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## **TRANSCRIPT OF PROCEEDINGS**

### **CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY**

**MS M. DOOGAN, CORONER**

**CF No 154 of 2003**

**INQUEST AND INQUIRY**

**INTO**

**THE DEATHS OF DOROTHY McGRATH, ALISON  
MARY TENER, PETER BRABAZON-BROOKE, AND DOUGLAS  
JOHN FRASER, AND THE FIRES OF JANUARY 2003**

**CANBERRA**

**10.04 AM, FRIDAY, 16 JUNE 2006  
(Continued from 19/5/2006)**

HER HONOUR: Yes, thank you, Ms Price.

MS PRICE: Thank you.

5 HER HONOUR: Yes, on Tuesday of this week I received an unsigned letter dated 9 June, which was also attached - or some information was attached to that, or it was under an email and some information was attached and I received it on Tuesday as I say.

10 MR LAKATOS: Yes.

HER HONOUR: The letter seemed to be copied to counsel assisting and also to other persons or - - -

15 MR LAKATOS: It was. It was, your Honour, yes.

HER HONOUR: - - - to counsel representing other interested persons. And I gathered that it's - well, the gist of the letter is the ACT Government's submissions were due to be filed today, but the letter  
20 indicates that there is some difficulty with that.

MR LAKATOS: That's correct.

HER HONOUR: And that was - I think that was the direction that I made  
25 on 7 April that the submissions be filed.

MR LAKATOS: Yes.

HER HONOUR: And it would appear that the circumstances have  
30 changed, as the letter has indicated. Mr Lakatos?

MR LAKATOS: They have, your Honour. The change has been brought  
about by, I suppose, four things. One is, of course, the size of the task in  
35 replying to the very many issues raised by counsel assisting. The second  
matter is that by reason of a number of submissions relating to the  
causation of certain events on 18 January being linked to antecedent  
matters some 10 days before in some cases, what I would categorise as an  
elastic notion of causation has required the ACT to look carefully at the  
40 evidence on which those submissions are based and also on whether the  
view of the ACT is consistent with that enunciated by counsel assisting.

An additional matter is that in the 500 or so odd pages of the submission  
which counsel assisting have put together, a large quantity of the material  
in very many instances purports to attribute specific personal  
45 responsibility for nominated people for certain things. Now those are

matters of concern to the ACT, matters which require careful looking at and careful response. That, with respect, in essence has been the reason on our side why complying with the directions your Honour made on 7 April has been not possible. I should say this as well - - -

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HER HONOUR: But none of that is really a surprise, is it, Mr Lakatos? Is that what you're suggesting, that there is something in the submissions that is somehow or has somehow caught the ACT Government by surprise?

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MR LAKATOS: I go back, your Honour, to 25 October when the last witness gave evidence and initial directions were made. And I made the point then, and I think it was accepted in part by Mr Lazry, that the way submissions would effectively occur depended upon the precise terms that certain criticisms and submissions by counsel assisting would be made. And that's been the fact. That fact was recognised. The size of the task was unfortunately, with respect, a little bit bigger than we thought.

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But there are two additional matters which I should say in how this has evolved. The first is that, of course, when counsel assisting filed their submissions in April there was this additional issue of evidence by other persons and purported further findings to be made on that evidence. Notwithstanding the fact that my client did not make any submissions one way or another on that issue, that involved the careful consideration of what our position should have been and that took some time away from the main task.

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The second matter, of course, is that subsequent to that counsel assisting then indicated that notwithstanding, that additional evidence would not be called. They would persist in one of the further findings that they envisaged they would make earlier on. So there's been a deflection, with respect, in that way. But with respect the biggest problem has been, and this was foreseeable and it was, to some extent, raised by a number of counsel on 7 April, that by reason of the movement of the original timetable from submissions of counsel assisting on 17 February, replies by us and others on 17 March, and hearing oral submissions on 27 March, by reason of that move people's diaries, unfortunately, have got in the way of a clear run at the submissions. Now I don't say this is a new matter, but the fact is that these are, in the world in which we live, matters which happen unavoidably.

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Your Honour, the situation is this. That the date that is sought in the letter for the filing of all submissions is, in effect, 30 June, that is to say a two week extension. As I understand it, no party objects to that extension. As I understand it, no party, including counsel assisting, assert that any

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prejudice would flow from the extension to anybody. Indeed, Mr Woodward and Mr Lazry were helpful enough in the email that they sent to us to say that the issue of their submissions in reply, which, of course, according to your Honour's timetable, were required to be filed by them on 30 June, could be done - and I understand at a pinch, but we're all compromising here, could be done after the delivery of our submissions - our old submissions. In some respects that may be thought to prejudice us because, of course, we would not be on notice, but that's a prejudice which we would accept, bearing in mind what our position is.

Furthermore, your Honour, my understanding is that two other parties who have asked me to announce their appearance in this hearing consent to the two weeks. I should refer to the specific instructions I have. Mr Pike has said that he is also having difficulties and seeks an extension until 30 June and therefore by implication does not object to the ACT's application.

Mr Watts, who originally thought that he would not be making submissions or at least extensive submissions in this regard, has indicated that that position has changed. Your Honour may well recall that on 7 June he told you that as a result of the change of the timetable, he had a European trip plan and as I understand it he is still there. He's taken the submissions across and it ultimately transpires that reading the submissions, he indicates that he will need to make some written submissions in reply. He cannot do that until 30 June, so once again he joins in the application for that particular date. He also asks me to ask your Honour, and I thought this may have been part of your Honour's original directions, that the submissions by all parties be interchanged, that is to say filed and served on each other. I understand that was already made.

HER HONOUR: That certainly was my intention and I thought that I had indicated that.

MR LAKATOS: Yes, well, that was my understanding too.

HER HONOUR: That's a normal procedure, in any event.

MR LAKATOS: It is. It is in any event. So your Honour, the situation is this. As regrettable as it has been, circumstances have conspired to leave my client, and for that matter others, in this position. As presently stands, none of the hearing dates for oral submissions would be affected by this extension so that in the end, the time frame your Honour has in mind stays in place. No party will be prejudiced, as I understand it, and no party objects. In those circumstances, I'd ask your Honour to grant us the

opportunity to file our submissions by 30 June. Those are the submissions, I think.

5 HER HONOUR: Thank you, Mr Lakatos. Does anybody else wish to be heard on this matter?

10 MR WALKER: Your Honour, it's probably appropriate to mention that under the cover of an email written to Mr Woodward by Mr Whybrow both for his own ...(indistinct)... and for mine, we indicated some  
15 difficulty in completing the submissions by today. We thought, and frankly still do think, we will possibly be able to complete the submissions next week and were intending to ask for one week extension, however, given what I heard fall from Mr Lakatos and also what he said on behalf of Mr Pike and Mr Watson, it may be appropriate that we all have the same filing date, your Honour. Again, I can also indicate that there is now  
20 difficulty in proceeding in the week beginning 10 July with oral submissions in relation to Mr Castle and Mr Lucas-Smith. I don't think there's anything I can usefully add to that unless there's something your Honour wishes to me to particularly address.

HER HONOUR: No. Thank you, Mr Walker. Yes, thank you.

25 Quite frankly, Mr Lakatos, I am amazed that with all the resources available to the ACT Government that the government has not been able to meet what I have regarded as a generous timetable, particularly given the original timetable that was indicated in February. You can be seated, Mr Lakatos.

30 MR LAKATOS: Thank you.

HER HONOUR: That was indicated in February and in March. And the reason I say that is because the government has had the last three years to establish the facts or to undertake what has been described in the government's solicitor's letter as the factual review. Furthermore, the  
35 ACT government has had eight months since the last evidence was heard in which to write its submissions.

40 Now I appreciate that to put the final touches on those submissions has not, perhaps, been practical until after submissions from counsel assisting had been seen and considered. However, those submissions were filed and served now almost three months ago, and from my reading of them I note that they are very extensively footnoted and the sources in the transcript have been noted as well as sources to the exhibits. As I've said on the last occasion, and indeed on other occasions, the families of the  
45 deceased and indeed the Canberra community generally deserve closure

and that closure should be as soon as possible.

5 It's now been more than three years since the fires in January 2003. This inquiry and the associated inquests has been bedevilled by various periods of delay, most of which are attributable to the actions by the ACT government and some of its employees and it will come as no surprise that I have found the slow progress of this inquiry to be very frustrating.

10 The ACT Government now wants until 30 June to finalise its submissions. I am reluctantly agreeing to the government's request and now formally extend the date for the finding and serving of the government's submissions to 30 June 2006. And in fairness to counsel, for all other interested persons who have not yet filed their submissions, I also extend the date to 30 June for their submissions, but I encourage all counsel to  
15 file and serve their submissions as soon as possible in any event.

Now, on the last occasion I set a date of 10 July as the date to commence any oral submissions over and above the filed written submissions, and I don't propose to change that date. Indeed, there has been no request from  
20 anyone to change that date. However, the extended time for filing submissions now makes that previous direction - or the previous direction, rather, for counsel assisting to file a reply by 30 June impracticable. Accordingly I revoke that direction and instead direct that any reply which counsel assisting wishes to make is to be made orally at the hearing on 10  
25 July 2006.

Now, as the High Court has previously said, there comes a time when a matter must come to an end, and for this inquiry and for these inquests that time has well and truly arrived. Given that the purpose of the  
30 submissions is to assist me in performing my statutory function as coroner, I now make it plain that I intend to complete my statutory obligations, preferably with submissions from all interested persons, but if they are not forthcoming in the directed time then I will proceed without them. The community cannot be expected to go through another summer  
35 without this inquiry and the related inquest being finalised and the report being published. Now if there's nothing further and if nobody else wishes to raise any matter we'll adjourn.

40 MR ERSKINE: Your Honour, may I raise one matter?

HER HONOUR: Certainly, Mr Erskine.

45 MR ERSKINE: Your Honour revoked the direction to counsel assisting to provide a response to our submissions. Before I came to court this morning I can tell your Honour that I have seen the final form of our

submissions on the email from my instructing solicitor in Sydney. Barring a technological breakdown I would expect that to have been filed today.

5 HER HONOUR: Thank you.

MR ERSKINE: If that be the case I can also anticipate the submissions by saying that they do raise quite a significant issue of law as to the proper interpretation of the Coroner's Act in the context of a fire that began in  
10 New South Wales. And your Honour won't be surprised that that issue will have to be explored as a legal issue. Given that circumstance we would respectfully ask if your Honour would reinstate the direction for counsel assisting to provide a response in writing to our submission. It is discrete and it is a discrete issue.

15 HER HONOUR: I'm not prepared to do that, Mr Erskine. What I will do though, I will, as I say, direct that counsel assisting - any reply that they wish to make to be done orally on the 10th if indeed there is an - - -

20 MR ERSKINE: Well, ours is on the 28th.

HER HONOUR: On the 28th. If there is an opportunity for counsel assisting to be able to provide written replies to your submissions then there'll be some indication about that. But I'm not going to direct that  
25 they do that.

MR ERSKINE: As your Honour pleases.

HIS HONOUR: Given that the timetable has slipped it's unfair for me to  
30 now require that counsel assisting now try to make a reply by the 30th when indeed the bulk of the submissions aren't going to be filed until that date. But I am sure that your matter will be taken into consideration by counsel assisting.

35 MR ERSKINE: Your Honour pleases.

MR LAKATOS: Sorry, before your Honour rises, I simply want to make  
40 one thing plain, with the greatest of respect. Your Honour has attributed the bulk of the delay to my client. Lest my silence indicate that we agree with that proposition, we do not.

HER HONOUR: I didn't expect you to, Mr Lakatos.

45 MR LAKATOS: Thank you.

HER HONOUR: Thank you, we'll now adjourn until 10 July.

**ADJOURNED TO 10 JULY 2006 AT 10 AM**

**[10.20 am]**

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