

**Address to
Senate Inquiry Into
Decisions Made By The Court of Disputed Returns
Adelaide, SA
19 February, 2018
Bob Day AO**

INTRODUCTION:

I only learned of this Inquiry's existence on 29 December last year. I quickly put together a submission and lodged it 2 days later – on 31 December.

What I'd like to do this morning is expand on that submission by doing 3 things:

1. Make an Opening Statement
2. Give a brief summary of the circumstances leading to my disqualification and
3. Address some of the implications of that disqualification

OPENING STATEMENT:

First and foremost, can I say this is all a bit perplexing. A Senate Inquiry is established with former Senator Rod Culleton and myself named as of particular interest. The Inquiry was established on 6 December with submissions to be received by no later than 22 December. Neither Rod Culleton nor I were informed of any of this.

Has there ever been a Senate Inquiry into a former Senator where that Senator has not been made aware of its existence? I doubt it. It would be like the police inquiring into an incident and the person involved in the incident being neither informed of the inquiry nor interviewed about it.

After lodging my submission I was informed that it would not be accepted as a formal submission thus preventing its publication by the committee.

I would like to now table my submission, or 'correspondence' as the committee prefers to call it.

SUMMARY OF EVENTS LEADING TO MY DISQUALIFICATION:

A full description of the events leading to my disqualification is in my submission which I presume Members have read, however I would like to highlight a number of key points:

1. At no time between September 2013 when I was elected and December 2015 when the lease was signed on the building in question was I ever informed of any potential constitutional problems with the lease.
2. Throughout those 2 years and 3 months I had countless discussions with numerous departmental officers however again, at no stage did anyone mention Section 44.
3. On 7 November 2016, in answer to a question in the senate, the Special Minister of State Senator Cormann said, "*Former Senator Day subsequently provided information to the department about vendor-financing arrangements underpinning his sale of the 77 Fullarton Road property. Related financial arrangements caused concerns about whether then Senator Day in fact remained connected to the Fullarton Road property. **Subsequent to that, and being aware of all of the information, the department advised me (Sen Cormann) that it was open to me,***

and that it would not be a conflict to make rental payments under the lease from 1 March forward. The issue, to be frank, was not a concern to the department at that point in time” and “at no point did I receive any advice from the Department of Finance that the lease signed on 1 December 2015 in itself and in the absence of rental payments could cause a potential breach of section 44 of the Constitution”.

4. No payments were ever made either to me or anyone associated with the property.
5. Notwithstanding the advice from the Department, the then Special Minister of State Senator Ryan obtained a private legal opinion.
6. Minister Ryan provided that private legal opinion to me and then Senate President Stephen Parry who contacted me on 28 October with the grim news that he was going to advise the senate on the next sitting day of its existence and then refer me to the High Court. Faced with that I felt I had no choice but to resign immediately.
7. My family business was experiencing difficulties at that time and whilst I had been contemplating resigning, I had started to work my way through those problems. The Special Minister of State’s advice and Senate President’s actions however put paid to that idea.
8. Neither the Department nor the Minister believed that the arrangement with my senate office breached the constitution. In fact the High Court confirmed their belief saying the previous ruling (the Webster case) could not be permitted to stand and changed the constitution’s meaning of ‘indirect pecuniary interest’.
9. Notwithstanding the Department’s actions over the previous three years, and the authority of three Special Ministers of State to proceed with the lease as arranged, the government argued in the High Court that I should be disqualified.

IMPLICATIONS:

The implications of my disqualification fall into 4 categories:

1. The implications for the electors of South Australia
2. The implications for the parliament
3. The implications for future members and senators and
4. The implications for me personally

Implications for voters:

At the 2013 and 2016 federal elections, enough electors gave either me or my party Family First enough first preference and subsequent preference votes to enable me to be elected to represent them in the Australian senate. The consequences of my disqualification has not reflected the will of the voters.

Implications for the parliament:

The implications for future members and senators is disturbing to say the least. I was a cross-bencher. Is it only cross-benchers who are to be referred to the High Court without their agreement?

I note there’s a Mexican stand-off in the parliament at the moment over the Member for Longman Susan Lamb who is a dual citizen. Susan Lamb and her party both claim she took reasonable steps to renounce her British citizenship and therefore shouldn’t be referred to the High Court. The argument in Susan Lamb’s case is ‘did she or did she not take reasonable steps’?

When my case reached the High Court, two hearings were held – the first before a single judge – Justice Michelle Gordon, to establish the facts, and the second before the full bench to decide my fate.

Justice Gordon found that I had properly and legitimately disposed of the property in question – including paying the full stamp duty on the transfer, that I was not a party to the lease, and that in her opinion I had done all I thought was required to comply with the constitution. Yet I was referred to the High Court and Susan Lamb hasn't. There is obviously one rule for members of a major party and another rule for those who are not.

Had I known then what I know now, my Party and I would have opposed a referral to the High Court. And what would President Parry have done then? Put a motion forward for a hostile referral to the High Court based on a vague indirect pecuniary interest asking the Court to overturn the Webster case? I don't think so. As mentioned in my submission, Professor Graeme Orr of the University of Queensland said that for the High Court to change the law and then backdate it to apply to someone who had relied on a previous ruling (Webster) seems somewhat unfair.

The implication in my case is, a Minister could get a legal opinion about a cross-bencher to simply put pressure on him or her.

As most of you would know, I voted with the government 90% of the time – more than any other crossbencher. So why did the government argue I should be disqualified? Would my disqualification give the government some political advantage? Or was it simply to prove the adage “no good turn goes unpunished”?

Given the Department's advice that there was no conflict, the government could have just as easily argued I should not be disqualified. It's hard not to be suspicious.

Implications for future members and senators:

As we all know, the Department of Finance provides members and senators with a document this thick about every minor allowance and entitlement you can think of, but not apparently anything about breaching the constitution. Does the Department of Finance owe a newly elected senator any duty of care in this area?

It was found by the High Court that I benefited from an 'indirect pecuniary interest' in a contract with the Commonwealth notwithstanding the fact that no payments were ever made.

Implications for me personally.

Since the Senate President informed the senate in November 2016 of the legal advice in his possession, I have been accused by senators, members of parliament, journalists and members of the public of all manner of things including fraud, corruption, misconduct in public office, cronyism, hypocrisy, self-entitlement, a cover up, ripping off taxpayers, trading my vote for office accommodation, and having my hand in the till.

The implications are obvious. A person's life and reputation can be ruined.

I ask that this evidence, together with my submission, be made public.