

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION**

**THE USE OF PUBLIC HEARINGS BY
THE CORRUPTION AND CRIME COMMISSION**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 2 NOVEMBER 2011**

SESSION ONE

Members

**Hon Nick Goiran (Chairman)
Mr John Hyde (Deputy Chairman)
Mr Frank Alban
Hon Matt Benson-Lidholm**

Hearing commenced at 10.26 am**CRICHTON-BROWNE, MR NOEL****PO Box 165,****Claremont 6010, examined:**

The CHAIRMAN: Mr Crichton-Browne, before we start I will just indicate that, given the time that has elapsed today, we have other witnesses that will be appearing, so we may be slightly constrained in terms of our time.

Mr Crichton-Browne: I am sorry; I am late, am I?

The CHAIRMAN: Yes. I understood we were starting at a quarter past 10. Also, for your awareness, I have allowed media cameras to be present for a short period of time while I start the hearing, but then they will be dismissed shortly thereafter. On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today. The purpose of this hearing is for the committee to speak with Mr Noel Crichton-Browne for the purpose of gathering evidence in aid of the committee's inquiries into the use of public examinations by the Corruption and Crime Commission. Mr Crichton-Browne has previously appeared before public examinations conducted by the Corruption and Crime Commission and he has provided a submission to the committee in aid of its inquiry earlier this year.

I would like to take this opportunity to introduce myself as chair of this committee; to my left is the deputy chair, Mr John Hyde MLA, the member for Perth. To his left is Hon Matt Benson-Lidholm MLC, member for Agricultural Region. To my right is Mr Frank Alban MLA, member for Swan Hills. The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record. Before we proceed to any questions we have for you today, I have a series of preliminary questions. Before I do that, I will dismiss the media cameras. Mr Crichton-Browne, have you completed the "Details of Witness" form?

Mr Crichton-Browne: Yes, I believe I have.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Mr Crichton-Browne: Yes, I do.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided in advance of today's hearing?

Mr Crichton-Browne: Yes, I have.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

Mr Crichton-Browne: Mr Chairman, there are one or two matters that I would prefer to provide to you in private, so with your indulgence, I make that request.

The CHAIRMAN: Yes, what you will find, particularly given the lapsed time today, is that at the conclusion of today's hearing, I will actually indicate the process for the finalisation of the transcript, and it will invite you, if you wish, to make any supplementary submission, so that may be a better forum for you to make any of those remarks.

Mr Crichton-Browne: At a later point?

The CHAIRMAN: In writing.

Mr Crichton-Browne: Okay. I regret that, because there are matters that will carry more weight if I am able to present them to you and you are able to ask questions of me.

The CHAIRMAN: Yes. Well, as I say, due to the lapse of time today, time may not permit us to do that, but you will be welcome to submit a supplementary submission for the consideration of the committee. Do you have any further questions in relation to today's hearing?

Mr Crichton-Browne: No.

The CHAIRMAN: In terms of the questions we may have for you today, Mr Crichton-Browne, before I do that, would you like to make any opening statement?

Mr Crichton-Browne: Yes, with your indulgence, Mr Chairman.

Mr Chairman and members, I hold the view that the CCC public hearings have, on occasion, been used to give the CCC self-serving publicity with no legitimate public interest virtue. Public hearings, in the past, led to the commission seeking entirely gratuitous, titillating and utterly irrelevant material for no apparent proper virtue. To illustrate my point, I give you an example of a matter which would very probably have been, at best, the subject of a private hearing and then discontinued. That it was not resulted in untruthful, scurrilous hearsay evidence being ventilated in a public hearing, which the CCC repeated in a report tabled in the Parliament. I was called to give evidence at a public hearing of the CCC in respect of the Smiths Beach reference, in part in relation to a meeting between Mr Troy Buswell and myself. Mr Buswell was also called to give evidence in respect of the same meeting. My evidence and that of Mr Troy Buswell was given against a background of previous public evidence given by a former Busselton shire councillor, Mrs Helen Shervington—an antagonistic opponent of the Smiths Beach development. Shervington gave evidence that, following my meeting with Mr Buswell, he had telephoned her to say that I had entered his office—that is, Mr Buswell's office—uninvited and remonstrated with him that the council, to quote Mrs Shervington, was not getting through development applications relating particularly to Smiths Beach, and that Mr Crichton-Browne wanted Mr Buswell, while he was shire president, to see that this application got through. Mrs Shervington also claimed Mr Buswell had informed her that I had threatened him that if he did not get this application through, he would have no future in the Liberal Party. Mrs Shervington's further evidence was that Mr Buswell had said he was very concerned about my attendance at his office and the manner of the discussion. Mr Buswell has alleged, according to Mrs Shervington, to have asked Mrs Shervington whether she would, in the future, attend any meeting he held with developers, and that he wanted it a practice that in such situations, there ought to be at least two councillors present, to which she agreed.

Putting aside the farrago of untruths, the short facts of the matter are these: Mr Buswell gave evidence, under oath, to the commission that I had rung him and made an appointment to meet him; that I attended his office and we then proceeded to the Vasse Café. Mr Buswell also gave evidence that I had asked him some technical questions about planning schemes and that he asked why it was — I am sorry, I asked him why it was that the council had voted unanimously in February of 2003 to take certain courses of action on a matter which apparently affected Smiths Beach, and just a month later, voted unanimously to rescind that motion. Mr Buswell gave evidence that he had changed his mind against other reasons because of concern and pressure from the Smiths Beach Action Group, which was violently opposed to the Smiths Beach development. Under examination, Mr Buswell denied categorically that I had threatened his political career. In fact, he told the

commission that, and I quote, “at the time my view of Mr Crichton-Browne’s capacity to influence the Liberal Party in the South West was that it was almost nil or nonexistent.” Counsel assisting, Mr Hall, asked Mr Buswell: But whatever you thought of his capacity, the point is, did he make any such suggestions to you? Mr Buswell emphatically said no. It is perhaps not beside the point that I had not, at that time, been a member of the Liberal Party for eight years.

[10.35 am]

Finally, in respect to Shervington’s evidence that Buswell wanted further meetings of developers or their representatives to include at least two shire councillors, as the evidence before the CCC showed, I met Mr Buswell weeks later by appointment in his mayoral office in the council chambers to discuss another development by another developer without anybody else present, least of all Ms Shervington or any other councillors.

Some weeks later, by my appointment, the principal of the Smiths Beach development, Mr David McKenzie, met Mr Buswell again, quite alone. Mr Buswell gave evidence that Mr McKenzie asked nothing of him. The truth of the matter is that at the time I met Mr Buswell and at that time Mr McKenzie met Mr Buswell there was nothing before council in respect to Smiths Beach and there were not any other items likely to come before the council in the foreseeable future. Between the time of my meeting with Mr Buswell and his resignation from the council, no item relating to Smiths Beach had been before the council.

It is significant that counsel assisting the CCC, Mr Hall, did not test the evidence of Shervington by asking Mr Buswell why it was that he met both Mr McKenzie and myself on separate occasions in private without anybody else present, least of all Ms Shervington immediately after the alleged conversation with Shervington. Surely if Ms Shervington’s hearsay evidence was to be believed, Mr Buswell’s subsequent conduct in meeting Mr McKenzie and myself shortly afterwards in private was in stark contrast to that bizarre hearsay evidence. The fact that Mr Buswell rang me in very considerable consternation upon hearing from the CCC that Ms Shervington had made such a claim and he was at a complete loss to explain it to me speaks volumes for the truth of the matter.

You might very well reasonably expect that to have been the end of the matter. However, it was not to be so. Not to be deterred, in a thoroughly disingenuous way the allegation, together with embellishments, were included by the CCC in a subsequent report. The report stated —

Mr Crichton-Browne is a former Liberal Senator and former president of the Liberal Party. Though no longer a member of the Party, he retains a broad circle of contacts within it.

True or otherwise, no such evidence of a broad circle of contacts was given to the CCC by any witness. The report states that Mr Buswell said that Mr Crichton-Browne did refer to Mr Buswell’s political aspirations in passing. Mr Buswell did not say that. Mr Buswell testified I did no such thing. The report then goes on repeat Ms Shervington’s hearsay falsehoods, while noting that Mr Buswell denied that any threat was made. To add a note of partisan gratuity, while keeping the allegation alive, the report stated that —

It should be noted that if a threat was made there is no reason to believe that Mr Buswell was influenced by it. There is no material that would suggest that he thereafter took a position that was favourable to the developer. If the accounts of the two councillors, one in particular, were accepted, and it is inferred that a threat was made, the actions of Mr Buswell at the time in reporting it are only to his credit.

The fact is Mr Buswell took no position because the matter of Smiths Beach did not come before the council between the time I met him and when he retired. How, you might ask, could it be to Mr Buswell’s credit in reporting a threat when he had denied before the CCC that such a threat was made? The report states —

It is important to acknowledge that the only two people present at the meeting both deny that any threat was made.

It then goes on to again contemplate that the threat did take place and to speculate about Mr Buswell's and my motives in denying it. In a deeply disturbing reflection upon the subjective manner of the CCC reporting, the CCC wrote that —

If a threat was made, it is evident that Mr Crichton-Browne would have every reason for denying it.

This, by any measure, was an outrageous and scurrilous smear to put into a report. The fact that I denied it because it was untrue is not so much as contemplated by the CCC. The CCC had slightly more difficulty in explaining Mr Buswell's unequivocal denial of a threat. The CCC answered it this way —

It is not so obvious why Mr Buswell would deny it.

The commission finally settled the imponderable this way —

However, in this respect, regard might also be had to the fact that subsequent to that meeting, and by the time Mr Buswell appeared at the Commission, he and Mr Crichton-Browne seemed to have formed a closer acquaintance.

So we have it. Having received hearsay evidence from a well-known opponent of Smiths Beach, the CCC, in the face of plain denials from the only two parties to the conversation, continued to ruminate in its report that the threat may have taken place and explained my denials as, of course, self-preservation and as Mr Buswell protecting an acquaintance. In other words, the CCC speculated that Mr Buswell might have lied under oath before the CCC to protect an acquaintance; an acquaintance, no less, than one who had unsuccessfully threatened his political career. The one explanation the CCC could not in its report bring itself to face was the blindingly obvious conclusion that on all the firsthand evidence the threat never took place.

When the CCC ignores the only evidence on the matter and the entire lack of motive for the threat, that may be thought of as an abuse of its assumed power to besmirch the character of a private individual in a report written in respect to public officers. The report crowned its glory in a last paragraph with the entirely disingenuous assertion —

It is clear, however, that Mr Crichton-Browne did use the opportunity to refer to Mr Buswell's political aspirations and, at the very least, this is indicative of the subtle means that can be used by a lobbyist with perceived political influence to endeavour to persuade an elected representative to a particular view.

The statement is not only entirely false, it is a reprehensive smear. It entirely ignores my evidence and the evidence provided by Mr Buswell that I did not take the opportunity to refer to Mr Buswell's political aspirations. As for the assertion by the CCC of my perceived political influence, Mr Buswell had already told the commission my influence was nil. The question of my political influence, perceived or otherwise, was never raised by the CCC in either my hearing or that of Mr Buswell's.

Finally, to what particular view I was endeavouring to persuade the elected representative, Mr Buswell, we are not informed. As Mr Buswell testified, I asked nothing from him and nothing subsequently arose during the time on the council of Mr Buswell. Mr Chairman, why was this scandalous hearsay, which had already been denied by Mr Buswell in an informal, private hearing with the CCC in the office of his lawyers, not tested in private hearings of the CCC? I was called to a private hearing of the CCC and these allegations were not put to me. Why were they not? Why were they not put to Mr Buswell under oath in a private hearing? The reason is that if the only two parties to the conversation both denied under oath that hearsay evidence given by a third party is not true, it would have been unconscionable and intolerable for the CCC to have raised the matter in a public hearing.

[10.45 am]

What makes this matter all the more appalling is that the CCC had electronically intercepted my telephone conversation with Mr Buswell when he rang to tell me that the CCC had contacted him to inform him of Shervington's allegations. That conversation would have unquestionably disclosed my shock and that of any allegation that was made and my question to Mr Buswell of why such an allegation could possibly have been made. Mr Chairman, this report was written in this way in spite of my exercising section 86. I say with respect to Mr Herron, who made much in his submission to you in respect to that section 86, that section is a nonsense and affords absolutely no protection. The use of public interest as an encompassing excuse for public hearings has in my view been an abuse of the intention of sections 139 and 140 of the CCC act.

Perhaps the most disturbing and self-indulgent explanation for public hearings is found in the justification of counsel assisting the CCC, Mr O'Sullivan, at the conclusion of the city council public hearings. Not tempered by the suicide death of a witness just days before the witness's compulsory appearance at a public hearing, the CCC crassly used the public forum of the hearings to defend their decision to hold a public hearing and then not to cancel them, which decision may well have led to the death of a witness. Mr O'Sullivan had this to say, "Finally, commissioner, it is submitted that the decision to hold a public hearing in this matter is absolutely vindicated by the nature and extent of the conduct and maladministration revealed. No right-thinking person and certainly no right-thinking ratepayer in the City of Stirling would think that it was not in the public interest to expose to the public the full extent that what has occurred and the conditions that allowed it to occur to leave such exposure to fragmented disclosure in prosecution cases which may or may not occur would not provide the impact necessary to promote the improvement in management so obviously required."

Mr Chairman, public officers do not need public hearings to learn that stealing from employers is a crime and nor do councils need public hearings to know that allowing the same person to set the budget, call for tenders, grant the tenders, certify the work and authorise its payment is bad administration. The Stirling council public hearings were those, as we all know, singled out by the parliamentary inspector when he said this: "I have said to this committee that it seems to me that that was a plain situation in which section 140 should have been made use of and in which the witness should have had his inquiry held in private and should have been told at once that that was going to be the case. It seems to me that the inquiry provides an example of the kind of inquiry in which there was no basis for having a public hearing or indeed any hearing. By the time the commission's preliminary investigation had concluded and the hearings have started—I was told this after the event, rather than before the event by the former commissioner—the commission had what it believed to be overwhelming evidence."

I am sure that Justice Steytler will not thank Mr O'Sullivan for accusing him of not being a right-minded person. It seems, gentlemen, that the CCC holds public hearings when either there is no evidence or there is overwhelming evidence. As part of this orchestrated defence of Stirling council public hearings, the Commissioner Len Roberts-Smith used the same entirely inappropriate public forum to quote Terence Cole, who sat on the Royal Commission into the Building and Construction Industry. He quoted Mr Cole, in part, this way —

Reasonable minds may differ in relation to which portions of evidence should be taken in public and which in private but the public interest in a Royal Commission conducting its evidence in public should not be underestimated.

Public hearings are important in enhancing public confidence in a Royal Commission as they allow the public to see ... information from the public as they demonstrate to the public the types of matter with which the Commission is concerned and they allow potential witnesses to see that they would not be alone in giving this information to the Commission. Summarising concerns of this type —

This is contained in the same quote —

Mason J emphasised in the Australian Building Construction Employees and Builders Labourers Federation the case that conducting Royal Commissions hearings in private —

and this is a quote within a quote—

“seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy, denying to them the public character which to my mind is an essential element in public acceptance of an inquiry of this kind and of its report.”

Mr Roberts-Smith completed the quote by adding his own following words —

Those remarks I think are apposite very much to the conduct of the examination that we have been conducting ...

In other words, he was saying they are germane and relevant to our position in private and public hearings. The particular reference to the statement of Mason J referred to by Mr Roberts-Smith can only have been intended to argue against the provisions of section 139 of the CCC act and for ignoring it, for which it is notorious.

Mr Chairman, the Corruption and Crime Commission is not the Royal Commission into the Building and Construction Industry. The Corruption and Crime Commission Act very specifically sets out that hearings of the CCC are to be in private, save for certain circumstances. The Cole royal commission specifically provides that the commission will so far as possible conduct hearings in public. The CCC does not allow a lawyer for one person to cross-examine another person except in special circumstances; the Cole commission does.

The commissioners of the CCC have been at great pains to make clear that they are not obliged to inform people who have been subject to adverse evidence of that fact before the hearing. The rules of the Cole commission required the counsel assisting the commission to notify anybody who was to be the subject of adverse evidence of that fact together with the particulars. It would have been far more honest of Mr Roberts-Smith when quoting the Cole commission's position on public hearings to have informed the public that the Cole commission specifically provided that the commission will so far as possible conduct hearings in public while the CCC act provides that all hearings are to be held in private except in certain circumstances.

The CHAIRMAN: Mr Crichton-Browne, can I ask you to bring your comments to a conclusion?

Mr Crichton-Browne: Yes, I have just got a page or so to go. It is just that if I cannot give you an example, my opinion is entirely irrelevant.

The CHAIRMAN: Please proceed.

Mr Crichton-Browne: Mr Chairman, the CCC seems to have its own convenient notion of what constitutes public interest and how it should be applied. I draw your attention to a press statement published by a CCC investigator, of all people. Mr Ingham, the investigator, in referring to the investigation into the Shire of Busselton, announced in a press statement that, and I quote —

“With a high level of public interest, the Commission would give serious consideration to holding a public hearing on the matter as part of the investigation and tabling a report in the Parliament at the completion of the investigation.”

One may well ask: what claim does Mr Ingham have to decide the high level of public interest? The truth is the interest at that time was confined to and promoted by the opponents of the Smiths Beach development, particularly two local property developers, one whose palatial home overlooks what is presently virgin bush on the Smiths Beach site, Ms Shervington who was a party to the complaint to the CCC and other vested interests whom Mr Ingham had interviewed. Mr Ingham's press statement reveals the base nature of the decisions to hold the public hearings and the extent to which the meanings of sections 139 and 140 of the act have been tortured for entirely dubious

reasons. The act does not refer to the level of curiosity, defined as “interest in a matter”, as satisfying the public interest provisions of the act. Mr Ingham does expose to the CCC, however, the CCC’s definition of “public interest”.

Mr Chairman, in my observations, the CCC has over the life of its existence demonstrated that it should not have wide discretion in how it chooses to hold public hearings. There is no cause to believe that matters have or will change. Mr Hammond’s public utterances about the need for public hearings and his oft expansive comments when reflecting upon the outcome of these hearings sets the standard and pattern which has apparently willingly been embraced by Mr Roberts-Smith. Mr Roberts-Smith, in fact, is fond of approvingly quoting Mr Hammond in views about public hearings. The present acting commissioner sees no need for a review of or variation to the present practices and procedures. Mr Herron has informed your committee, as you know, that —

... it is important to reiterate that the overriding consideration is whether it is in the public interest to hold a public hearing.

It is not a competing consideration; it is the overriding consideration. In response to a question from the committee, Mr Herron answered thus —

... you asked whether we think any amendments need to be made to the legislation. In our view the legislation as it is currently worded is sufficiently flexible. It gives us a proper and sound basis for exercising discretion whether to hold public hearings. It has worked well. It is in date. We think there is no need, we respectfully suggest, to make any amendments. We think as it is presently structured it works well.

Mr Hyde perspicaciously asked the acting commissioner whether since inquiries of late 2006 and early 2007, I quote —

Have any changes been made to the commission’s hearing practice as a consequence of ... the hindsight or review of the Smiths Beach hearings?

Mr Herron was unable to answer the question, Mr Silverstone declined an invitation to do so and Mr Hyde asked that the matter be placed on notice. Frankly, Mr Chairman and Mr Hyde, the question need not have been put on notice with Mr Silverstone in front of the committee. One cannot be other than struck by the fact that on several occasions during the evidence of the CCC, Mr Silverstone in spite of being a sworn witness declined opportunities to answer questions except to urge Mr Herron to tell you how successful the CCC has been in its prosecutions. Mr Silverstone has been with the CCC as executive director since its inception. He would most certainly have had the answers to the questions which Mr Herron as an acting commissioner did not have. It is disturbing that Mr Silverstone could not or would not defend the CCC’s performance in respect to the controversy about the public hearing history of the CCC as referred to by Mr Hyde. He was not prepared to say what changes have been made as a result of the controversy of the previous year.

And I refer to my last page. The influence of senior staff in these matters is referred to in response to a question from the chairman about the level of suspicion and facts in determining whether to hold public hearings, and Mr Herron answered in part —

You rely upon advice from various people within the commission. The commission has a variety of skills from different backgrounds.

And again to a similar question, Mr Herron answered —

A number of different people are involved in the investigation. There are people at the commission who have been involved in inquiries like this over a long period of time and their experience is absolutely invaluable as to tactically how you proceed.

The acting commissioner seems to have misunderstood the underlying purpose of the chairman’s question and with refreshing candour referred to the tactics the commission uses in deciding to use public or private hearings.

Mr Chairman, my apprehension is that there is a culture within the CCC at the highest level which has not changed since the formation of the CCC, and in my view it will not change.

[11.00 am]

The attitude towards successive parliamentary inspectors, the ex parte application to the Supreme Court to prevent Mr McCusker reporting on the matter, the refusal to accept the parliamentary inspector's right to review and report on faults in its reports, its claim of right to express opinions of a lower standard than misconduct, its claim of right to express views about the conduct of private citizens, the grim determination to refuse to accept fault and its references in its reports of criminal behaviour as recently as the Stirling council matter all convince me that there is an irreversible culture within the CCC. Neither the parliamentary inspector nor this committee have regrettably had the slightest apparent influence upon the attitude of the CCC in spite of best endeavours. Legislative changes relating to public hearings are required to bypass that culture.

Committee members, I have read Mr McCusker's oral evidence but of course while I have not had the opportunity to read his written submission, I thoroughly agree with the proposals he put to you with respect to amending the CCC act so as to make the changes he advocated to public hearings. That having been said, I suspect I have less faith than Mr McCusker, and most certainly Mr Steytler, as to the CCC changing its ways insofar as it has any discretion in the matter of public hearings.

As for proposed witnesses being able to seek relief from the parliamentary inspector with respect to public hearings, we have all seen the complete impotency of the parliamentary inspector with his present powers and the manner in which the CCC treats the parliamentary inspector's findings. It would be a grave error to give unnecessary discretion of any measure to the CCC expecting its use to reflect the sentiments expressed by Mr McCusker. It would unquestionably be wise to reduce the constricting changes as far as possible to writing.

That concludes my submission.

The CHAIRMAN: Mr Crichton-Browne, in the remaining time that we have, you indicated in your evidence this morning that legislative changes are needed and that you concur with those proposed by the now Governor of this state. Can I get you to confirm then that in terms of the committee's terms of reference you believe that the CCC should maintain a statutory discretion to conduct public hearings?

Mr Crichton-Browne: I expressed the grave reservation that was expressed by Malcolm McCusker.

The CHAIRMAN: His evidence to this committee was that the CCC should retain that discretion. I am just asking you, given your evidence this morning that you concur with that view of Mr McCusker, whether you also concur with the view that the CCC should retain its discretion to hold public hearings.

Mr Crichton-Browne: With respect, I do not want to disagree with you because it would be impertinent, but Mr McCusker said at one point that he had grave reservations about any discretion. I am not certain, while I understand the difficulties of no discretion, because that allegedly was a problem with a previous committee of which Mr Hyde was a member, but it seems to me that any discretion allows them to go back to where they are now and use their discretion for all the wrong purposes. I said at the conclusion of my words that I fear that any amount of discretion will be abused by them so as to continue to use the public hearings in the way that they presently do. I think that was Mr McCusker's position. Mr McCusker said, "Well, perhaps there's an argument to the contrary", but he did say they should perhaps be used in very rare occasions and then he was not even certain that there should be any occasions.

The CHAIRMAN: Mr Crichton-Browne, do you agree with me that Mr McCusker has suggested that there be some changes to the legislation?

Mr Crichton-Browne: Yes, and as I said, I do not have Mr McCusker's faith, and less so Mr Steytler's faith, that whatever discretion there is will be used in good faith by the CCC. One can only look to its history. What I am saying is that while I understand the difficulty of drafting the legislation, there is the prospect that the matter would go on forever if there be an appeal from that discretion. If there is to be discretion, as Mr McCusker said, it should be in writing, it should be reviewable by the CCC and it should be of the most narrow nature so the CCC is held so far as possible entirely accountable for any reasons and any causes for public hearings.

The CHAIRMAN: Is your preferred position that they do not have a statutory discretion to conduct public hearings?

Mr Crichton-Browne: That is my temptation. I understand —

The CHAIRMAN: You can understand, Mr Crichton-Browne, that this committee is in the business of taking evidence. It is fairly unhelpful to know what the temptation is. You have elected to put a submission to this committee. You have asked to have your evidence heard in public, which the committee has granted. One of the terms of reference of this committee is that we specifically ask whether the Corruption and Crime Commission should maintain a statutory discretion to conduct public hearings in the exercise of its misconduct function. Each witness who has come before this committee to date has said that the answer to that is yes.

Mr Crichton-Browne: Alright. Well, my answer is no. I doubt it is beyond the wit of your committee or competent draftsmen to find a set of words that allow there to be no discretion without at the same time inhibiting the activity of the CCC and having some ventilation.

The CHAIRMAN: My last question this morning relates to one of the other terms of reference that the committee has before it, and that is with respect to the CCC's preservation of procedural fairness. In your written submission to the committee you said that you take strong issue with the acting commissioner's view that procedural fairness is properly accorded to everybody and is properly addressed by the current provisions in the act. This morning you have indicated that section 86 is a nonsense and provides no protection at all. Would you recommend that the legislative changes include the removal of section 86?

Mr Crichton-Browne: Section 86 is altruistic and it was put into the act in good faith. As I said previously, the reason legislation is reviewed is not because of the words in the act but how the act is implemented. Section 86 is a nonsense and it has no effect. I gave you the example—you may or may not be sympathetic—of the most obscene public hearing. I wrote a Bible-length response to that, referring not only to the things I had said to you but also pointing out factual errors. It fell on deaf ears. I say to you that there has to be a mechanism with respect to section 86 but as it presently applies it is ineffectual.

The CHAIRMAN: Would you at least concede, Mr Crichton-Browne, that section 86 provides some protection, albeit in your view insufficient protection?

Mr Crichton-Browne: I would say it is not only ineffectual, it is totally unworkable, but if you can find a way of writing section 86 so it has some consequence, I would agree with that. It is not within the terms of this reference, I gather, but the problem is that when section 86 is used, it has no impact on a predetermined view of the CCC and then the complainants go to the parliamentary inspector and the CCC says, "Well, that's your opinion and we're not moved by it." In other words, there is no proper check and balance. I know that you have agonised over how you deal with that. The parliamentary inspector was never meant, I suspect, to be a court of appeal, perhaps a halfway house. As it is now, it is utterly impotent. The CCC, as we have seen and you have had recent occasions to consider it—the CCC simply says, first of all, they resent the fact, and that is an ongoing debate as to whether or not the parliamentary inspector has any proper overview right. It seems to me that there is no mechanism to give any weight or teeth to section 86. Having exercised section 86, it can then go to the parliamentary inspector and it just dies a death. I suspect that in

every single report that has gone to the inspector, the CCC has simply argued against it and it has achieved nothing and nobody has helped.

The CHAIRMAN: Mr Crichton-Browne, thank you for your evidence before the hearing today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Mr Crichton-Browne: Mr Chairman, can I indulge you for a moment? I understood what you said and you chastised me very appropriately for being 10 minutes late in circumstances beyond my control. Can I plead with you to find 10 minutes sometime before you conclude your witnesses to allow me to appear to present the sort of matter that I think is highly relevant but also highly sensitive?

The CHAIRMAN: Mr Crichton-Browne, the hearing is now concluded. If you want to write to the committee, you are welcome to do so.

Hearing concluded at 11.11 am
