

**THE PARLIAMENTARY JOINT SELECT COMMITTEE ON ETHICAL CONDUCT
MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON
THURSDAY 11 SEPTEMBER 2008.**

Mr RICK SNELL, SENIOR LECTURER, FACULTY OF LAW, UNIVERSITY OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Wilkinson) - Rick, thank you for coming along. I know you are interested in the area and you attended the meeting at the old Hutchins School about three weeks ago and spoke at that meeting. We appreciate your expertise and the time that you are giving up this morning. In relation to where we go from here, we are quite happy to let you open in the way that you want to open and then we will ask you questions.

Mr SNELL - Thanks Jim. I want this to be in many ways a question of dialogue rather than me saying this is what I think is the best solution. In reality my ideas are still in formation as I think this committee's approach will be. Given the nature of the history of Tasmania, both in the short term and long term, these problems have been a continuing problem in the body politic. Given our size, infrastructure, personnel et cetera we have to come up with innovative and creative solutions and it is going to be very hard to find something that we can just import to put into place and do what we want it to do.

I put forward my ideas in the sense of just tossing up what I think are some major considerations. In terms of dealing with questions of integrity and standards and ethical conduct in public life I think that we have got to start with the approach of taking a kind of systems approach to try to work out what type of integrity system should we have in place that enables us cope with both the challenges that we have had previously and challenges that we are not even aware that we are going to face in the future because the very nature both of corruption and ethical misconduct et cetera changes. People are very innovative in ways of getting around rules or procedures et cetera, so I think that we need to have mechanisms in place that can respond to those types of changes. I am particularly drawn to the idea of an integrity system, which has been around for a while. Chief Justice Spiegelman of the New South Wales Supreme Court, John McMillan, the Commonwealth Ombudsman, A J Brown and the people at Griffith University have been putting forward for a number of years this concept about a national integrity system of governance.

I think it is almost demanding of us as a State to fit into that national system with our own subsystem of an integrity system as well. And that is a combination of laws, procedures, practices and attitudes that attempt to deal with the issues that this committee has been set up to deal with.

I think it needs a network of various institutions and legislation and it needs strong parliamentary oversight. Michael Stokes sent me his talking notes from yesterday and I saw that he took up some points that we were talking about over afternoon tea rather than anything that I have sat down and thought about deliberately. But I would strongly support the concept of setting up an oversight parliamentary committee - a joint one. I think it deserves that type of attention and expertise on it. I think that it should be a

permanent arrangement. It should be one that focuses on accountability, that monitors and oversees a number of different institutions and pieces of legislation because I think they all go together to try to cover the field in terms of integrity and ethical conduct. So something that the Ombudsman is reporting to and a committee that looks at the Ombudsman's role in that term. Public interest disclosure, the Auditor-General, archives records management. Michael would have gone through it yesterday. So a whole series of different things because I think you need someone to get that overview about what -

CHAIR - Can I ask in relation to that please, Rick? You are saying this oversight parliamentary committee. Some might argue, there are a number of committees in place already within Parliament, such as the Privileges Committee which does not meet a lot. I am trying to remember when it last had an investigation. I think it was 15 to 16 years ago or maybe more.

Mr SNELL - In the late 1980s, wasn't it?

CHAIR - Number two, you have your Auditor-General. You have your Public Accounts Committee. Are you saying that there should be another body within Parliament, other than those bodies?

Mr SNELL - Yes, I think there should be and I think its responsibility should be this oversight and monitoring. So a systematic approach because these other bodies are dealing with bits and pieces and I think it would be fair to say that the parliamentary action to the types of issues that you have come together to deal with has usually been ad hoc and reactive and piecemeal, in that type of approach. I think the most damning is the fact that it is reactive rather than proactive. A lot of these problems were, if you like, in the pipeline or apparent prior to the instances that have come up in recent times. So I think a strong parliamentary oversight committee would bring a sense of coherence and it would also bring a sense of ability to monitor new changes and directions. Whether it is an introduction of corruption into the State from new sources, whether it is drug corruption or police corruption or whether it is just lapses in ethical conduct, to say what is driving this and how can we respond because some of the responses will need to be legislative and some of them will need to be training, such as Jeff Malpas and Sir Max Bingham have put forward. For others, it will be police investigations.

Mr BEST - You are probably aware that with the Public Accounts Committee, for example, they have the Auditor-General attending. Would you see something like that? As an oversight committee, it is not just made up of members from both Houses, it may also have a couple of people to talk about how we keep in front of emerging things?

Mr SNELL - Yes. The way that I see the committee operating is that type of dialogue with the Auditor-General, with the Ombudsman and with the DPP or whoever it may be, so that, again, there could be discussion about -

Mr BEST - The Commissioner for the Public Service?

Mr SNELL - Yes. All those types of bodies. So you can have the dialogue taking place and they can raise their concerns and also their performance could be monitored in terms of, are they getting sufficient resources, is there something they have come across which, below the surface, is not serious enough to be flagged as a major issue in a report but is a

warning sign that there is some slippage in standards, either in a particular sector of the public sector or in some other area involved in that process.

Mr BEST - I agree that this is all about scrutiny. I think the DPP said yesterday about not just dealing with issues as they arise at then end but also maybe auditing, in some sense, and doing different things because it is about the perception isn't it, mostly; the trust and the issues in the community, apart from the fact that events have happened, but it is about that perception, isn't it, or the politics that are also played out? Does it resolve or does it become a whipping dog for people to get up and refer that off to the oversight parliament committee?

Mr SNELL - It has that capacity but one of the reasons you make it a joint parliamentary committee is that I think it will take a lot to move a joint parliamentary committee to be interventionist and activist when there is no need for it. It would have to be a serious matter for them to take that course. So it is a serious forum. It is not just one or two people looking at this, it is effectively a group of skilled people with public responsibility for some of these areas, oversighting in that process. I think also that as the DPP said yesterday, one of our problems has been that the standards that have been expected, the conduct that we're concerned about, almost have to be criminal or illegal before being seen as bad or reprehensible. As he indicated yesterday, some of the instances that have led up to this have been clear examples where criminal conduct hasn't been satisfied but it is unacceptable conduct in terms of people holding public office. I think you need to be able to address something short of a full-scale trial or full-scale criminal investigation where the outcome is most likely going to be either no finding of criminality or juries are going to have difficulty coming to a conviction on the evidence that they have before them. It is the behaviour that needs to be addressed in part.

Mr ROCKLIFF - Rick, with respect to the parliamentary oversight committee, how can issues be referred to that committee?

Mr SNELL - I think there ought to be at least an annual meeting with the chief bodies - like the Public Service Commissioner, the Ombudsman, the Auditor-General - to report on what is happening in that process. Later on I will advocate the setting up of some type of commission, and this body has responsibility for that too. So it is a much more ongoing process in that aspect. I think it should sit regularly and be thinking proactively, not just reacting to reports but thinking about what else could be done, what type of training can be put into place, and what other measures. So the concerns that you may have or you seem to think are occurring, can they be addressed in some other way rather than just on the Floor of Parliament in that process?

Mr MARTIN - You are recommending setting up a corruption body?

Mr SNELL - Yes. To start off as a systems approach, I think there needs to be some kind of parliamentary oversight, some type of parliamentary quality control monitoring process, that looks at the system as a whole. I think we need some type of body to fight corruption and misconduct. The issues go beyond what an ICAC or a crime and misconduct commission could necessarily deal with. I think there are wider issues.

Mr BEST - I think what you're saying is we are dealing with this issue now, and you're saying that if the findings were for something to be set up, then that wouldn't be the end

of it. You're saying there should be ongoing monitoring and we have two processes, in a sense, to keep each other on the ball, I suppose.

Mr SNELL - There's a gap in our integrity systems that is quite apparent in terms of fighting corruption and ethical misconduct, and it needs to be filled in some way. I think an anticorruption body, or some particular type of body, will help fill part of that gap, but I don't think it will fill all of it. I was pleased with the Premier's 10-point plan about the resources for the Auditor-General and the Ombudsman. I would like the Premier to specify how much of the resources because I think that's going to be important. If it is only one or two staff members then it is a very piecemeal and very minimalist approach.

The Ombudsman must be able to undertake investigations to extend out in a proactive way. The Auditor-General already does performance management audits, but I think they need to do more performance management audits, again filling in some of those gaps.

Mr BEST - Do you see this committee, then, as determining resources required and that sort of thing?

Mr SNELL - Yes, and the Government has gone along that way in terms of taking the Ombudsman's budget outside the Justice department, which was long overdue. I think you need some type of parliamentary committee to which the Ombudsman can come and plead a case. That expertise develops over time in these issues.

CHAIR - I was mentioning yesterday that to me there needs to be an educative process for members of parliament because what often happens is that people get into Parliament but they haven't got a clue about what really goes on inside. They listen to it on the news, they read about it from time to time, but once they're inside the door they don't really know what goes on and it takes some time for them to understand exactly what is going on.

My view is that there should be some type of continuing professional development, as there is in a number of other professions, to keep people up to date with how the system works. That might assist in people therefore in not stepping across the line, nine times out of ten by mistake as opposed to intentionally. Would this committee be that body or would this committee then say, 'We need a Rick Snell to give us a bit of a hand here, so he should be coming in and giving us a talk on that'?

Mr SNELL - I don't see the committee taking a hands-on role with the training, but rather doing that type of thing in saying, 'This is what we do need. We suddenly have, after the next election campaign, two or three or half a dozen new members, therefore they need some induction into the parliamentary process, not just through their own parties but in what it means to be a parliamentarian'. New ministers need that same type of approach. We need to take it in a much more professional way.

CHAIR - Does that happen in any other States?

Mr SNELL - When the Bracks Government first came in a number of people got together and provided them with training on how to be a new government involved in that process. I thought that was in an innovative and skilful move, but over time it lapses.

When you get re-elected you think, 'We've got the experienced hands with time in Parliament'. One of the big things about ethics is that you need forums to discuss issues. One of the things to ask is, 'Is this proper? Is it proper for me to behave in this way, to use my credit card in that way?'. To raise issues and air them without necessarily hounding or investigating people in the process retrospectively is to be able to raise issues and say, 'This Parliament is not functioning in quite the way we want it to', or 'Ministerial behaviour is not quite what we want', or 'We've heard rumours about such and such'. We need to be addressing some of the standards.

Mr HALL - I tend agree with you. A lot of local government authorities now have moved down the track whereby they give new members two or three days of induction and go through a lot of those issues.

The Chair mentioned the Privileges Committee and I think you said, Jim, that it hadn't sat for about 10 years. I presume that is, as you said, probably a reactive-type situation. Do you think maybe that committee might be expanded into this role?

Mr SNELL - It is a possibility or put it in part of this role as well. I think one of the problems about having the Privileges Committee and the type of people you have on it is that it is a high-level committee and therefore requires a serious complaint for it to be triggered, so it has some major political ramifications for the government of the day to institute the Privileges Committee. You don't get a lot of the issues that ought to be dealt with, as in, say, the Senate. A lot of issues come before the parliamentary Privileges Committee. Sometimes it is no more than a reprimand, other times it is a report saying, 'This is an area that needs to be rectified or fixed up'. I think we are under-utilising that kind of parliamentary Privileges Committee because it has now such a high threshold because it hasn't met for so long. Given what has happened in the last few years in Tasmania, if none of those events went before a privileges committee then what would go before it?

CHAIR - With fewer members in Parliament it is very difficult to get members together as a whole to sit on these committees because there are numerous other committees involved as well. Do you think that goes hand in hand with getting such committees up and running properly? Do you think that would assist with the ethics and behaviour of members of parliament and others?

Mr SNELL - I think so. One of the shortcomings of this proposal is that Parliament would need to be increased in size to allow that type of staffing expertise. Parliament has suffered from lack of backbenchers doing what backbenchers do in many other parliaments, which is making a nuisance of themselves. It's a bit like a football team and saying, 'You've got a place on the front bench but if you don't keep performing we'll use whatever we can, including your poor conduct or misconduct' -

Mr BEST - I would like to declare misrepresentation, Chair.

Laughter.

CHAIR - A number of issues have been raised now and I think the public and members of parliament have become more aware of trying to shake the skeletons from the closet. Have you noticed that has only occurred since the reduction of numbers or has it always

been something going on from time to time in politics throughout Australia, and Tasmania is no exception to that? Do you think it has increased? Can you align that increase with the reduction in numbers?

Mr SNELL - I have not thought about it in terms of reduction in numbers because other parliaments suffer from the same problem regardless of their size. As I alluded to before, Tasmania has a long history of dubious conduct by various members of parliament and governments of particular types, and lapses in ethical conduct and even criminality in some regards. I think it is always going to happen and I think one of the realities you have to take on board is that this is not something you can just fix up, put a bandaid on and it will go away and never come back. People lapse in their standards or fall from grace for all number of reasons involved in that process, and I think one of the things we have to be on alert for is the nature of criminal activity and those who corrupt, looking for weak points. If you look around the Federation at the moment, Tasmania is one of the weakest links in terms of combating or responding to major corruption.

Mr McKIM - And it is on that basis, Rick, that you would support the establishment of some kind of independent investigative authority that does not currently exist within our structures in Tasmania?

Mr SNELL - Yes, and my views keep on dodging around as to which one, because I think the problem we have is that if you look at the CMC in Queensland, that has 320-odd personnel, and the ICAC has 121, so even if you do the proportional sizes you are coming down to 30 or 40 staff in Tasmania to try to replicate those types of provisions. I just do not think it is feasible to do that, so we have to be creative and be thinking about what it is that we are attempting to do, and maybe do some innovative things such as piggy-backing on existing institutions like the Ombudsman or the Law Reform Institute or TILES at the University of Tasmania - the Tasmanian Institute of Law Enforcement Studies - and other things, and be a little more creative in ways which you do not need to be in other jurisdictions.

Mr HALL - I would also point out that neither Victoria nor South Australia have any formalised ICAC at this stage. Have you looked at what happens there? You were saying that Tasmania was the worst in terms of responding to these issues, but what about Victoria and South Australia?

Mr SNELL - Well, Victoria has the Ombudsman which had the Police Integrity Branch with it, and now you have the Office of Police Integrity separate, so they are dealing with part of the problem but they have also had that major issue as well. When Morris Iemma was still Premier of New South Wales last year -

Ms THORP - Last week.

Laughter.

Mr SNELL - Yes - they hosted the first Australian public sector conference on anti-corruption and he came out and said that any premier who did not have an anti-corruption body of some type was a fool, in his experience, and as much of a heartache that the ICAC gave him as Premier, it was still an indispensable part of the accountability framework of New South Wales involved in that process and when you do not have it,

such as in South Australia, Victoria and Tasmania, you just do not really have the mechanism to respond adequately to these types of problems. Corruption in the Victorian police force is still a major issue.

Ms THORP - It seems to me that there are two main sections to this: when something serious has occurred and it requires a really in-depth investigation, perhaps resulting in criminal charges; but there is also the other side of it which is that a committee of parliament, such as you suggest, may well see some sort of pattern or repeated behaviours that need a systemic change, so that not only are the people who could be accused of doing something wrong are protected but it does not happen into the future.

Mr SNELL - Yes.

Ms THORP - That could be as simple as fundraising issues or a variety of things, couldn't it?

Mr SNELL - Yes.

CHAIR - Very topical.

Laughter.

Ms THORP - If there are clear guidelines and systems in place -

Mr BEST - Every time someone raises something?

Ms THORP - Well, it is all very well, but someone can get their name in the paper at the moment and then everyone turns around and says, 'But they have done nothing wrong', but in a sense the damage is already done. If there are clear things in place that everybody understands it also gives people in public office a little bit of protection from false allegations and also the salacious nature of a lot of newspaper readers.

Mr SNELL - Yes, and it gives a chance to actually be proactive in thinking ahead and saying, 'This is an issue; now what do we learn from this issue and what should be put into place in that process?' Being a joint committee it has more kind of momentum and reputational status than just coming from the opposition parties involved in a process, so it gives us another forum outside the media to conduct a number of these discussions and investigations and to get experts in and do it in ways which are innovative and responsive to the problems that we have.

Ms THORP - Do you think it is fair to say that there a lot of behaviours that occur over time that are seen as acceptable by members of parliament or public servants or whoever, that this is a completely reasonable way to behave, and then there is an explosion - something comes up - and all of a sudden a behaviour that has been considered quite normal for some time is exposed as being less than satisfactory, and all that has gone before it then becomes questionable. Is that reasonable?

Mr SNELL - I think so. I think part of the problem, too, is that it is hard to keep high standards. It is a constant problem for people to keep high ethical standards to consider what is taking place - their use of government cars or equipment, or if when they take a conference trip they put a holiday on the end of it - and then other people start doing it

and then people say, 'It must be acceptable', or they just do not know that there were any rules in place involved in that process.

So I think we always have to be constantly reminded and again, both this parliamentary committee and an independent commission of some type has that capacity to issue guidelines or saying, 'We've got a report from the Auditor-General about credit card abuse, how should we get the Public Service to respond to this? Should we ask the Auditor-General to undertake another performance review in six months time?' Even though he may not think it is necessary we, as a parliamentary committee, would like to have some more information about what is taking place'.

Mr ROCKLIFF - What retrospective powers should this investigative body have and what limitations in terms of time would you set?

Mr SNELL - That is something which I have not come to a definitive conclusion about. I think there is a problem about retrospectivity, which is the digging up of old cases and old issues - going back last year, five years, 10 years or 15 years - and they keep being dug up again and at the end of the day there will be no clear resolution involved in the process. There have been inquiries or investigations that have taken place to a degree.

My preference at the moment would be to say it is prospective; that we start afresh. We should see this as a new start and go ahead, because in many countries, and Ireland is a good example, in the late 1990s and the early part of this decade, they had a series of tribunals looking into massive misconduct by government officials and prime ministers and all the rest, and all that amounted to, effectively, was a major money-earner for the lawyers. They earned squillions from representing people who were named in the inquiry and at the end of that process, very few people were ever charged, because you have the problem of time. Your witnesses have disappeared or are starting to disappear from age or death; the paperwork is not as much as it should have been at that particular time; memories are not what they used to be, and the more you go back the more difficult it becomes to try to get to the truth of what you are trying to achieve in that particular process.

It is a problem that new ombudsmen always face with people coming to them saying, 'I want to complain about the previous ombudsman and the previous ombudsman and the previous ombudsman because they didn't investigate my investigation well enough and I want you to look at it afresh'. I think sometimes it pays to close the door and continue from there.

Mr MARTIN - I had some other questions but you have -

Mr SNELL - Provoked you?

Mr MARTIN - Provoked me. I want to explore what you have said. Regarding the instance of the sex offender case from 30 years ago, are you saying that that should not be investigated and the person held accountable, if you follow through the logic of what you are saying?

Ms THORP - That is criminal.

Mr MARTIN - Exactly.

Ms THORP - Wouldn't the police do that?

Mr MARTIN - Some of these could be criminal too. I suppose the point I am making is that if a politician or a public servant has done something wrong in carrying out their duties in the office they hold, whether it is five years ago, 10 years ago, yesterday or five years time, should they not be held accountable?

Mr SNELL - They should, but it is a question of whether you spend the resources hoping to go back possibly to find something like that and how you differentiate between allegations and getting a sure-fire hit in the investigation. With criminal investigations, you have the police for that and they can carry out those types of criminal investigations. My primary concern was more about the ethical misconduct rather than the criminal matters. Again, I think your question is a good one. And possibly you have to make the exception to say criminal matters are something that you can go back and investigate.

Mr MARTIN - I suppose it comes down to what value and therefore what resources you are prepared to attribute to good governance and ethics.

Mr SNELL - Yes, and what value you will get from digging that. It may very well be, given our history or whatever, that there is some enormous value to be gained from that process or it may just be rehashing over old issues when it would be better to spend the limited resources we have to look towards the future.

Mr MARTIN - There was a question I was going to ask before and I led you down another way. You made a comment earlier on that Michael touched on yesterday as well. The comment that was made a few minutes ago leads me back to asking about this. I am getting a little bit sick and tired of hearing politicians and other people saying in defence, 'I have done nothing wrong' when what they are actually saying is that they have done nothing legally wrong. To me that is almost irrelevant; it is a matter of whether they have done anything ethically wrong, morally wrong and so on. You touched on that before. Do you want to expand on that?

Mr SNELL - Yes. I agree both with Michael and with the DPP's comments yesterday. I think that there is continuum of conduct, some of which is criminal and illegal, but there is a other conduct that falls far short of that that is still unacceptable conduct. Whether it be shredding documents in breach of the Archives Act or whether it be telling a public servant to delete e-mails or to not record activity that takes place, I do not think that is acceptable conduct by a public official. So I think there are standards that probably you are never going to be able hold as criminality involved in process but it is behaviour that is unacceptable in that process.

Ms THORP - Do make a clear distinction between public and private behaviour?

Mr SNELL - In terms of what?

Ms THORP - For example, we have a story in the newspaper today about someone having a wild party in a parliamentary office in New South Wales, I think. So is the problem there that it was in the parliamentary office or is it -

Mr SNELL - Or that it was the Police minister or -

Ms THORP - Yes, the distinction there about public/private. When is someone's private life sacrosanct or not?

Mr SNELL - That is a difficult question. I think that it helps that it took place in Parliament because then it is misuse of resource and unacceptable conduct in a public place where people are supposed to be on official duties or close to it. In terms of conduct outside in your personal life, I think that becomes a little bit more problematical. But sometimes it crosses the line because it is involving public resources or it is involving public officials or personnel in activities or whatever. I think that there you have to stop.

I think there is a kind of different standard that we ought to expect of parliamentarians. We may not recompense you enough for holding you to those standards but I think that it is important in our society for parliamentarians to earn the respect and keep that respect, as difficult as it may be. If it involves staying off the grog and not getting carried away at what you think is a private function among friends et cetera then I think that comes with the territory.

But I think you need venues like this or committees like this often to discuss that. I think this is a good example. We should have mechanisms in place where we hear what happens in other jurisdictions and say if it happened here, what should our response be? Rather than worry about the response at the actual time and the personalities involved maybe we can sit down and say well we all agree that this is unacceptable conduct so if it happens here in the future and someone does this, they know that they breached what is considered to be the acceptable line of conduct, rather than the Government being forced to defend a member or the Opposition being forced to defend a member, regardless of the merit or otherwise of their activities. I think that would take some of the immediate heat out. I think one of the reasons for both the anticorruption body and the parliamentary committee is to be able to look at the lessons from other jurisdictions and say, 'Maybe we should be holding some type of investigation into horse racing', say, with recent allegations in Victoria, or if there is an outbreak of corruption of a particular type in a police force somewhere, 'Is our police force immune from that? Let's have a quick check or audit involved in the process'. I think there is nothing wrong and, in fact, there is a lot to be gained from an agency or body surviving an integrity audit to say that they are clear and I think there is a lot to be added to it.

Ms THORP - Do you see then the body, whether it be the parliamentary committee or whatever, as some place where a public servant, senior public servant or a member of parliament could go and say, 'This is a decision I need to make about a particular thing. I'm not 100 per cent comfortable about the ethics of this, what does the committee think?', rather than just taking your own call on it and then hoping you have made the right call?

Mr SNELL - Yes, I think that is a possibility, either for the commission or the committee, and that is one of the reasons I am tending toward a crime and misconduct commission, a little bit like the Queensland one but not as big and not as extensive. It covers a field because it has a research arm to it. So it puts out lots of publications about acceptable conduct. So it thinks ahead. I was impressed when the first Privacy Commission in

Victoria was set up under Paul Chadwick. He used to take a lot of the privacy issues before anything blew up in the press and have discussions about these potential things on the horizon either because they happened somewhere else or commonsense tells you that it could possibly happen in this jurisdiction.

Ms THORP - So a preventative role?

Mr SNELL - Yes.

CHAIR - Rick, I do not want to tie you exactly to time, but if we can keep to it as best we can. Therefore, it would be fair to say, would it not, that really what you are talking about at the first level or a level is a parliamentary oversight committee because really, the only committee that is now in place that is not really reactive is the Auditor-General and the work that the Auditor-General does. Other than that, the other committees, you believe, are reactive and, therefore, if we had a parliamentary oversight committee which would include not only members of parliament but also the AG, the DPP, the public service head and others who we thought appropriate, that is the first body that fills that gap between Parliament and, let us say, an ICAC or whatever you want to call it? Is that right?

Mr SNELL - No, they would not be part of the committee. They would not report to the committee. I think it pays to keep it as a parliamentary body because there is an important aspect here about the way that Parliament should take the responsibility for this as well.

CHAIR - One of the problems can well be then, if that is the case because, as we talked about, with the numbers and the busy schedules available, that committee may not be as active as it should be. I know a lot depends upon a number of different issues, but it may not be as active. One argument could be, if you had a meeting and had the meeting with people like this, once a quarter, then at least it keeps the committee honest and at least, because they will know that other people are coming in from outside Parliament, it ensures that the members of parliament are going to be there. What do you think of that proposal?

Mr SNELL - I think that is fine and that does not require them to be members of the committee. So if you schedule regular contact meetings and report back about activities and what is taking place, it would be a useful process, and it does not necessarily have to be for a long period of time as well.

Ms THORP - If, for example, a member of parliament was accused of something that was not right or people were a bit dubious about it, would it be possible then for the Chair, after a meeting of the committee, to say, 'In view of the committee, this is appropriate' or is not inappropriate, therefore giving the person accused at least someone coming out on their side and saying, 'Hang on a minute, that's a bit rough, giving that person a hard time because it's not unethical behaviour.'?

Mr SNELL - I think that there has been, without going into particulars, a couple of instances in our recent past where people do not seem to have been given good advice by those around them who surely must have known what was going on and should have said something and should have asked them to reconsider their actions. I think there needs to

be more of that involved as well. So it is being part of a team or parliamentary process, as adversarial as it may be, from time to time. I think people on each side of their own side of politics should be giving advice to each other about their standards and conduct.

Mr McKIM - Just for clarity, you're not suggesting that that committee would constitute an acceptable entire response to some of the issues that you have raised?

Mr SNELL - No.

Mr McKIM - You're suggesting that very much in conjunction with the establishment of an independent organisation, are you not?

Mr SNELL - Yes. It is starting from setting the overview and then coming down to the mechanisms that we have in place. As Michael indicated yesterday, I think we need to have a new generation of FOI and whistle blowing laws and, thankfully, the Premier has put that in train. Yesterday the *Government Gazette* advertised for the appointment of a project officer in Justice with carriage of those affairs. Applications close next Friday, so the Government is moving fairly quickly on that. That is promising and it will be a step forward. If those resources come out for the Ombudsman and the Auditor-General, that will be useful in covering part of the territory. I think it is a question of how much resource. I would like the Premier to indicate this a bit more specifically and not just leave it to Treasury. Most treasury departments are not really optimistic about finding resources in great abundance for bodies such as Ombudsman or Auditor-General.

CHAIR - We have this oversight committee and there has to be something over and above that, so how would you make that up? You're starting afresh, I come to Rick Snell and say we need, we believe, an ethics commission or a standards commission: what would you do?

Mr SNELL - I would take a hybrid of ICAC and the Crime and Misconduct Commission from Queensland. I would probably make the Ombudsman, the Auditor-General and the Director of the Tasmanian Law Reform Institute ex-officio members of this commission. I think partly it helps with liaison in activities being undertaken. I think it would help with transfer or aligning of staff between the organisations. Again, because of the question of size et cetera, it is always going to be a critical issue here. I would have one to three commissioners, maybe one full-time and a couple part-time. I think having those ex-officio members such as the Ombudsman and the Auditor-General would overcome it. I think the Sir Max Bingham and Jeff Malpas model is too small. I think they created it at a time when the Government gave every indication that they would be lucky if they even got it considered. I think the ground has changed enormously since then and I think we can step up and go for something far more creative and effective than we could have had a few months ago.

It would effectively have an ability to carry out investigations. It would have - as Jeff and Sir Max argue - ethical training guidelines and proper conduct but would also have the ability to carry out investigations and have the full powers needed to carry out those investigations. It should not be able to prosecute and discipline. It should only be able to tie together the case and then hand it over. These other jurisdictions are so large. With the CMC you have two major monitors, including a parliamentary committee. You have a public interest monitor and another body that is effectively able, with phone taps or

surveillance, to check that they have been undertaken legitimately and are fairly involved in the process. That is going to be an extra person involved in this process in Tasmania and that's going to be difficult to justify. I think you need to have some guardians of this particular body and the parliamentary committee serves that purpose. Having the commission, including the Ombudsman and the Auditor-General, helps with that but I think you need some operational protection as well because these are very extensive powers that you will need to give to these bodies. It's no use not giving them extensive powers because the very nature of illegal, corrupt activity is such that people will use whatever means they can to avoid it.

One of the things you want is deterrence. You want people to be thinking, 'My phone could be tapped. I could be under surveillance', but you want to know that the body is not becoming a rogue body. As a former tax investigator myself one of the problems about investigators is that you start to believe everybody is guilty, that it is only a question of finding the evidence and if you do not find it today then tomorrow you will find it or the next day or the next little piece involved in that process.

Mr HALL - You are talking probably about two or three ex-officio members plus three permanent commissioners?

Mr SNELL - I would have one permanent commissioner and two part-time.

Mr HALL - Right, plus support staff. One of the issues that has been raised is the recurrent cost. In Queensland and New South Wales they cost mega-bucks to run but the model you are proposing would be financially reasonable; they would only be called upon when an issue arose, or you would have it in place as a permanent staff set-up?

Mr SNELL - It would be a permanently staffed set-up. That is one of the interesting reasons for having both the ethical training guidance wing and the investigation wing. There will be times when you will not need your investigation wing and you can move some of your staff across to the more proactive training aspects and then there will be other times when you will need to drag your staff across. I do not think, as a State, we can afford to have a Rolls Royce or Ferrari-type of anticorruption commission just waiting in the wings just in case something will come up. But we have to have something sufficient to deal with the most likely problems that we will face, so it is a question of looking at what, say, is taking place in other States and asking what would you have needed to have coped with it. We have been remarkably successful in an ad hoc reactive way. We have been fairly successful in containing and catching people -

Mr McKIM - But how do we know, Rick?

Mr SNELL - Well, you do not but you have to be a little bit optimistic, otherwise I would be looking around at people suspiciously all the time. I have got out of the Tax Office so I do not now look at people suspiciously all the time. We have to be flexible in our approach and we have to be creative. We have to do it a little bit differently and that is why I say I do not have not any firm views on this because the models that are in other jurisdictions I do not think will necessarily work for Tasmania - because of the problems we have here.

Mr BEST - Just in relation to deterrence am I getting this right where you are talking about whether the phone is being tapped? So if you are a public servant or a politician are you suggesting that there could be some random auditing for some reason so that all of a sudden they might say, 'Let's just listen in on Nick McKim's office for a week or so and see what is going on there'?

Mr SNELL - No. In all other jurisdictions there has to be good cause. To be able to undertake the surveillance you have to go before a magistrate or a judge and be able to say, 'We've got sufficient prima facie evidence to suggest that there's a problem here', and then go from there. I think the problem you have with that approach in just going to a magistrate or judge is that you would need to audit the activity over a period of time. Is it excessive surveillance -

Mr BEST - It is a fine line, is it not, between a balance in having a democracy but also having an accountable democracy? That is why we have to be careful that we are keeping things ethical but also not, say, listening in on the media, for example, because someone thinks that maybe something could be happening.

Mr SNELL - Yes. You have to be responsive to the times and to the actual reality of what we have. I take Nick's point: how do we know? But until we know or until we get some suspicion then I do not think we should go overboard with a kind of inquisition.

Mr BEST - Do you know of any guidelines then that can be drawn upon?

Mr SNELL - Yes. The CMC, CCC and ICAC all have guidelines and legislation that deals with the granting of surveillance and everything else involved in the process.

Mr McKIM - I want to follow through on the staffing issue, Rick, and then ask you a question about another matter. You've mentioned the CMC and ICAC, and you have, I guess, proposed in a general way that any agency that may be set up might reflect part of most organisations. But in relation to staff, isn't it true that any kind of an ethics training function requires a completely different skill set to an investigative role that an agency might play, so wouldn't you need to at least have some people either full-time or available for the agency to conduct the investigative side of the affairs?

Mr SNELL - Yes, I think you certainly need that availability. I think there comes a time when you are operating in a certain way and then an issue comes up and you need to be able to pull in well-trained investigative staff from somewhere. I think this body needs to have a capacity to recruit or second from other bodies interstate or from the Ombudsman, the Auditor-General, the police force, or whomever else is involved in that process. It's a question of trying to keep it primed and ready to cope with anything, but as to the actual cost of keeping those people there almost doing nothing until something occurs, we just don't have that luxury.

The CMC has 316 staff, so it's a massive organisation. Here you'll be plucking a figure out of the air, but the Ombudsman's staff is 17, and I can't see this body being bigger than the Ombudsman's staff, so it is going to be something less than that. On a per capita basis, if you took the CMC - or the ICAC is a better one - you're looking at maybe six to 10 staff, and I think that is where maybe we need to think flexibly and that's where the Jeff Malpas model comes in. You've got the university with the ethics training and the

law school, where I was involved in that process. A lot of that could be outsourced or made available in that process.

You also may not need as many staff because a lot of this work has already been undertaken in Western Australia and Queensland and New South Wales in guidelines for good conduct and so on, so a lot of times it will be just borrowing, cutting and pasting and adapting for Tasmanian circumstances so you don't have to start from scratch. These bodies had to start from scratch and invent procedures and guidelines. We are now the beneficiary of coming in late in the piece and being able to draw upon their expertise.

Mr McKIM - Mr Chairman, I might just raise one other slightly separate matter. The committee is charged with a review of mechanisms currently available to support ethical and open government in Tasmania. I wondered, Rick, whether you would be able to give the committee your views on whether or not Tasmania might need political donations disclosure law reform and whether you think it's reasonable for people going to the ballot box to know who has donated to which candidate or party. The second part of that question is whether you think it would be reasonable to require organisations or people who buy advertising space during election campaigns to actually declare who they are and where their money's coming from.

Mr SNELL - In response to that second question, yes; and in response to the first question, I can't understand why in today's age you can't have automatic and instantaneous declarations of disclosure. As soon as the money is donated, I can't see why it can't be put up on the web. There are countries around the world where there is immediate disclosure, and the people can therefore check, so if it's in the last two days of an election campaign, it doesn't matter, it comes up on the web, rather than what we have at the moment Federally where several months or even a year down the track they are still piecing it together. I think people have an entitlement to know who is funding and supporting particular candidates involved in that process. Given the technology, I can't see why you couldn't have it so that even if it's a dinner function or whatever, you can just put the names down and have it there. At least it's open and transparent and disclosed.

Mr ROCKLIFF - My question, Rick, was also around the powers of investigation of an investigative body. Do you think it should be largely complaints-based, or if there is a sense of a bit of smoke here and there, through the parliamentary process or by the media, should that automatically instigate an investigation within that body?

Mr SNELL - I think it should have the ability to carry out its own investigations and not have to rely on just receiving a complaint from someone to make a judgment call. That's why in terms of appointment, I probably agree with Michael Stokes' position that you make them appointed for a particular period of time, whether it be five years or seven years, and a little bit like the Ombudsman in that they can only be dismissed by both Houses of parliament, so that they are truly independent and focused on that particular task. But if you are going to make it that independent and you are going to give them that security of tenure and the ability to investigate on their own notion, I think that you need to scrutinise them much more than is involved in that process, because there is always the possibility of them going off the rails.

Mr BEST - Especially if they can go off on their own. That does bother me, as I was saying before about having the balance - say, people phone-tapping trying to catch who the *Mercury* is talking to or something like that. Who knows, how does someone know if they can determine their own investigations, and what it the right of the community to know?

Mr SNELL - That is why I would have the Ombudsman and the Auditor-General as ex officio members and I would have this body reporting to a parliamentary committee, because sometimes people will be a bit more zealous when they are involved in the process. You might think you have uncovered the largest corruption scandal ever in the history of Tasmania; it just does not occur that way but you have pursued it too much, and I think there has been a couple of examples like that in Western Australia where they have been a little bit too zealous in their approach.

CHAIR - Any other questions for Rick? Rick, did you want to sum up?

Mr SNELL - I think we have covered most points. My major point is that there needs to be a systematic approach. An anticorruption commission by itself is not the be-all and end-all answer to it. There needs to be attention paid to these other mechanisms, whether it is DPP, freedom of information or whistleblowing laws et cetera. I think that has been partly addressed by the Government and if they go the way they intend to I think that will be of great assistance.

CHAIR - When you look at New South Wales and say it is not in itself the silver bullet that everybody expects, we saw what happened there just recently in relation to the behaviour of some members on that ICAC.

Mr SNELL - Yes. The thing about ICAC is that their definition of corruption is a very wide one. Maybe it is the nature of New South Wales society but I do not think that it is quite the same in Tasmania. They have a large problem with local governments in NSW because of the amount of money that is flowing through the system. Our problem in Tasmania is not the amount of money that is flowing through local governments et cetera, it is almost the converse. It is the difficulty they have with lack of resources and the shortcuts they take as a consequence.

CHAIR - Should this committee look at local government as well and have that within their bailiwick?

Mr SNELL - I think that it is important. The experience in other jurisdictions is that one of the major problem areas is local government if you are worried about training and induction of members and all the rest local government is even more so, because in most cases you are relying on well-meaning amateurs to carry out often quite responsible positions and in really difficult times, especially on small councils with resources et cetera. The former chair of the CCC in Western Australia said that the problem with Western Australian public servants and local government officials was that they would not recognise a conflict of interest if it kicked them in the backside. I think it is much the same here and you find all the time in a lot of organisations that these kinds of fairly esoteric and high-level items about conflicts of interest are not communicated all that well and we need to be innovative about how we get it across, rather than just police it. We need to be able to assist people to recognise conflicts of interest for themselves; not

just hunting out people for committing foolish acts but assisting them to avoid them in the future.

CHAIR - Thank you for your time and for your consideration of the matters as well. If necessary would you be available to be called back if anything further is required?

Mr SNELL - Yes, that would be fine.

THE WITNESS WITHDREW.