you, Ms Blackburn.

BLACKBURN, MS: This is an application to vary bail. Your
Honour should have an affidavit and a memorandum of the
proposed varied conditions. Your Honour does not?

HER HONOUR: I will check. I don't think so.

BLACKBURN, MS: I can hand up a copy, if you don't.

HER HONOUR: No, there's nothing, so I'm probably going to
need time to read that before I can hear the application.

BLACKBURN, MS: If you would prefer, it's short, and I can
talk your Honour through it.

HER HONOUR: I will just have a look first, please.

BLACKBURN, MS: Thank you.

HER HONOUR: Yes, there's nothing on the system.

BLACKBURN, MS: Right. I apologise. It was filed about a
week ago.

HER HONOUR: Yes. All right. So just give me one moment,
please.

BLACKBURN, MS: Thank you.

HER HONOUR: Were you aware of this application, Ms
Zavier?

ZAVIER, MS: Yes, the State has been made aware, and the
State doesn't oppose the bail variation.

HER HONOUR: Doesn't oppose. All right. Well, then that short-circuits things, so maybe you can just outline for me then. Thank you.

BLACKBURN, MS: Thank you. The application is to vary the condition that he not leave the state, in order to permit him to travel to Queensland for a work trip. He is a sitting Member of Parliament. The work trip involves attending as a member of the Select Committee into Cannabis and Hemp. That committee is due to attend a symposium in Queensland between 20 and 23 May. The symposium is the Australian Medicinal Cannabis Symposium.

It's directly relevant to the committee's work. The committee is investigating and considering amending Was medicinal cannabis laws, and the symposium will be attended by people who are making presentations on that topic. He will be travelling with other members of the committee, as well as administrative staff. Attached to the affidavit are copies of flight and accommodation bookings, and there's also, one of those documents just handed to your Honour is proposed amended wording. It just involves amending the not to leave the state condition and the reporting condition.

HER HONOUR: So he will be out of the state for four days?

BLACKBURN, MS: Yes.

HER HONOUR: All right. So with the flight itinerary, sorry, so is that directly to Queensland? It looks like it's going through Melbourne.

BLACKBURN, MS: I think it is, but it's only for a stopover. It's not - there's nothing substantive happening.

HER HONOUR: Yes, I see.

BLACKBURN, MS: There or on the - I think the way back is also through Sydney but, I'm told, there's nothing - - -

HER HONOUR: Yes, so I see that - - -

BLACKBURN, MS: - - - nothing substantive happening there either.

HER HONOUR: There's only an hour stopover.

BLACKBURN, MS: yes.

HER HONOUR: Yes.

BLACKBURN, MS: I think, on the way back, there's three hours.

HER HONOUR: Is there any opposition with including a condition that he not leave Melbourne Airport on the way through?

ACCUSED: There's no opposition. I'm not sure what benefit there is.

BLACKBURN, MS: No. No. I'm not entirely sure of the need, given that he will be with other staff, other committee and staff members, but if that's what your Honour pleases, then it won't cause a problem for him.

HER HONOUR: Yes. Thank you, Ms Blackburn. This is an application to vary bail for the accused, James Hayward. I note that the State does not oppose the application to vary bail. The application is to change, vary, two conditions just to allow travel to Queensland so that the accused can attend the 2022 Australian Medicinal Cannabis Symposium being held in the Sunshine Coast from 21 to 22 May 2022, and the application is to travel on 20 May to Queensland via Melbourne, and travel back to Perth on 23 May, via Melbourne, from Queensland.

As I understand it from the affidavit that has been filed in support of the application to vary bail, Mr Hayward is a Member of Parliament, a member for the South-West Region. He is a Member of the Upper House's Select Committee into Cannabis and Hemp, and the Committee's terms of reference include inquiring into and reporting on current legislation and regulations which apply to cannabis and hemp in Western Australia.

Parliament has authorised a committee to travel to Queensland to investigate the use of and legislation surrounding medicinal cannabis in other jurisdictions with Australia. Four other members of the committee and two parliamentary staff will be travelling, in addition to Mr Hayward, and he has said in his affidavit that if he is not permitted to attend the trip, he will be unable to fulfil his responsibilities as a member of the committee and will have to resign as a committee member.

In considering this application, I have considered the relevant sections of the Bail Act and whether these variations will be suitable to continue to protect the complainant and children in general. I am satisfied that

the conditions, as they stand, will be satisfactory in relation to addressing any risk of either further offending, or a risk to the safety of any person, and I am minded to vary the bail, as requested.

So, Mr Hayward, you will understand that one of your protective conditions is that you not have unsupervised contact with any child under the age of 16. It's probably worth speaking to your lawyer about what to do if you end up being seated next to a child, although I think that's unlikely to happen. Yes. And when is this next listed in court?

BLACKBURN, MS: 1 June.

HER HONOUR: Yes. Thank you. And what hearing is that, sorry?

BLACKBURN, MS: The disclosure committal hearing.

HER HONOUR: Right. Yes. So the conditions are varied in relation to two of the conditions. So in relation to the reporting condition, you are to report to the Australind Police Station every Monday, Wednesday and Friday between 8 am and 4 pm, save that when the Western Australian Legislative Council is sitting. You are not required to report on Wednesdays and save that you are not required to report on Friday, 20 May 2022, or Monday, 23 May 2022. And in relation to the condition not to leave Western Australia, that has been varied to read:

Not to leave Western Australia, except for the purposes of travelling to Queensland with the Select Committee into Cannabis and Hemp between 20 and 23 May 2022, and whilst in transit through Melbourne Airport, you shall not leave the precincts of Melbourne Airport.

Do you understand those conditions?

ACCUSED: I do.

HER HONOUR: Yes. Thank you. You will need to wait at the back of the court to re-sign some papers.

ACCUSED: Yes. Thank you.

HER HONOUR: And, otherwise, this matter is remanded to 1 June for committal mention.

BLACKBURN, MS: Thank you, your Honour.

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MC/CRIM/PE/49698/2021

HER HONOUR: Yes. Thank you.

AT 10.15 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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Certified on 3/6/2022.