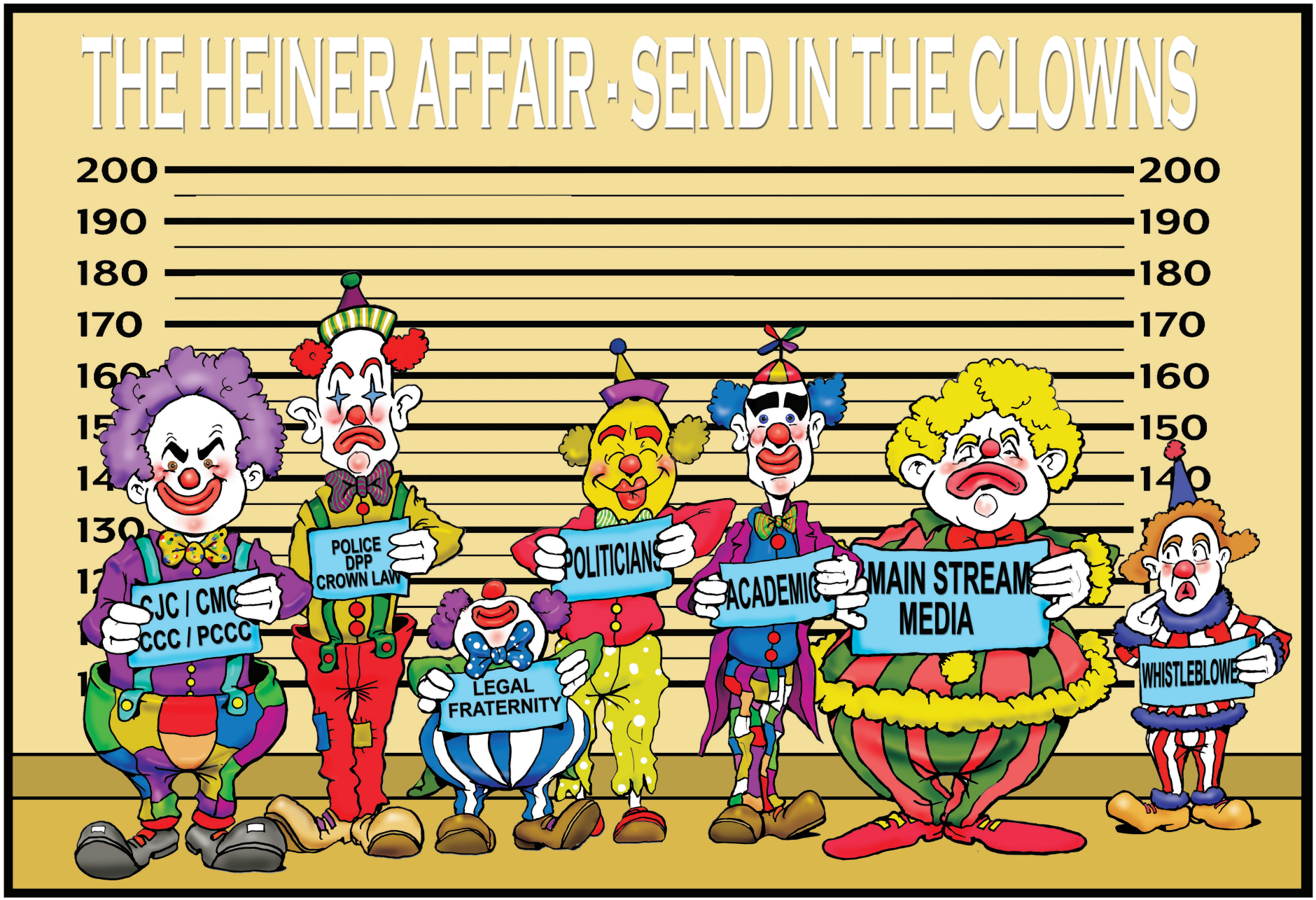
THE HEINER AFFAIR - SEND IN THE CLOWNS
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CJC / CMC
CCC / PCCC
POLICE
DPP
CROWN LAW
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FRATERNITY
POLITICIANS
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MAIN STREAM
MEDIA
WHISTLEBLOWE

IN ITS BEGINNING - THE HEINER AFFAIR

SEND IN THE CLOWNS

"…But where are the clowns?…Send in the clowns, ….Don't bother they're here!"

27 November 2020

Stephen Sondheim's song "***Send in the Clowns***" from the 1973 Broadway hit musical ***A Little Night Music*** is tailor-made as an overture for Part III of this **Heiner affair** series. It addresses the magnitude of the misinterpretation section 129 of the ***Criminal Code 1899*** (Qld) - **destroying evidence** – which 'the system', in particular Queensland's new integrity authority, the Criminal Justice Commission (CJC), determinedly relied on for years to dismiss my 1990 public interest disclosure of serious wrongdoing.

This is an exceptionally long posting. It could not, however, be otherwise. It is important for readers to fully comprehend the seriousness of my initial 1990 disclosure and due to 'the system's' prolonged rolling cover-up involving massive abuse of office, how that initial shredding crime has evolved into a crisis of unprecedented proportions in Australian political history, but most especially for unicameral Queensland.

So, some 3 decades later, the disease caused by this highly infectious cover-up virus is now so widespread and deep seated entangled within the three arms of government that its resolution appears to be too daunting for the '*politico-governor elites*' to stop the ship-of-state from sinking under its own corrupted weight while at the same time hoping that no one will either notice or fully comprehend what is really going on.

The long overdue point of decision has been finally reached where the '*politico-governor elites*' are either damned if they do or damned if they don't act.

That is, if they continue to run away from their responsibilities, they will be shown up as spineless clowns or be damned and shamed when the inescapable parliamentary tribunal is established under **section 61 of the *Constitution of Queensland 2001*** to be presided over by three interstate senior judges when, under oath, they will have to explain how, when, where and why so much wrongdoing so fundamentally unambiguously clear at law and ethics went unresolved and so horribly wrong, so often for so long.

For now, behind the scene, this affair is forcing many high ranking appointed and elected public officials to look to their own consciences in respect of their handling of its various misconduct elements at particular times because of core personal/societal, universal, democratic values involved, particularly since the **2012/13 Carmody Commission of Inquiry**.

What is currently being reflected back to them is a deluded glorified image of themselves and not, as the people will see when these facts become known, without any cast iron commitment to truth, integrity, justice and concern for their (i.e. the people's) welfare when their job as elected or appointed trusted decision makers in public office might get exceptionally tough.

These are the public officials who investigate whistleblowers' complaints. It cannot be said that this matter was not of their business or trivial in character. Unpleasant though it may have been, it was always their bread-and-butter business to deal with.

The risk-takers, whistleblowers, are assured that these qualified decision-makers can be completely trusted to investigate their disclosures with the utmost integrity and professionalism, no matter its seriousness or who the alleged wrongdoer/s may be. Many were qualified in law.

As a backdrop to Part III, at the time of the shredding of the Heiner Inquiry documents in early 1990 (and unchanged since 1899), section 129 of the ***Criminal Code 1899*** (Qld) stated: (Quote)

> ***"Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years."*** (Underlining added)

The Queensland authorities declared that this law could only be triggered if and when a relevant judicial proceeding was on foot. This was a nonsense. The law did not say this at all.

It is an indisputable fact that officials were placed officially on notice by lawyers, by writing and phone calls, about a future court proceeding and even after being instructed by the lawyers not to destroy the identified evidence, they went ahead and did so. Think about that.

A LAWLESS VOID CREATED BY OFFICERS OF THE COURT

Their interpretation created '*a lawless void in the administration of justice*' – a black hole. It not only permitted, but actually encouraged an open shooting season on all known and foreseeable evidence, without a worry in the world. In effect, the right to shred without a licence. Think about that.

For instance, it opened the way for lawyers and barristers to advise their clients to deliberately destroy any and all known and foreseeable evidence without a legal worry in the world for either themselves (as sworn '*officers of the court*' bound by a strict professional code of ethical conduct) or their clients who could be, as in the Heiner affair, the all-powerful State Government, itself supposed to respect the doctrine of the separation of powers and to conduct itself as '**the model litigant**'. Think about that.

One didn't need to be a legal genius to appreciate that this '*lawless void*' creation was a killer blow to the Judiciary's constitutional functionality. It undermined the courts essential ability to deliver justice according to law because it left the gate wide open to have all relevant evidence deliberately fed through a shredder up to the second before a related court proceeding commenced. What a nonsense. Think about that.

This '*lawless void*' self-evidently affronted all notions of democratic accountability and justice for all.

In my view, a more shameless and brazen scandalising of the doctrine of the separation of powers and associated discovery/disclosures Rules of the Supreme Court as a central part of due process could hardly be imagined.

And, like a trifecta, when it came to the Queensland State Archivist's role in appraising a public document for disposal or retention, the only consideration according to the CJC was whether or not the record had any '*historical*' value. Its legal value counted for nothing. Think about that.

To repeat, the fact that lawyers had officially placed the government on notice that the evidence (i.e. public records) not be destroyed and be held safely for impending judicial proceedings, was none of the State Archivist's statutory concern according to the CJC. Think about that too.

And, wonder of wonders, any such wholesale shredding of evidence could apparently be carried out either in secret or public.

The CJC's misrepresentation of their vital accountability role outraged the Australian and international community of archivists/public recordkeepers.

And, as if that all wasn't bad enough, the shredding could be done while deceiving the other side (in the related foreshadowed litigation) into believing that all the identified evidence was safe and being held in readiness for the Discovery/Disclosures Supreme Court Rules to kick in once the anticipated writ was served. Hallelujah!

In practical terms, this void had a name: "***A world without evidence***".

I was expected to accept this world as defined by the CJC. I said, "*No!*" I would not bow to it then, now or ever.

-oOo-

What makes this misinterpretation in the Heiner affair's factual circumstances so significant and universally important is that those involved held positions of great public responsibility, importance, power and influence in 'the system' at the time - and some still do – added to the fact that they were, in the main, supposedly learned in law, highly ethical, and all '*officers of the court'*.

This question arises: How could such a fundamentally important and so unambiguously clear and purposeful law be misinterpreted by so many in high political and statutory authority so absurdly for so long, so often, and get away with it?

Were they all just honestly incompetent? Were they just clowns hopelessly stumbling around in the dark and honestly ignorant of fundamental laws concerning the administration of justice?

Or, might it have had something to do with the known fact about who the alleged wrongdoers were? That is, an entire State Cabinet just elected to power after 32 years in the political wilderness, along with certain senior bureaucrats?

Surely not!

The Hon James Spilegman AC

(Former) NSW Chief Justice, the **Hon James Spigelman** AC, speaking to the ICAC/Interpol Conference in Hong Kong on 22 January 2003 perhaps best summed up the situation relevant to the Heiner affair when he presciently told his audience: (Quote)

> ***"...Legal institutions are interdependent. In the area of criminal justice, the police force, the prosecution and the judiciary have a symbiotic relationship in which the performance and the functions of each depends to a substantial degree on the capacity and integrity of each of the others. The same kind of relationships exist in other areas of the law, involving the broad range of regulatory authorities and adjudicating bodies, including tribunals. If the powers given to any participant in this process are abused by being exercised improperly e.g. to serve the interests of those who wield the power, the whole system is distorted, indeed perverted."***

But also, just as discerningly applicable to this scenario might be Shakespeare's famous Mark Anthony **oration** about the conspiratorial senators who planned and assassinated Julies Caesar with their numerous dagger blows while in the Rome's Senate on 15 March 44BC. Those who assassinate him hid their blood-stained daggers inside their respected senatorial togas.

The thought that *prima facie* criminal conduct might lay at the heart of this matter was hidden from day one behind the Cabinet's façade of respectability and honourable status of its members. From the very beginning, it required intellectual honesty and a preparedness to let the facts and laws speak for themselves to find out the truth, irrespective political considerations or allegiances.

Mark Anthony addresses the Roman masses about Caesar's murder

So, in whom should the public place its confidence regarding where the truth lies in this affair?

"***Send in the Clowns***" spurs us to ask who are the real clowns in this affair?

-oOo-

For instance, is it those who postulated the nonsense interpretation of section 129 of the ***Criminal Code 1899*** (Qld) in the first place and then doggedly relied on it for decades? Or, on becoming aware, was it those in positions of power in the legal profession, media or high public office who themselves failed to call it out as unadulterated nonsense and not persist until the wrong was fully corrected?

Perhaps, as the whistleblower, I've been the clown and should have just accepted their world as being sufficiently true or good enough given their public position and status of overwhelming strength.

Perhaps, I shouldn't have struggled to uphold the principle that truth must triumph over evil? That is, I was wasting as a whisleblower to fight against evils like destroying the right of each individual to a fair trial, the right to expect integrity in our key democratic institutions and in the administration of justice, and trustworthiness in our elected and appointed public official?

All brought about by those in power when supposedly being our trusted public servants always claiming to be acting ethically and honestly in the public interest within the law.

To start, the claim that lawyers can never agree on anything was a checkmate move – or so they thought!

In playing this move, the authorities claimed that just because there was a disagreement regarding section 129's proper meaning, didn't mean any dishonourable conduct or improper purpose on their part if they happened to get its meaning wrong.

At first blush, this appears to be a fair proposition. However, when seen in context, a very different picture emerges. How so?

Our Westminster system of government decrees under **the doctrine of the separation of powers** that courts are the final arbiter on what a law means. In these constitutionally authorised independent courts and tribunals under the protection of privilege, lawyers contest their version of the law at issue to obtain a ruling which must be obeyed. Lawyers do so without expecting a detriment in return if their argument fails. Again, another fair proposition but context can change things.

The facts of this matter went to the very heart of the administration of justice concerning how, when, where and why related evidence should be handled lawfully. In this matter, those opposing me were, to all intents and purposes, "the Crown" (i.e. the guardian/standard bearers of the law's integrity and majesty, including its application).

In this mix, the courts have the solemn constitutional authority and duty to strike down "the Crown's" position if and when an overreach occurs as unlawful/invalid/unconstitutional. Two landmark cases in Australian jurisprudential history, as examples, are the ***Australian Communist Party v The Commonwealth of Australia*** in 1951 and in ***Kable v Director of Public Prosecutions (NSW)*** in 1996.

In the ***Communist Party Dissolution*** case, two relevant rules were made:

> McTiernan J said: ***"The Constitution does not allow the judicature to concede the principle that the Parliament can conclusively "recite itself" into power."***
>
> and

> Fullagar J said: ***"The validity of a law or of an administrative act done under a law cannot be made to depend on the opinion of the law-maker, or the person who is to do the act, that the law or the consequence of the act is within the constitutional power upon which the law in question itself depends for its validity. A power to make laws with respect to lighthouses does not authorize the making of a law with respect to anything which is, in the opinion of the law-maker, a lighthouse. A power to make a proclamation carrying legal consequences with respect to a lighthouse is one thing: a power to make a similar proclamation with respect to anything which in the opinion of the Governor-General is a lighthouse is another thing."***

In 1996, the High Court discovered in ***Kable*** what is now known as "*the institutional integrity doctrine*", in particular as it applied to the ***Constitution's* Chapter III – the Judicature**. While this is not the time or place to expand on this important consideration, it is relevant nevertheless to place on the public record what McHugh J said at 25: (Quote)

> ***"…it is a necessary implication of the Constitution's plan of an Australian judicial system with State courts invested with federal jurisdiction that no government can act in a way that might undermine public confidence in the impartial administration of the judicial functions of State courts."*** **(Underlining added)**

And relatedly, what Gaudron J said about the ***Kable principle*** in her judgement in ***Ebner v The Official Trustee in Bankruptcy; Clenae Pty Ltd v Anz Banking Group*** [2000] HCA 63 (7 December 2000) at 81-82: (Quote)

> ***"…Impartiality and the appearance of impartiality are necessary for the maintenance of public confidence in the judicial system. Because State courts are part of the Australian judicial system created by Ch III of the Constitution and may be invested with the judicial power of the Commonwealth, the Constitution also requires, in accordance with Kable v Director of Public Prosecutions (NSW), that, for the maintenance of public confidence, they be constituted by persons who are impartial and who appear to be impartial even when exercising non-federal jurisdiction. And as courts created pursuant to s 122 of the Constitution may also be invested with the judicial power of the Commonwealth it should now be recognised, consistently with the decision in Kable, that the Constitution also requires that those courts be constituted by persons who are impartial and who appear to be impartial….It follows from what has been written that, in my view, Ch III of the Constitution operates to guarantee impartiality and the appearance of impartiality throughout the Australian court system."*** **(Underlining added)**

Significantly, the Queensland authorities, in particular the CJC, didn't just hold an opinion about section 129's true meaning but in its capacity as an oversight "Crown" agency in the administration of criminal justice matters, it spoke with massive authority and widespread influence.

Indeed, there was no compunction on the CJC's part to expend immense public resources (i.e. taxpayers' monies) in publicly defending its version of the truth regarding what section 129 meant - albeit as it was applied in this matter.

But, the authorities forgot in their checkmate move about another parallel cardinal legal principle. It was that their version, being so true and reliable, **must be applied** in materially similar circumstances should it occur again.

As readers will soon see, this principle becomes highly relevant and incriminating further on in this posting when these very same circumstances did unexpectedly occur again. And the law was applied properly but directly contrary to what occurred in the case of the Heiner evidence shredding.

It's also worth noting that Parliament is not just a talkfest (as some might cynically portray it) but commands the uniquely important role in our society as '**the grand Inquest of the Nation'**. It can command people to attend its committees or the Parliamentary Bar to be questioned. It is an offence to knowingly mislead Parliament, and in Queensland is a serious **crime** under its Criminal Code. Parliament is our supreme democratic institution and law maker, and warrants respect.

So, as time passed, not only was the Australian Senate expected to believe the CJC's version of the true meaning of section 129, but so too was I, the legal fraternity, police, media and the general community, underpinned by the fact that the 'shredding' was ordered and executed by an all-powerful government and standard bearer, the so-called '***model litigant****'*.

The clash to dare go beyond the 'argument/disagreement' point in respect of the practice of 'lawyering' wherein differences of opinion are daily and honestly argued in good faith to being contrived for an improper purpose (in the factual circumstances of this affair), became inevitable.

As the whistleblower, this matter brought me to the door of '*the Holy of Holies*' of the legal profession. It could be said that many have knocked throughout history but few allowed to enter to expose their failings. Nevertheless, on occasions when extraordinary events converge showing a compelling pattern of conduct giving rise to a reasonable suspicion of a systemic cover-up existing (as in the Heiner affair), this '*Holy of Holies'* cannot be left to its own devices.

That is, it cannot be treated like an impenetrable and unchallengeable select club which may enforce its own rules and norms when and however it likes as if public confidence in the administration of justice and the law itself are its sole province of concern.

Wherever and whenever power in public office exists in a democracy, there must be an accountability mechanism in place to counter abuse of that power wherever and whenever it might occur, even if very, very rarely.

Section 61 of the *Constitution of Queensland 2001* holds the key to the accountability demands of this affair in 2020.

However, as truth would have it, even in this field of perpetual argument and disagreement, there are some laws, like foundation stones (e.g. section 129), which are so unambiguously clear in wording and purpose that for so-called competent, honest lawyers/barristers to argue a contrary position with such a devastatingly perverse outcome, namely "***a world without evidence***", legitimate suspicions that improper motives may be at play cannot be reasonably avoided, most especially if and when promoted by entities of the Crown.

Former WA Chief Justice The Hon (the late) David Malcolm AC QC CitWA

I was not alone in these concerns. Similar gravitas was expressed in an **August 2007 Public Statement of Concern** by a number of this nation's most esteemed jurists, including the former Western Australia Supreme Court Chief Justice, (the late) the **Hon David K Malcolm AC QC**, who informed then Queensland Premier, Peter Beattie, *inter alia* that: (Quote)

> ***"…Compelling evidence suggests that the erroneous interpretation of section 129 of the Criminal Code (Qld) used by those authorities to justify the shredding of the Heiner Inquiry documents may have knowingly advantaged Executive Government and certain civil servants."***

This unprecedented warning by some of our nation's foremost retired senior judges was ignored in Queensland.

But, for my public dissent and persistence, my reward was to experience the odious, derogatory label of '*conspiracy theorist'* being put into action.

The system with all its power and influence including allies within the media, whenever caught out by a persistent whistleblower-cum-messenger who keeps knocking on the door daring to point out to '*the politico-governors elites*' that they weren't just wrong but unarguably wrong in a matter of potential criminality, things can get very personal very quickly, as history regularly shows. And label and ridicule me, they did.

Allied by certain parts of the mainstream media, the term '*conspiracy theory'* became the currency-of-explanation in this affair. Myth and dogma became their fact. The facts and the law, even when expressed by eminent retired judges, did not matter.

For those in power being expected to honestly examine the glaring facts in front of them showing who might be culpable, this was a secondary matter of no consequence. On the other hand, it was fitting to tag me as being obsessive or a right-wing extremist.

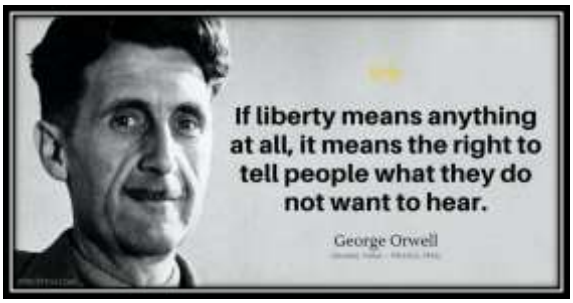
The plain fact is that political partisanship stalked and poisoned this matter due to its extraordinary political/constitutional characteristics from day one. Truth was the first casualty in this dirty war.

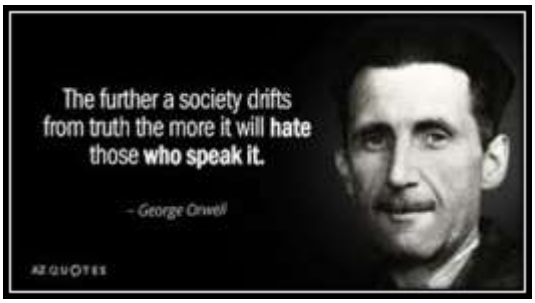
In effect, the authorities were saying that nothing in law was certain or beyond argument, including even when their argument and application led to undeniably perverse outcomes as well as displays of gross double standards.

In other words, the law, one of the noblest and most important of professions, was permitted to be and shown up to be a complete ass, but always a virtuous and upright ass at the same time so that heinous outcomes could be either excused or trivialised whenever it suits.

So this question arises. Are we, the Australian people, truly so gullible as to believe anything? Is truth always so unknowable, and words so malleable that they can mean the very opposite to what it is plainly saying?

Are we now finally living in the age forewarned of by Orwell?





This is another reason why the unresolved status of the Heiner affair has always been so concerning to so many for so long.

Firstly, the absurd meaning of section 129 applied by the authorities in this matter flew in the face of plain, concise English words used.

Secondly, from the lowest to the highest in the land, from the most ignorant to the most learned, the provisions of the ***Criminal Code 1899*** (Qld) are expected to be known and obeyed by everyone on pain of imprisonment, because ignorance of the law has always been no excuse when breaking it.

Thirdly, while the law respects no one, no one can disrespect it with impunity. The law occupies the same space in which all activities within our nation take place as a commanding majesty, be it when plans are agreed in a tin shed at the back of Bourke or in the Cabinet room behind locked doors on the top floor of the Executive Building.

Fourthly, whenever the law is abused by its enforcement servants and applied by double standards, its majesty is reduced to an unacceptable state of derision and capricious non-compliance.

This is a dangerous state of affairs beyond words. No sane person should desire this.

It follows that whenever and wherever trusted elected or appointed public officials apply the law by double standards to advantage certain parties over others for the same crime, it is such a major betrayal of public trust. It is made even worse if those advantaged happen to be an entire Cabinet ministry, so much so, that ignoring it cannot be an option if men and women truly value their freedom and civil society.

In order to protect the full commanding majesty of the law, ideals of peace, order and good government decree that ignorance of the law is no excuse otherwise the law would become meaningless and farcical.

That said, however, to afford justice and to consolidate peace, harmony and good government, the elements of the particular crime must be present and proven by 'the Crown' beyond a reasonable doubt at a fair trial against the person concerned before guilt may be **properly found**.

However, when the conduct of Queensland authorities in this matter became the issue, this cardinal principle of ignorance of the law being unavailable as an excuse was tossed overboard quick smart. The Crown, in all its emanations (i.e. Cabinet, Crown Law, DPP, CJC, police), was given the advantage of not knowing the law. Think about that.

For example, one of the key 1990's advocates of the misinterpretation when (then) CJC Chief Complaints Officer, lawyer **Mr Michael Barnes**, later told the 2004 **Senate Select Committee on the Lindeberg Grievance** in his 18 September 2004 **submission** at Point 6: (Quote)

> ***"It cannot be disputed that the decision to shred the documents was based on advice from the Crown Solicitor. Surely governments must be free to take and act on such advice. Even if Mr Lindbergh's (sic) claim that the shredding was unlawful has any substance how could action to taken against the Goss Government for acting in accordance with its legal advice?"***

When Mr Barnes made this extraordinary public claim, he held the judicial post of a Queensland Magistrate by reason of being Queensland's State Coroner. Think about that.

These honourable people would have us believe that any person (which included 18 Ministers of a State Cabinet sitting around the Cabinet table) can and should escape scot-free for a breach of the criminal law by pointing to the fact that their act was based on legal advice before acting, even if and when the advice was erroneous. And there were lawyers in that Cabinet.

It therefore didn't matter to the Queensland authorities how erroneous or ludicrous a mistake of law (i.e. regarding section 129) their interpretation was, how absurd or unjust a state of affairs it visited on the administration of justice. That is, **the law permitted and encouraged not a single shred of evidence be left in existence despite being required for known impending and realistically possible court proceedings**.

From day one, status overrode the law in this matter.

But, what did the High Court of Australia think about Mr Barnes' assertion as a matter of principle?

In ***Ostrowski v Palmer*****,** a Western Australian crayfisherman acted on erroneous government advice and was subsequently charged with an offence. The High Court of Australia emphatically rejected any such notion being correct at law (i.e. ignorance of the law being an excuse for breaking the law by relying on erroneous legal advice).

Their Honours Callinan and Heydon JJ stating in their 16 June 2004 ***Ostrowski*** judgement that: (Quote)

> ***"…A mockery would be made of the criminal law if accused persons could rely on, for example, erroneous legal advice, or their own often self-serving understanding of the law as an excuse for breaking it."***

How did this apply in the Heiner affair?

On the one hand, the CJC had said what section 129 meant. It was wrong but this was their version of the truth, and they were going to stick with it come hell or high water.

In other words, everyone should go their separate ways (including the Queensland Government and its Parliament, the DPP, Crown Law, Police, legal fraternity, Queensland people, Australian Senate, media and whistleblowers) as if nothing of significance was ever in the balance over what was true and what wasn't regarding section 129 – a law which underpinned the viable operation of the administration of justice.

The thought of anyone daring to believe that such a perversity might have been contrived for an improper purpose to advantage another, or to dare point out its self-evident catastrophic effect on the administration of justice as a matter of rational reasoning, had to be not just '*a conspiracy theory*', but a '*barking mad conspiracy theory'.*

No greater authority was the former Queensland political luminary, the (then) responsible Families Minister and later Premier, **Anna Bligh**, as she made clear in her address in Parliament on this topic.

Hon Anna Bligh, Former 1998 Qld Families Minister

It happened some 12 years ago. She has never recanted her words made during a serious **debate** about the connection between the newly established **Forde Inquiry into the Abuse of Children in Queensland Institutions** and its child abuse/shredding-of-evidence connection with the Heiner affair.

As a sworn Minister of the Crown, she assured Parliament on 28 August 1998 that: (Quote)

> **"...The motion before us tonight makes a series of very serious allegations against five of my colleagues, serious allegations that do not bring forward one shred of evidence against these colleagues. It is time, as the Deputy Premier said, to call a spade a spade. This has not been debated on the facts; this is nothing more than a complicated, convoluted conspiracy theory a totally mad conspiracy theory. Far be it for me to ruin their grand conspiracy theory with some facts, but I feel I am bound to put them on the record here tonight.**
>
> **It seems to me that, if one is going to have a conspiracy theory, one ought to do it properly. If one is going to have a conspiracy theory, one really should have a totally mad one. One should have one that is gloriously mad, one that is grandly, gloriously, barking mad and this one bears all the hallmarks of that. Not only have members opposite come in here and made repugnant and malicious personal slurs on five Ministers, they have made false and disgraceful attacks on current and former officers of my department. We do not mind so much. We have broad shoulders. We take a lot of flak and we will take a lot more. But who else has been dragged into this barking mad conspiracy? Who else is being accused of communism, paedophilia and criminal activity? None other than the Crown law office, the Audit Office, the Office of the Information Commissioner, the Director**

of Public Prosecutions, the Queensland Police Service, the Criminal Justice Commission and the Federal Senate! I am disappointed here tonight. I had hoped to hear the full extent of this conspiracy.

I was hoping that we would hear tonight of the involvement of the United Nations in this matter; that we would hear tonight about the involvement of the Vatican, the Pope and the entire Catholic Church around the world; that we would know tonight at last the truth about the involvement of the ABC in this; about how Bananas in Pyjamas have figured in this, and the role of the Wiggles in this matter. But no! What we have had tonight is further nonsense about documents and documents and documents.

While we are on the subject of documents, there is a lot of curiosity from One Nation members about the attendance register from Cabinet. I am going to let the One Nation members into a secret. Just so that they never know who is there and who makes these dastardly decisions, at the end of every Labor Cabinet meeting right throughout the Goss years and we have restored the tradition the Premier eats the attendance register. I say to the One Nation members: you will never get it. You can take us to the International Court of Justice and the attendance register will remain in the bowels of former Labor Premiers. It is part of the austerity drive; we do not get lunch."

So, the secular gods having decreed from on high what was true, any and all subsequent dissent could be summarily ignored, trivialised or ridiculed including from the floor of the people's house, the Parliament, under its complete protection.

In essence, this affair became a repeat of Pontius Pilate's famous eternal question: "***What is truth?***"

-oOo-

Pilate asked his question when many would say that Truth stood in front of him in Jerusalem some 2000 years ago. But, having asked the question, he didn't wait around to hear the answer. He left. Probably, he didn't want to hear it.

And, for Queensland authorities, the same key question arose when I first lodged by public interest disclosure with the CJC in 1990. But, like Pilate, did anyone in power ever want to know the truth about the Heiner affair allegations then, or even now in 2020? It seems not.

For my part, I have persisted now for three decades to have the truth fully revealed as well as see the law applied equally, consistently and impartially to restore justice for all. Why?

It's because in this matter's uncontested factual context, their version of the truth about section 129 was its polar opposite and corruptly turning the administration of justice into a monstrous fraud against the people.

-oOo-

THE MONSTROUS LIE EXPOSED

The desire of the State/Crown authorities that I should to agree to disagree with them over section 129's meaning meant leaving an utterly crippled system of justice in its wake.

Self-evidently, those who held statutory responsibilities over its health and operation could not have cared less. They got what they wanted from the law, not what the law wanted from them.

Then like Pilate, they wanted to wash their hands clean, move on and expect everyone to still believe that they were completely trustworthy and reliable when it came to impartial law enforcement.

But, in reality, they were too cunning for their own good.

It was by reason that this monumental betrayal of public trust generated out of their own hubris and belief in their own untouchability, a self-serving mischief/lie became the authorities escape from not to the truth regarding section 129's proper meaning.

In order to reach this innocence outcome, the authorities created gaping sink-hole in the administration of justice/due process, namely 'a world without evidence'.

The authorities left this sink-hole lurking in wait for everyone, assuming its version of the truth would be applied equally and consistently whenever anyone else conducted themselves in a similar manner to that of the 5 March 1990 Cabinet members.

Let's assume that honest conduct and total indifference about the prospective wrongdoers' identity in this matter was their constant mode of operation (as I and my fellow Queenslanders were entitled to expect of law enforcement authorities).

This next consequence was never speculative. The authorities (i.e. CJC, Crown Law, Attorney-General and DPP) had 'unearthed' a monumental deficiency-cum-mischief by reason of their version of the truth about section 129's meaning as it sat within offences against the administration of justice, which (as just one of many other self-evident serious flow-on effects) undermined the right to a fair trial.

So how could such a monumental mischief be then honestly ignored if in fact the authorities did truly believe what they were advancing was genuinely true?

Instead of addressing and correcting this critically important deficiency-cum-mischief in the criminal law immediately by amending the wording of section 129 and related section 119 (i.e. definition of "judicial proceeding") upon which the functioning of our entire justice system relied, the authorities did nothing whatsoever.

They left their massive train wreck as if there wasn't one, or if there was, it didn't matter one iota. However, what did matter to them was to adopt a belligerent attitude of publicly ridiculing me, as an ordinary Queensland citizen, because I would not agree to disagree or to walk away from their train wreck.

The pivotal question to be asked is whether this inaction was really the act of honest law enforcement and responsible government if they truly believed in what they were saying or was their inaction because they always knew it was a convenient stitch-up and impossible to justify when placed under close scrutiny in an open forum?

In a democracy, the law is **not** enforced as some sort of changeable, unstable, arbitrary guessing game. Law enforcement authorities are sworn to uphold and enforce the law consistently, impartially and honestly in materially similar circumstances.

It's the foundation stone on which all properly functioning democracies rely if the rule of law matters and is to operate and be obeyed harmoniously.

In regard to the Queensland DPP's prosecutorial discretion in respect of acting '***impartially***', the **guidelines** state, *inter alia*: (Quote)

> ***"A decision to prosecute or not to prosecute must be based upon the evidence, the law and these guidelines. It must never be influenced by:-***
>
> ***(a) race, religion, sex, national origin or political views;***
>
> ***(b) personal feelings of the prosecutor concerning the offender or the victim;***
>
> ***(c) possible political advantage or disadvantage to the government or any political group or party".***

There is the related important question about accountability in government to consider. This principle underpins freedom and responsible government. Those in government exercising power must explain how and why they apply the law because consistency and certainty underpin the public's confidence and faith in knowing what is right and what is wrong when acting in materially similar circumstances.

This means that lessons from the past regarding the administration of justice can be relied on by other individuals with confidence in regard to their own present and future actions in materially similar circumstances like, for instance, walking on a cleared track through a field of land mines.

Reliance on how the law has been applied in the past creates civil order and harmony in the present and future. It's vitally important.

This is just one of the many reasons why double standards and rank hypocrisy at the hands of capricious law enforcement authorities is a disease of the highest order whenever it occurs. It imperils democracy. It invites contempt for the law itself, law enforcement authorities and our key democratic institutions.

Fear of not knowing who can and can't be trusted cripples, drains the public's confidence in their elected and appointed public officials and government itself. Doing the right thing becomes an unknown quantity when certainty under law becomes uncertainty under law.

Such fear, unless addressed openly, makes government and the law the enemy from within. There is nothing worse than ordinary citizens seeing some in high public office being publicly and brazenly advantaged over individuals like themselves for similar improper conduct.

It's the sure fire, direct, damnable road to a destination called Anarchy.

I want no such road or destination anywhere in Australia.

I am sure that I am not alone in this concern.

-oOo-

Mischiefs in law can occasionally arise. They can arise unwittingly in the drafting and parliamentary debate stages. It's rare but it can happen. These unintended consequences are generally discovered after a newly drafted law is enacted and applied. In this case however section 129 had been in operation since 1 January 1901 – hardly a new law!

When a mischief is discovered, by one authoritative means or another but especially if by law-enforcement authorities, they are expected to correct the mischief at the earliest possible opportunity by the government of the day introducing urgent amending legislation.

Harmony between laws is a vitally important feature in our system of government which claims to be one of responsible government by the rule of law, not one by the arbitrary rule of men or women.

In this process, explanatory notes to Parliament explaining why the amendment is required must accompany the amendment. Sometimes courts look to these notes as an aid when interpreting the relevant law later on if called to do so.

The Queensland Government's obligation to correct this mischief flowing from their version of section 129's meaning (if true) saw the magnitude of their train wreck on the administration of justice having to be rationally explained. It was always an impossibility.

That is, to explain to Parliament, let alone to persuade a competent parliamentary counsel to draft a correction to a provision which was already so unambiguously clear as it stood in 1990, let alone having stood for nearly 100 years beforehand without any problem whatsoever, would have tested not just the skills but the integrity of a modern legal Einstein, whom many would accept Sir Samuel Griffith was and who drafted Queensland's Criminal Code in the first place, as well as Australia's *Constitution*.

Nevertheless, by any standard, this was a startling discovery of enormous legal and administrative proportions found by so-called honourable people. If true, it had been sitting like a cancer right at the epicentre of the administration of justice after being in operation for close on 100 years in Queensland.

But not only that, this same law had been in operation for decades elsewhere in the Commonwealth of Australia (i.e. Federal, Western Australia, Tasmania and New South Wales) and other nations like Israel, Nigeria, PNG, Solomon Islands, Seychelles and Fiji without anyone ever discovering its deadly flaw (assuming one ever existed!)

How could this be?

It only manifested itself when the Heiner affair came along in unicameral Queensland in 1990. And, low and behold, the alleged wrongdoers just happened to be an entire Cabinet and certain senior bureaucrats.

But, to emphasise again, as Mark Anthony said, these were all honourable people.

ENTER A LEGAL GIANT

Then, onto this scandal's large and expanding stage of players entered an Australia giant in the law: **Mr Ian Callinan QC**, later to become a Justice of the High Court of Australia.

Former High Court of Australia Justice, the Hon Ian D F Callinan AC QC

Notwithstanding I, as a layman, rejected the interpretation relied on by the authorities from day one, in 1995 I engaged the services of eminent Queensland senior counsel, Mr Ian Callinan QC.

By any objective measure, Mr Callinan was, and remains, one of Australia's foremost authorities in criminal law jurisprudence, especially the ***Criminal Code 1899*** *(Qld).* It was just one of his many other talents later brought to the High Court of Australia when he joined its ranks on 3 February 1998.

The Australian Senate – One of the World's Most Powerful Upper Houses.

In 1995, Mr Callinan provided evidence on the facts surrounding the shredding to the **Senate Select Committee on Unresolved Whistleblower Cases** in public. The CJC witnessed his oral presentation to a packed audience.

Mr Callinan concisely summarised the driving universal importance of the Heiner affair by his statement on 23 February 1995 at its Brisbane public hearing: (Quote)

"…***The real point about the matter is that it does not matter when, in technical terms, justice begins to run. What is critical is that a party in possession of documents knows that those documents might be required for the purposes of litigation and consciously takes a decision to destroy them. That is unthinkable. If one had commercial litigation between two corporations and it emerged that one of the corporations knowing or believing that there was even a chance that it might be sued, took a decision to destroy evidence, that would be regarded as conduct of the greatest seriousness - and much more serious, might I suggest, if done by a government***."

Mostly notable and relevant for Part III of this series, in a further written submission dated 7 August 1995, he publically advised this Select Committee (which, to all intents and purposes, meant he was speaking to the relevant Queensland authorities, legal community, media and the world at large) that on the CJC's own admissions regarding the Cabinet's state of knowledge, section 129 was open to be applied. And, for completeness sake, he advised that **section 132** may apply, citing ***R v Rogerson*** as an authority and ***The Queen v Vreones*** [1891] 1 QB 360, and that the misinterpretation of section 129 was "…***too significant to ignore***".

The Queensland authorities had been exposed naked to the world. Publicly condemned by words out of their own mouths and actions by their own hands in handling this matter.

Such words and actions bringing about their corruptly created "***world without evidence***" to which I had not and would never bow.

-oOo-

Two further significant steps took place in the wake of the Mr Callinan's landmark advice. It involved then Queensland Shadow Attorney-General, Mr Denver Beanland MP.

In referring Mr Callinan's 7 August 1995 advice, he wrote to then Queensland Director of Public Prosecutions (the late) Royce Miller QC on 9 November 1995 and then to acting CJC Chair Mr Lou Wyvill QC on 30 November 1995 seeking further action in this matter.

On 28 November 1995, the DPP responded. The DPP indicated that section 129 required the relevant judicial proceeding to be on foot before it could be triggered, and that any further concerns should be made to the CJC.

In the same letter, the DPP outrageously cited as a reason Form 83 of the Indictment Schedule to dictate the meaning of section 129. In other words, he impermissibly reversed the legal norm that subordinate legislation cannot override the '*head of power*' law, the ***Criminal Code 1899*** (Qld). This

was a flaw beyond comprehension from someone so experienced and holding such an important public post.

On 8 January 1996 the CJC responded. It stated that this matter had been previously investigated (and settled) referring to the advice received from **private counsel**, and to advice from the Crown Solicitor to the Queensland Government.

It is beyond dispute that both responses (i.e. the DPP and CJC) were not worth the paper they were written on. Save, of course, that the untenable *status quo* was not disrupted.

It was always open for the authorities to seek a judicial review from the Supreme Court to know precisely what section 129 meant but instead it is abundantly clear that they did not want their *status quo* to be altered.

Remember, this was supposed to be the authorities' true version of section 129's meaning. Little did they know that the toxicity of this unforgivable venomous corruption would be fully exposed in later related events in 2003-04 in court proceedings regarding section 129, as readers will see further on.

-oOo-

No one denies that our courts are the final arbiters over the meaning of our laws if and when different views between parties arise and need to be resolved. The rule of law does not allow a party to judge in their own cause and also says that justice must not only be done but be manifestly seen to be done (i.e. the ***nemo iudex*** principle). Hopefully, our courts, when called on to interpret a law to settle a dispute, particularly between an individual and an all-powerful Government, will always act with utmost integrity and according to law.

But there is more to this equation which should concern everyone.

Laws are meant to be read and understood immediately on being enacted otherwise our courts would be forever clogged up with statutory interpretations being required of every provision in new legislation before it could be safely applied or obeyed. In short, on being enacted, a law would remain inactive – and that would be a complete nonsense.

If, however, the rule of law is like buying a lucky lottery ticket by reason of it being open to arbitrary and inconsistent application by those in authority as they see it to be unless or until a court rules on its meaning, then God help us all.

There is an common sense solution to this. Sanity, rationality, purpose and context in and by which a law is created and enacted by Parliament should provide a sufficient guide for reasonable minds to know what a law properly means.

In other words, it could hardly be sensible or rational for Parliament, in the full glare of the media and interested parties like the courts, Bar Association, Law Society, civil liberty associations, trade unions and the like, to enact a specific law to outlaw the destruction of evidence (i.e. section 129) but which, in fact, lawfully encouraged its unfettered destruction up to the very moment of an anticipated writ being lodged and served.

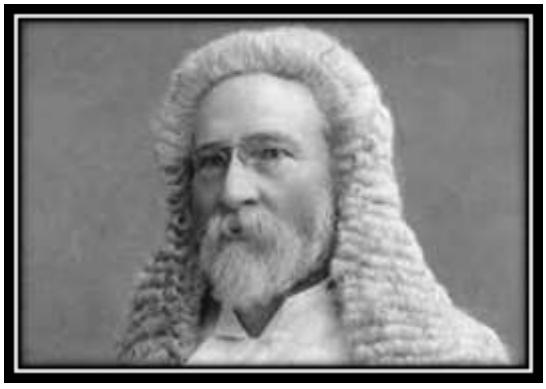
Since the dawn of civilisation, laws have been created to correct or prevent mischiefs, not to make perversities or disharmony legal. Accordingly to **section 14A(1) of the *Acts Interpretation Act 1954* – Interpretation best achieving Act's purpose** – this is expected of us all: (Quote)

> ***"(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation."***

History tell us however that in the hands of the unethical State/Crown officials (as might always occur without eternal vigilance over their actions), laws can become corrupted when extraordinary circumstances arose.

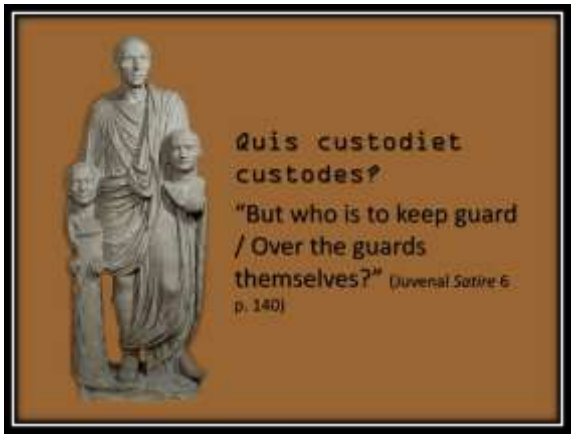
The law can become a perverse, oppressive, unreliable instrument open to be used against anyone (especially against those who might dare challenge abuses of power like whistleblowers) by being twisted or turned on its head to benefit those with influence.

Without honesty and impartiality being the constant compass point for law enforcement authorities to follow when to comes to those in high places saying to a law enforcement official, "*Don't you know who I am?"* without the official responding back, "*I don't care who you are, it's the law which is supreme, not your status!*", the law can be perverted, at will, from a secure instrument protecting and upholding the public good to one of being a danger to the public good.



Sir Samuel Griffith, first Chief Justice of the High Court of Australia

I hold this to be a true enduring value. I am sure the vast majority of my fellow-Australians do also. If a society truly wishes to be and remain civil, harmonious and enjoy freedom in its fullest sense, then the law must be everyone's reliable protector not their capricious enemy.



Therefore, those who would knowingly pervert the law, especially the criminal law, from its proper beneficial purpose to evil ends from their positions of power deserve severe reprimand for their acts or acts of omission to act as a deterrent to others who may be tempted to follow in their footsteps to tamper with the law's proper majesty when the moment suits.

The eternal question therefore also arises in this matter: "***Who shall watch those who watch over us"****?*

-oOo-

The Queensland people were given to believe that the bad old days of its so-called "**Hillbilly Dictator**" (a.k.a. Premier Sir Joh Bjelke-Petersen as described by journalist (the late) Evan Whitton) would be a thing of the past when the **ALP** rode to power on the coat-tails of the Fitzgerald Commission of Inquiry revelations on 7 December 1989 after being in the political wilderness for 32 years.

It's not a long bow to suggest that this matter became as a first cab off the rank for Queensland's new dawn riders (i.e. the incoming Goss administration) to test its credentials in a significant manner.

Members of 5 March 1990 Goss Cabinet

Who then would have thought that at its dawning, cutting corners and deceit in due process of the administration of justice would come instantly into play in the immediate wake of the Fitzgerald Inquiry, let alone within some 100 days of winning government?

Surely, bitter lessons had been learnt?

After all, after 32 years of dishonourable conduct in high public office by others (as some would claim), wasn't this a new set of honourable people in charge, ready to guide us into a bright new world of open and accountable government? Surely, it wasn't a false dawn?

As a reminder, we are primarily addressing how these honourable people dealt with the ***Criminal Code 1899*** (Qld), in particular its Chapter 16 concerning **Offences Against the Administration of Justice.**

This Chapter is sometimes known as '*the Holy of Holies in the practice of the Law'*.

Chapter 16 comprehensively sets out a range of impermissible conduct in the context of ensuring that the proper administration of justice in a democracy under the Westminster system is safe and fair, and protected from obstructionist acts of commission or omission by anyone.

Its core demands are a strict adherence to the rule of law, probity in public office and the limited/restrained exercise of power by elected/appointed public officials holding public office by respecting the doctrine of the separation of powers, hence its title of '*the Holy of Holies*' in the overall ***Criminal Code 1899*** (Qld).

Section 129 was never an insignificant law. Unsurprisingly, it is, in fact, a key law. It harmoniously interconnects with and is intra-relied on by sister '*administration of justice'* offences like attempting to obstruct of justice and conspiracy to defeat justice, and other administrative laws for example like Discovery/Disclosure Rules of the Supreme Court, Evidence Acts and archival legislation.

Without evidence being protected, the whole system falls apart. A fair trial, for instance, cannot be conducted or justice served and delivered in its myriad of forms across the gambit of activities in democracy. It underpins open and accountable government because the proper continuing existence or disposal of records-cum-evidence is central to the proper operation of best practice public record keeping.

No justice system can operate fairly, let alone survive or maintain public confidence in its processes and outcomes without available and foreseeable evidence being kept safe and available for courts or tribunals regarding related pending/impending/realistically possible civil and criminal proceedings.

Police investigations and prosecutions would fail. Other general accountability needs and honouring contractual rights, arrangements, undertakings and obligations between private or corporate parties with and between governments, and not least the justice system's own interface with the general affairs of government (e.g. Right to Information and Privacy legislation), would fail and fall into chaos.

-oOo-

This is the bottom line. The Queensland Government/Cabinet was unquestionably aware that an official notice of a future court proceedings had been served on it by lawyers and two trade unions (one of which I worked for as a senior organiser). The Queensland Government was clearly instructed by lawyers to preserve the Heiner Inquiry documents and tapes as evidence and **not** to destroy them.

Again, it should never be forgotten that all this happened at this very time when '*the new post-Fitzgerald Queensland'* was dawning. Instead of openness, a different hive of activity was going on behind the closed doors of the Queensland Government and Cabinet regarding the continuing existence of these public records, to say nothing about their awareness that their contents concerned evidence about unlawful abuse of children at the State-run youth detention centre.

While being assured that the evidence was safe, the Queensland Government was actively making them unsafe. Senior bureaucrats were hard at work to deny access. They also unquestionably knew that these records were required for court and revealed material about child abuse at the State Youth Detention Centre meaning also that they cannot escape responsibility for their role in this matter under **section 7 of the *Criminal Code 1899*** (Qld) – **Principal offenders**.

On 5 March 1990, the Queensland Cabinet secretly ordered these public records to be destroyed. Its stated purpose was to prevent their anticipated usage in court proceedings. The 5 March 1990 **Cabinet submission** (publically available now), made it explicitly clear to all Cabinet Ministers that these records were being sought by lawyers for legal action which had not yet seen the anticipated writ served.

The evidence went secretly through a government shredder on 23 March 1990. Significantly, one senior departmental bureaucrat, who assisted a senior official from Queensland State Archives feed the evidence through the shredder, had been personally informed by lawyers about the foreshadowed court proceedings. If anyone knew the facts then this particular public official unquestionably did. Think about that.

After the shredding became known and challenged, the Queensland Government defended itself by claiming (despite what the law said) that no judicial proceeding had commenced at the time or afterwards.

This was true but the Queensland Government conveniently forgot to tell 'the **whole** truth.'

A new self-evident reality was brought in existence by the Queensland Government's own doing. That is, as the defendant (i.e. the Queensland Government), while assuring the prospective plaintiff that all the evidence was safe, it was busily shredding them in secret. Think about that.

Why then would anyone in their right mind commence court proceedings regarding a grant of access to the Heiner Inquiry documents when they no longer existed?

This was the perverse reality which the system defended with all its might and main for decades.

In effect, the Crown/State had decreed what could and could not be litigated in court when it controlled the fate of relevant evidence.

In one savage blow this extraordinary shredding Cabinet order made a known course of justice utterly futile for a citizen who had officially signalled his litigation intentions beforehand via a lawyer as a correct thing to do in what is commonly described as "due process at law", a process specifically designed to protect everyone's equal right to enjoy a fair trial.

The Queensland citizen – i.e. representative of the universal citizen - was summarily deprived of his democratic/constitutional right to embark on a judicial proceeding to enforce his rights without experiencing interference by anyone, let alone the Crown/State, in which these 'public records' were the known key item of evidence.

Former Queensland Supreme and Appeal Court Justice, the **Hon James B Thomas** AO QC, advised a student reporter from the University of Queensland's School of Journalism for its May 2003 edition of *The Queensland Independent* about section 129's wording and purpose, that: (Quote)

> ***"I can't see how it is even arguable that a legal proceeding be on foot….The section itself contemplates that legal proceedings might not be on foot,…There were some things in the law that were open to different interpretations, but due to the wording of the section, this clearly isn't one."***

-oOo-

At this point in this long struggle for justice, the principle of '*always expect the unexpected*' in the affairs of men, women and governments suddenly burst onto centre stage in 2003-04.

Into this web of intrigue and deceit and cast of many in high public office, an unexpected player entered. He was not a Minister of the Crown but a **Baptist Minister of Religion**.

Like a meteor out of nowhere, the accused pastor brought with him an unexpected, inescapable relevant message.

It flowed out of his treatment of foreseeable evidence in his possession and how the same system then dealt him regarding his materially similar conduct to that of the 5 March 1990 Queensland Cabinet when the authorities became aware of his 1996 'shredding/guillotining-of-evidence' act which adversely impacted on a foreseeable/'realistically possible' future judicial proceeding some 7 years **afterwards** in 2001.

In summary these events occurred:

- **In 1995 an adult male parishioner had engaged in improper sexual behaviour with a female minor also a parishioner in the same church;**
- **The victim recorded these encounters in her diary. This diary came into the possession of the pastor at a time when the behaviour was being dealt with inside the church, and thought to be settled without police involvement. The male parishioner admitted to the improper sexual behaviour;**
- **In 1996, the girl's parents asked for the diary to be returned from the pastor being their property. He wanted to know why they wanted it back but, on their insistence due to it being their property, it was returned;**
- **It arrived in a package. The diary was discovered to have been guillotined by the pastor into strips rendering it indecipherable. The guillotined diary was held by the parents in this state.**
- **In 2001, the victim lodged a complaint with the police over the earlier improper sexual assault. The perpetrator admitted his guilt again and was summarily dealt with by the court without a trial.**
- **At this time, the police became aware of the guillotined diary and its foreseeable relevance as evidence to related court proceeding, knowing that the guillotining act had taken place some 5-6 years before the court proceeding had commenced.**
- **The pastor was charged with *prima facie* criminal conduct pursuant to section 129 of the *Criminal Code 1899* (Qld), or, section 140 – attempting to defeat justice in the alternative. On 11 March 2004, a District Court jury found the pastor guilty under section 129. The judge sentenced the pastor to 6 months imprisonment wholly suspended.**

- **On 25 March 2004, the Queensland Attorney-General appealed the manifest inadequacy of the sentence due to the seriousness of the crime. The Queensland Attorney-General wanted the sentence increased to act as a deterrent.**

- **On 29 June 2004, the appeal was argued before the Queensland Court of Appeal with the judgment reserved.**

- **On 17 September 2004, the Queensland Court of Appeal handed down its majority decision. It ruled that the guilty verdict should stand. All Justices (Their Honours Davies AO, Williams and Jerrard) made it emphatically clear that section 129 did not and could never have required the relevant judicial proceeding to be on foot before it could be triggered. They all described the crime as serious.**

Connecting the above with the other aforementioned facts and commentary, the following key elements surfaced during the course of this successful prosecution of the pastor.

These elements (of legal/procedural principle and acts of commission and omission) exposed what can only be reasonably described as deep-seated corrupt conduct at the highest levels of government when the same Queensland law-enforcement authorities handled my 1990 public interest disclosure juxtaposed to their handling of the pastor's similar destruction-of-evidence offending conduct.

It was as starkly different as chalk and cheese.

That is, beyond any doubt, it showed that the incriminating evidence in the Heiner affair was always far more compelling than that which saw the pastor found guilty by a District Court jury which was then endorsed on appeal to Queensland's highest court, and saw the pastor branded a criminal for life.

The key elements were:

- **After the Magistrate's committal ruling to stand trial, the pastor's lawyers made a detailed application on 13 October 2003 to the new DPP, Ms Leanne Clare, to have the charges against their client dropped.**

- **Of particular relevance, the lawyers cited the way in which section 129 was applied in the Heiner affair by her DPP predecessor, Mr Royce Miller QC, in his 28 November 1995 letter to Shadow Attorney-General, Mr Denver Beanland MP. Mr Beanland was advancing the legal arguments to prosecute put in public evidence by my senior counsel, Mr Callinan QC, to the Senate Select Committee in August 1995.**

- **DPP Clare dismissed their application on 6 November 2003. Amongst other related facts in the pastor's case, she said that section 129's ambit applied to 'futurity circumstances' by referring to its wording "*was or might be*" required in a judicial proceeding. She then cited *R v Rogerson* being also applicable in the alternative regarding an offence of attempting to pervert the course of justice.**

There are three highly significant points arises out of these exchanges:

a. **DPP Clare applied the law in the same manner as Mr Callinan QC advised was applicable in the Heiner affair where the facts were materially similar and of a far greater public interest reason to prosecute the wrongdoers;**

b. **if DPP Clare were to claim no detailed personal knowledge of the Heiner affair before this 13 October 2003 application from the pastor's lawyers, she could not claim any lack of knowledge after its receipt and her 6 November 2003 response.**

c. **by details in the application itself, and by professionally checking the DPP's Heiner affair file, she reasonably had to know that her predecessor in late 1995 had applied section 129 in a different way in materially similar circumstances; and**

d. **when the DPP successfully prosecuted the pastor on her interpretation of section 129 (which was emphatically endorsed by judges in the District Court and Queensland Court of Appeal), she reasonably had to know, unlike the pastor, that members of the 5 March 1990 Queensland Cabinet and certain senior bureaucrats had and remained scot-free for the same *prima facie* serious crime (wherein no statute of limitation was applicable) by reason of her predecessor's (and the CJC's) erroneous interpretation of section 129 in far more compelling incriminating factual circumstances.**

Both the District Court and the Queensland Court of Appeal were emphatic in their interpretations of section 129, namely that the relevant judicial proceeding **did not** have to be on foot but only be a future '*realistic possibility*' at the time when the relevant evidence was destroyed to satisfy a *prima facie* crime being committed.

- **At the beginning of the pastor's District Court trial, circumstances arose which required (then) His Honour, Judge Nicholas Samios, to declare what section 129 meant. He instructed the jury: (Quote)**

> ***"Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."***

- **Queensland Court of Appeal Justice Geoff Davies AO said at 15: (Quote)**

"…It was not necessary that the appellant knew that the diary notes would be used in a legal proceeding or that a legal proceeding be in existence or even a likely occurrence at the time the offence was committed. It was sufficient that the appellant believed that the diary notes might be required in evidence in a possible future proceeding against B, that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose."

- **Queensland Court of Appeal Justice Glen Williams AO said at 39: (Quote)**

"…The destruction of evidence is, in my view, a serious offence which calls for a deterrent sentence and that would usually necessitate the offender serving an actual period in custody."

- **Queensland Court of Appeal Justice John Jerrard QC said at 48: (Quote)**

"Since the term is used in different ways in chapter 16, and since s129 should not be unduly restricted in its ambit, the judicial proceeding referred to in s129 in which an offender knows that the relevant book, document, or other thing is or might be required in evidence, should be understood to include a judicial proceeding which the offender knows, or believes on reasonable grounds, may occur…."

In respect of Justice Jerrard's ruling, he was referring to another serious offence in Chapter 16 defined in **section 123 regarding "perjury.**" Its wording specifically speaks of committing perjury for the purposes of "***…instituting any judicial proceeding***". That is, one not on foot but in the future.

It follows that the definition of "*judicial proceeding*" under section 119 of the Chapter 16 **was never open to be limited** in its meaning, and was specifically catered for in section 129's words, namely "…***is or may be required".***

When the Queensland authorities were approached to reopen my complaint what happened?

The Queensland Court of Appeal had emphatically endorsed of section 129's meaning and declared the crime to be serious. In both respects, I had said this from day one since 1990. On the other hand, at great public expense and while constantly ridiculing me, the authorities had ruthlessly fought against this truth and resolutely denied any wrongdoing while hiding behind the self-serving shield of their erroneous interpretation and high status.

So, what did they do? They then declared my complaint 'stale' and 'not in the public interest' to pursue.

All this said, readers should know, and be greatly concerned in knowing, that what was rotten then in the State of Queensland in the wake of ***Ensbey*** in 2004, has worsened markedly ever since, and still leaving this affair as unfinished serious business.

In 2020, it now infects all three arms of government massively. Unicameral Queensland has finally arrived at a major state of constitutional/governance crisis of its own making brought about through hubris and unfettered abuse of power as if truth standing in front of State/Crown power and prestige back in 1990 and ever since, still counts for nothing.

But what goes around, comes around.

Despite the best laid plans of mice and men, its resolution is unstoppable.

The truth and the ends of justice caught up in this scandal will have their day of reckoning….of that I am certain.

-oOo-

Whistleblower - Kevin Lindeberg