

**SELECT COMMITTEE INTO THE
FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 17 JULY 2000**

SESSION 1 OF 3

Members

**Hon Ken Travers (Chairman)
Hon G.T. Giffard
Hon Ray Halligan**

WARNING: Publication or disclosure of any evidence given to a committee before the evidence is reported to the Legislative Council may:

- (a) constitute a contempt of the Legislative Council; and**
- (b) mean that the publication or disclosure of the relevant material is not subject to parliamentary privilege.**

Committee met at 10.10 am

SCARFF, MRS VICKIE,
Chairperson, Land Valuers Registration Board,
Level 10, Central Park,
150 St Georges Terrace,
Perth, examined:

JOHNSON, MR MICHAEL,
Registrar, Land Valuers Licensing Board,
c/o Ministry of Fair Trading,
219 St Georges Terrace,
Perth, examined:

CHAIR: Welcome. You have signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mrs Scarff: Yes.

Mr Johnson: Yes.

CHAIR: These proceedings are being reported by Hansard. To assist the committee and Hansard, please quote the full title of any document to which you refer during the course of the hearing. The transcript of evidence will be provided to you. Even though this is a private hearing, the committee may make your evidence public at the time of its report to the Legislative Council. If the committee decides to make your evidence public, it will first inform you of the determination. You should not disclose your evidence to any other person.

We have received a copy of your letter and been through it. Before we proceed, are you happy to appear by yourselves, or would you prefer someone from the Ministry of Fair Trading to be present to provide advice?

Mrs Scarff: I am happy for Michael to speak on its behalf.

Mr Johnson: I am aware that the ministry made a submission about certain issues which may or not may not cross-over with the matters before us.

CHAIR: Do you wish to make an opening statement to the committee? Otherwise, I have some questions regarding your letter and the documents to be provided.

Mrs Scarff: I am happy to start with the letter.

CHAIR: In the letter we specified a date of 1988, but we understand that you can provide only the documents you have with you which I understand go back to 1992. Is that the case?

Mr Johnson: The records retained on behalf of the board are maintained by the ministry, which does not, as I understand it, have complaint records prior to 1992. It has the database information we have provided which gives a listing, but not the complaint files. The complaint files are destroyed after six or seven years.

CHAIR: In regard to the comment about many of the documents subject to the summons containing personal confidential information relating to members of the public being covered by secrecy provisions, can you specifically identify how that impacts upon the documents you are providing today? What is the nature of the confidentiality issue?

Mr Johnson: We provide a file listing. We have not assumed what the committee wants. Therefore, we provided a file listing of the general files maintained by the ministry, which are the administration-type files report. We are also providing a file listing of all the licence files. It is a complete listing. We are providing a file listing of the complaint files. After getting some legal advice, we thought in the first instance we should provide the committee with complete file listings with names of both the complainant and respondent on them, relating to complaint files completed when the investigation has been closed. The initial advice with the current investigations was to provide only the numerical listing of the file numbers. The committee can see the files which are open, but no information is disclosed about who the complaint may be from and the subject of the complaint. These are ongoing investigations.

CHAIR: Do they not provide any names?

Mr Johnson: They provide no names at this stage.

CHAIR: So it is just numbers. Are you asking that the other document list containing names be made a private document?

Mr Johnson: The Act contains a secrecy provision. To that extent, our policy has never been to disclose publicly the name of any person subject to an investigation or persons who lodged a complaint. Our position is to protect the interests of those people and, if possible, the secrecy will be maintained.

Hon G.T. GIFFARD: Is that attachment C?

Mr Johnson: Yes.

Hon G.T. GIFFARD: Are you asking for that list to be private and confidential?

Mr Johnson: Yes.

CHAIR: In respect of item No 2, you indicated that you are not sure what "not pursued" means.

Mr Johnson: That is correct.

CHAIR: In previous evidence provided to us by other boards in the ministry, we had indication that in some issues a complaint is raised and a file is drawn up. In other areas, a complaint may

be made but not have a specific file drawn up. Is that correct?

Mr Johnson: Two investigations conducted by the board did not have separate complaint files made up for some reason. I do not know the reason, but it was in the past. They are in the file listing, and they have an odd looking file number. You will pick them up. The process of dealing with complaints has always been that one receives the complaint, analyses it and makes a determination on whether an investigation will proceed.

CHAIR: In terms of definitions, when you talk about a "complaint", are you talking about a formal written complaint or someone ringing the ministry explaining he or she has had X, Y and Z problems in the past, and asking what can be done about it? Do you take notes of such conversations? If they do not send a formal written complaint, is that considered a complaint?

Mr Johnson: No. I have been with the ministry for some 20 years. The ministry received between 120 000 and 150 000 telephone calls a year in the old days through its advice line; I am not sure of current figures. People raise issues which arguably are of a complaint nature. The conversations are not recorded - they never have been. We identify them, as it is essentially a process to give advice to people on how they might deal with a matter. If it is a matter of complaint or something with which we should get involved through investigation or conciliation, we ask them to put something to us in writing, or we send out a complaint form for them to fill out and return. If they already have documentation, they may be invited to submit that with a short covering letter. We then take it from there. Investigations of land valuers' complaints in my experience - which is short in the land valuers area, but not in ministry practice - is not to commence an investigation without documentary evidence.

CHAIR: Is there any record, or potential record, of the names and addresses of people who are sent complaints forms?

Mr Johnson: No record is kept, as far as I am aware.

CHAIR: That is what we are getting at. What about statistics and other such things?

Mr Johnson: Statistical data on telephone calls is maintained in the ministry's annual report. It has always been treated in the context of being a telephone advice line. To that extent, it has never been thought of as the primary source of complaint information. The ministry has always relied upon written submissions of some description. I recall situations in which a phone call was considered to be so serious that an officer has gone out to assist a person to fill out a complaint form or to give us documentary information. We would never commence an investigation based only on a telephone call.

CHAIR: Are there records in the ministry of officers assisting people with a complaint?

Mr Johnson: One would not identify that separately. One would just have a complaints file. That is the documentary record of any investigation.

CHAIR: If you had a serious verbal complaint over the phone when someone spoke to you directly, but that person said "I will not put in a written complaint", is there no mechanism for self-generation of complaints?

Mr Johnson: There are mechanisms. Circumstances are dictated somewhat by the information given, and to a degree by the person answering the call. If it sounds like a serious complaint, it is often referred to more senior officers in the ministry. That could generate complaints. If I can remove my land valuers' hat, and put on my real estate hat - I also manage the real estate branch of the ministry - our database contains a lot of complaints which do not show a complainant, but show, for example, the registrar as the complainant. In that context, chances are that the registrar has received information from another source. He may say that a matter warrants an investigation. In other words, he does not have a written complaint in front of him. Circumstances arise in which that could occur. I do not think there are any such cases in the land valuers' listing, which is a very short list of complaints.

CHAIR: If people have telephoned and not made a written complaint, no record will be kept and no file created.

Mr Johnson: Not from the telephone calls themselves.

Hon G.T. GIFFARD: You said that in instances of a telephone complaint of a serious nature, an officer would be dispatched to assist that person. Would that be sufficient for those people to make it to the attachment C list? Is some record maintained of the fact, even though it was not pursued at that point?

Mr Johnson: I have not had that experience in my past two or three years in the role; if I sent one of my staff to interview in that manner, we would create a file.

Hon G.T. GIFFARD: Would you have a record and would it be in the list of complaint investigation files?

Mr Johnson: I would certainly insist on that being done.

CHAIR: Do investigators have notebooks in which they record contemporaneous notes as they come up? If there is a conversation, do they record it? If someone comes in for a formal interview, is that recorded? Is there any other documentation in which such things are recorded for the likelihood of it being used down the track?

Mr Johnson: The investigation file should contain copies of file notes of any conversations investigators have had with various people interviewed. Obviously, if they follow an investigation to the point of a board inquiry or a prosecution in the Court of Petty Sessions, there will be records of interviews and witness statements -

CHAIR: Do officers not carry a notebook, in the way that police, customs officers and others have a notebook to record items of significance as they go through an investigation? That can be referred back to in court cases and the like.

Mr Johnson: Most officers record their contemporaneous notes straight onto the file. That is the nature of the way we do our work.

CHAIR: You commented that you do not investigate complaints against persons other than licensed land valuers. Would that include people who operate as a land valuer but who are not

licensed and should be licensed?

Mr Johnson: We investigate those cases.

CHAIR: If allegations were made that someone was operating as a land valuer and was not licensed -

Mr Johnson: We would investigate it.

Mrs Scarff: That is a petty sessions offence.

Mr Johnson: That would not go to the board in that sense. The ministry will conduct that investigation. None of the boards has the power to deal with offences committed against the Act when a person does not have a licence.

CHAIR: Would that be the responsibility of the ministry, not the board?

Mr Johnson: Yes.

CHAIR: In item 4 of your letter you state that you can provide the minutes, but that these relate to current investigations. The committee seeks some clarification of the problems you envisage arising by which you cannot provide that information to the committee.

Mr Johnson: The issue from the board's perspective is that if a matter is under investigation - one inquiry is before the board at the moment - and if the minutes of those inquiries or potential inquiries were disclosed, some potential arises to prejudice that inquiry. With the one inquiry going to the board at the moment, the legal counsel for the respondent - the land valuer - has taken a fairly robust approach in taking the matter to the higher courts to stop the board hearing the matter. Our concern is that the inquiry may be prejudiced if any information about its progress - it is not complete - is released in any other forum. We have not taken legal advice on that matter at this stage.

CHAIR: Are you happy for members or officers of the committee to go through the files with you?

Mr Johnson: Yes. Alternatively, if the committee said it is happy to have references to the current inquiry or any current investigation deleted and an edited version of the minutes provided, I am happy to do that. It is significant. It relates back to 1988, although this is not significant when compared with the activity of other boards.

CHAIR: When do the minutes become public?

Mr Johnson: It is always a difficult question. This issue comes up more often with the Real Estate and Business Agents Supervisory Board, as it does more business and meets more often than does our board. The Chairman of the Real Estate and Business Agents Supervisory Board has taken the view, when I ask him, that he is prepared to release edited minutes, so it almost complies with freedom of information legislation; that is, one deletes the names of people

mentioned. As a general rule, he would prefer that people were specific in their request for the minutes, provided they do not release confidential information, such as names of respondents, complainants and such things, until the end of the inquiry. They are edited out and given a small section of the minutes. That board in the past has not made a practice of photocopying a ream of minutes and making them available - even when requested. It is a matter of policy for that board. I have been with the land valuers licensing board since late September last year, but from my recollection no request for minutes has been raised at this stage with the chairman.

Hon G.T. GIFFARD: I return to the first point regarding attachment C. Are you in a position to explain to the committee how it is that current investigations will be interfered with by the provision of information essentially consistent across all files in attachment C? I understand you have distinguished between closed and current matters. If you are to provide information on current investigations, how does the provision of that information to this committee interfere with the investigation?

Mrs Scarff: It is really once it is made public - that is the main thing. When public, it could be seen that justice was not seen to be done. It is a matter of whether it would prejudice the hearing against the complainant. That is the main problem. It is a real problem with the amount of publicity generated by the Gunning inquiry, and probably by your inquiry as well.

CHAIR: What if we took it as a private document?

Mrs Scarff: I probably should not say anything, other than just provide information and be asked questions on it, until after the hearing.

Mr Johnson: That is your position as the chair.

CHAIR: I understand that. Obviously, from what you say, attachment C lists names of people and you have some concerns about that being public as well.

Mr Johnson: That is one issue. When a file is closed, we have put the name of the person complained against, but not the complainant. That is one issue. If the committee wants the names of the complainants, and it directed us to provide them, we would put them there. We have drawn a line on those for which we have not completed the investigation; we have only put numbers so far. That is because of the view of the chairman. We have had some advice on that view from the ministry's director of strategic services, who is a legal officer, who thinks there is a potential for an inquiry or investigation to be prejudiced. That is consistent with ministry policy. If the Press ring and ask whether we are investigating someone, chances are that they have been told we are doing so. We still take a neither confirm nor deny approach. To do otherwise could be prejudicial in itself. Our concern here is similar. We are not concerned about the provision of information to the committee, but whether it would provide any potential legal escape route for someone subject to a serious investigation.

Mrs Scarff: All of those without names have not gone to the board yet, but are under investigation. They only go to the board if there is a prima facie case.

CHAIR: In terms of the comments about the minutes, would you be happy for a member or officer of the committee to sight the minutes with you and to take it from there?

Mrs Scarff: I have no problems with that. I see no problem with you looking at the procedures and how we have dealt with the complaints, taking into account the secrecy regarding the names. From that point of view, I cannot see any reason that any committee such as yours should not be able to see them.

Mr Johnson: It would not be an onerous task for a member of the committee or committee staff to do so. Only 41 complaints have been made against land valuers since 1987. It is not like other parts of the organisation. The Real Estate and Business Agents Supervisory Board receives 600 or 700 complaints a year. Until the current issue arose, only one or two complaints were made a year about valuers. It is not a big job for someone to look at what we have.

CHAIR: Thank you very much. Will you formally table those documents for the committee? We can stand you aside for the moment. The subpoena stands until further notice. We will need to have a discussion as a committee on some of the points you raised. We will decide how we want to proceed in respect of the matters discussed. If you wait a few moments, we will advise you of our course of action.

Committee suspended from 10.35 to 10.55 am

CHAIR: We have looked at some issues and will seek further advice from committee staff concerning some of the documents, and your position. The summons still stands. We can release you for the time being, but we will advise whether we want you to back and how we will proceed in the future. The summons stands with respect to these documents. The question has been raised about who we should subpoena in the future. If we were to subpoena Michael Johnson as the Registrar of the Land Valuers Licensing Board, does he have access to all the documents of the board? Will you be happy to indicate to the committee that he has the power to provide any document the committee requests?

Mrs Scarff: Yes, Mr Johnson has access to all the documents, and I will be happy to authorise him to do that.

CHAIR: Is he authorised to provide documents to the committee by way of summons if required in future?

Mrs Scarff: Yes.

CHAIR: Thank you.