



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

Federation Chamber

GRIEVANCE DEBATE

Western Australia: Property Rights

SPEECH

Monday, 1 June 2015

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

<p>Date Monday, 1 June 2015 Page 180 Questioner Speaker Randall, Don, MP</p>	<p>Source House Proof Yes Responder Question No.</p>
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Mr RANDALL (Canning) (20:11): I wish to again bring to the attention of the House the unjust and unfair situation of a constituent in Canning, Mr Peter Swift of Waroona, who was accused by the Department of Environment and Conservation, DEC, in 2010 of clearing environmentally sensitive areas of land on his property, to be labelled as contentious areas, CA, between November 2007 and December 2009. His property is located on Bunnings Log Road, Frankland River, in the shire of Cranbrook.

On a number of occasions I have made statements in relation to Mr Swift's innocence in this matter, so I will not re-debate the issue today. What is known from my previous statements is that I have made long and sustained approaches about Mr Swift's innocence to the Premier of Western Australia and the then environment minister of Western Australia, Bill Marmion. I have never asked Mr Marmion to have this case aborted. My entreaties to him were that, as the minister responsible, he ask his department to be certain of the evidence that they had against Mr Swift before they began the long, tortuous, demoralising and expensive prosecution of him. In other words, I had outlined in detail that Mr Swift had much support from neighbours and other locals to say that he had not cleared this land as alleged by DEC and his prosecutors. In the most egregious Pontius Pilate manner, the then minister, Bill Marmion, continually washed his hands of this matter and allowed his department to run a vexatious prosecution of this humble mechanic from Waroona.

I have said in my previous statement that two rogue officers from DEC had made it their intention to prove the case against Mr Swift, well knowing that their evidence was unreliable and flimsy at best. In other words, they were hell bent on getting a prosecution no matter what the repercussions were for this innocent man. These two rogue officers were Gillian Stryke, an employee of DEC for seven years, and Mr Craig Jacques, who has been an employee of DEC since 2006 and, before that, had been with the Waters and Rivers Commission since 1996. Ms Stryke claimed that her observations were that vegetative native materials had been put in windrows for a while, but she could not say exactly how long. In the transcript of the magistrate's summary, Ms Stryke said that she could not give an accurate estimation of how long the material had been in the windrows and piles. Magistrate Hamilton, the presiding magistrate, observed Ms Stryke in cross-examination to be extremely defensive, and at one point even counsel made a comment on this.

The prosecution's case is based on the alleged fact that Peter Swift cleared the CA of bushland between the dates 2007 and 2009. Mr Swift has always strenuously denied this. The most serious allegations brought against Mr Swift were by the highly vindictive Craig Jacques, who said that he had visited the property with Ms Stryke in 2010. In evidence during the trial, he denied having formed the view that the accused had performed the clearing prior to his inspection but, somewhat confusingly, he said that when he interviewed the accused he knew he had done the clearing. The prosecution case largely relies on aerial photographs, satellite images and hand-held photography. Interestingly, during Mr Jacques's testimony he agreed to the dangers in drawing conclusions from these three forms of images. To support the prosecution's case, Jacques had enlisted the support of Mr Richard Van Dongen. He said he did work for Jacques as an aerial cartographer using remote images. He denied enhancing any images, and the magistrate believed that Van Dongen gave balanced evidence at trial.

The court case also heard from Mr Noel Phillips, the previous owner of the property for 35 years. He denied clearing any vegetation within the CA. However, confusingly, he then gave evidence that he had permission to clear anything that was 30 metres from a waterline. He believed that he had a clearing permit until such time as he sold the property. He confirmed that he had two bulldozers, a D7 and a D8. He also said that in 1993 a pine plantation was established on his property. He stated that CALM had requested him to install a drain and a road as a result of this plantation. The magistrate observed that Mr Phillips had been a somewhat reluctant witness and impatient by the process, particularly of cross-examination. Further, the magistrate observed, 'I have some difficulties in relation to credibility when it comes to Mr Phillips's evidence.'

The defence relied on Mr Swift's next-door neighbour, who lived there for 30 years, Mr Glynn Bevan. Mr Bevan said that, as a neighbour, he was in constant observation of the property. Further to that, he said that he sometimes

visited the property up to three times a day, depending on the season and the farming activity. He testified that the drain in question had been commissioned by a government department in the early 1990s to ensure run-off from the area. In court, he gave evidence that he had never seen Mr Swift carry out any clearing in the CA. However, he had seen clearing in the CA by Mr Phillips in the early 1990s. In fact, he stated that he had visited Mr Phillips on the property, who was working two bulldozers at one time within the CA. The magistrate observed, 'I have no doubt he was a witness of truth to the best of his recollection.' The magistrate noted Mr Bevan's evidence in relation to Mr Noel Phillips's clearing patterns when Bevan stated that 'Phillips cleared everything until he found the best bits.'

Mr Christopher John, who has an honours degree in agricultural science, is a highly credentialed environmental consultant. He gave evidence that the vegetation in question alleged to have been part of a clearing operation was relatively old. He estimated the windrows to be up to five to 10 years old. If we rely on the dates that the prosecution alleges the clearing to have occurred, we can draw the conclusion that Mr Swift had not done the work as claimed by DEC. That is, even at five years, this clearing was done before Mr Swift bought the property in 2007.

Ms Elliott, who was counsel for the state, then decided to proceed with a tangential argument that, if Mr Swift maintained the drain within the CA with a Pederick rake, this would amount to clearing for the purposes of the act. She suggested that, if the court were to accept that this had occurred within the relevant period, then the prosecution's case would be proved. In other words, maintaining the integrity of the drain would amount to clearing the alleged area. The magistrate noted that this created a farcical situation that could only be envisioned by Sir Humphrey Appleby. Essentially the prosecution relied on a comparison of aerial photographs, satellite images and their extrapolations. The defence counsel relied on the evidence of local neighbours, agricultural scientists and Mr Swift himself.

In summing up, the magistrate believed that 'unexplained inconsistencies simply go to the vexed question of reliability of the evidence presented by the prosecution'. Given that 'beyond reasonable doubt' is the requisite standard in such cases, the magistrate believed that 'Mr Swift discharged the onus on him to the requisite standard.' In other words, he did not clear the land but rather maintained it to the standard that the law required. On this basis, Magistrate Hamilton found Peter Swift not guilty.

Subsequent to Mr Swift's trial, it is very clear that this has been a physically, mentally and emotionally draining exercise for somebody who has always claimed his innocence. This exercise has cost Mr Swift more than \$2 million, as mentioned in his statement of claim by his lawyers at Integra Legal. The court offered him the eventual maximum amount of costs that they could, which was \$15,000. As you can see, this is woefully inadequate compared to the financial costs this man has endured.

The Attorney-General, the Hon. Michael Mischin, has responded to an ex gratia payment sought by Mr Swift from the state government on the basis of this vexatious prosecution by Mr Jacques and the DEC. The Attorney-General has deemed not to provide an ex gratia payment, which is his right. However, I contend that in these circumstances this is a cold-hearted, parsimonious and, in my opinion, disgraceful decision made in the circumstances of an honest man like Mr Swift. The DEC, led by Mr Jacques and Ms Stryke, clearly sought to destroy Mr Swift. They were aided and abetted by a weak and insipid then environmental minister, Bill Marmion. It is obvious that Mr Marmion chooses not to make decisions as a minister of the Crown but allows his department to make decisions for him. As representatives for the people, and ministers presiding in these positions, we are expected to be the bulwark between the people and those who would seek to destroy them, such as in this case—the government department, the DEC.

Mr Swift is not only in a tenuous financial position and about to lose his house and his farm to his financial lender, the police and nurses credit union; he is also in a highly fragile emotional condition. Should anything unfortunate occur that would place Mr Swift's life in danger, I would hold Bill Marmion totally responsible for Mr Swift's welfare because of his ineptitude and incompetence in this matter. Mr Swift has been on suicide watch several times, as was explained to Premier Colin Barnett by Peter Swift's sister, Jenny. This is the worst case of injustice that I have seen in my role as a political representative in my 16½ years in this federal parliament. Government is meant to be a model litigant and should be held to a high standard of account when their actions form an injustice as substantial as the one in the case of Mr Swift. Mr Swift's only crime was to purchase a lifestyle block and proceed to care for it, look after it and maintain it. I seek leave to table the documents which support my speech.

Leave granted.