

# Fitzgerald on the role of the media

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**Gary Evans, Editorial Manager of Queensland Press, has selected excerpts from the Fitzgerald Report concerning the role of the media in the reporting of the Inquiry and in dealing with Governments generally.**

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**T**he Fitzgerald Inquiry could not have proceeded without public confidence, co-operation and support, Commissioner Fitzgerald, Q.C., says in his report.

The power of some of the individuals involved and the type of issues raised were such that it would have been impossible for the Inquiry to have succeeded without such public confidence, co-operation and support, Commissioner Fitzgerald said.

"That meant the Inquiry had to be as open as possible, so that the public, including people with information, could see that it was a genuine search for the truth. Such a course was also necessary so that the Inquiry could generate enough momentum to overcome any attempt which might have been made to interfere.

"Apart from one brief sitting, all the evidence of this Inquiry was heard in public. With a few exceptions, exhibits were made available to the media. Restrictions on publication were generally made only in cases where safety or continuing law enforcement operations would have been jeopardized by openness, or in some instances of pure hearsay which has, in itself, no probative value.

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## Hearsay evidence

"One of the most difficult and controversial issues facing the Inquiry was whether to admit and allow the publication of evidence with a dual character, including both a hearsay element and an element that was direct and probative. After taking submissions, the Commission decided to admit and allow publication of such evidence which could not be practically excluded or restricted from publication without producing gross distortions in what was publicly disclosed. The solution arrived at was not perfect, but it was the best workable compromise between competing legitimate interests.

"One of the most effective pieces of false propaganda used against the Inquiry, perpetrated by the media, the accused and some lawyers who should have known better, was that "most" or "much" of its evidence was "hearsay". In fact, the vast majority of evidence before this Commission is not hearsay

and would be admissible in conventional legal proceedings.

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## Openness: The pros & cons

"There is no doubt whatsoever that this Commission could not have got as far as it did without openness. But openness also had disadvantages, which varied according to the innocence or guilt of those about whom evidence was given.

"Criminals abused the information they gained, as they did other privileges such as the leave to appear and access to transcripts and exhibits. Public hearings also greatly increased the likelihood that criminals would abscond, hide their illicit wealth and destroy evidence. All of those things almost certainly did occur.

"Meanwhile, individuals had to endure the ignominy of adverse publicity. But openness also helped the innocent. The publication of evidence and allegations brought forward more information and witnesses which, in some cases, helped to rebut allegations. More generally, openness helped to avoid uncertainties which would have bred suspicions and rumours, extending the range of innocent people affected. Of course, innocent people also had the same interest as others in the community in the overall success of the Inquiry, which was dependent on openness.

"So far as possible, steps were taken to lessen the disadvantages of openness. People implicated in evidence were given the right to appear before the Inquiry to make short, unsworn statements refuting allegations and giving their versions of events. The media was also able to seek comments from people named, and publish any statements of denial made outside the Commission.

"Permanent bodies will have to address similar considerations, but the balance which they strike might well be different. If the recommendations in this report are implemented, the permanent body which will continue this Commission's work will be primarily accountable to Parliament. It will still need public support and confidence, and there will be at least some occasions when open hearings will be appropriate."

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## The Quality of reporting of the inquiry

Commissioner Fitzgerald said that, on balance, the media had been helpful to his Inquiry.

"The efforts of journalists employed by the Australian Broadcasting Corporation and Queensland Newspapers Pty. Ltd were the immediate causes of the Commission being appointed, and these organisations were given leave to appear.

"More generally, all media organisations with journalists attending the Inquiry were able to represent the public to ensure that it was kept informed and that support and co-operation were maintained.

"The media not only heard the evidence, but was allowed to inspect almost every exhibit. Journalists were given a special section of the hearing room: and so far as was within the Commission's powers, their requests for facilities were met.

"Media releases were issued, and as far as possible the media was provided with information in response to requests.

"Determined attempts were made to enable the media to provide an effective link between the Inquiry and the public so as to achieve, as nearly as possible, the situation which would have existed if the community generally had been able to attend the public sittings of the Commission.

"There was for the most part a determined effort to be fair in reporting the proceedings, although there were some lapses in standards which caused concern."

"No proceedings were brought in respect of the many defamatory statements which were published, or the contempts which were committed. Journalists' ethical claims to confidentiality of sources were allowed, even in circumstances of considerable doubt about their validity.

"There was for the most part a determined effort to be fair in reporting the proceedings, although there were some lapses in standards which caused concern. "Scoops" were reported which unintentionally but unnecessarily hindered the Commission's work.

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"Sometimes admissible evidence with a 'hearsay' component was reported as though the hearsay was probative. The names of prominent persons mesmerized some journalists and their employers.

"After Commission appeals for careful reporting, many reporters constantly described all evidence as 'hearsay', even when it was clearly direct testimony.

"As well, sections of the media constantly claimed that most of the evidence was hearsay when in fact the vast majority of evidence accepted by the Commission was not hearsay and had no hearsay element. Almost all would have been admissible under the normal rules of evidence, provided that there was a proper understanding of the issue to which the evidence was material, and of its probative effect. Journalists were unfortunately encouraged in this aspect of misreporting by some of those who were the subject of allegations and by some lawyers.

"Other allegations aimed at undermining the Commission were published on the basis of rumour or misinformation from sources who had reason to fear the Commission's work. As a result, the public was misinformed.

"With some notable exceptions, there was insufficient careful or reasoned media analysis of the Commission's work. Most criticism was ill-considered or based on misconceptions, while the real issues were neglected.

"Some damaging reports were blatant propaganda and others were unsubstantiated and recklessly, if not deliberately damaging. Some created unrealistic community expectations, while others eroded essential public support. At the very least, controversies raised by such reports distracted Commission resources and energies from other pressing tasks.

"Nevertheless, there is no doubt that the Commission could not have achieved its task in secret. The openness of the hearings and the work of responsible journalists have, it is to be hoped, laid the basis in the public mind for the process of reform to begin."

### **The Use and abuse of media**

Commissioner Fitzgerald said the media was one of the most important and effective mechanisms for the control of powerful institutions and individuals by reason of its ability to sway public opinion.

"Those who wish to mould public opinion must do so largely through the media.

"The media played a part in exposing corruption, and two media organisations

contributed to the setting up of this Inquiry.

"Unfortunately, it is also true that parts of the media in this State have, over the years, contributed to a climate in which misconduct has flourished. Fitting in with the system and associating with and developing a mutual interdependence with those in power have had obvious benefits.

"The complementary techniques of secrecy and news management allow governments to exercise substantial and often disproportionate influence on what is published in the media.

### **Leaks: scoops or manipulation**

"The media is able to be used by politicians, police officers and other public officials who wish to put out propaganda to advance their own interests and harm their enemies. A hunger for 'leaks' and 'scoops' (which sometimes precipitates the events which they predict) and some journalists' relationships with the sources who provide them with information, can make it difficult for the media to maintain its independence and a critical stance. Searches for motivation, and even checks for accuracy, may suffer as a result.

"In Queensland, Government reports and information are invariably 'leaked' to selected journalists who are able to delude themselves that they are not being used, but on the contrary are establishing and maintaining contacts which help them in their appointed task of discovering information and communicating it to the public. Should these journalists ever 'bite the hand that feeds them', the flow of information would presumably dry up, or be diverted to a rival media outlet or colleague.

"Instead of 'leaks' becoming an alternative to official information, they become a way of making the media act as a mouthpiece for factions within the Government.

"This places an extra responsibility on the journalist. Both the journalist and the source have a mutual interest: both want a headline. Yet if the journalist is so indiscriminating that the perspective taken serves the purpose of the source, then true independence is lost, and with it the right to the special privileges and considerations which are usually claimed by the media because of its claimed independence and 'watchdog' role.

If the independence and the role are lost, so is the claim to special considerations.

"It is legitimate and necessary for Government Ministers, departments and instrumentalities to employ staff to help ensure the public is kept informed.

### **Government media units**

"Media units can also be used, however, to control and manipulate the information

obtained by the media and disseminated to the public.

"Although most Government-generated publicity will unavoidably and necessarily be politically advantageous, there is no legitimate justification for taxpayers' money to be spent on politically motivated propaganda.

"The only justification for press secretaries and media units is that they lead to a community better informed about Government and departmental activities. If they fail to do this, then their existence is a misuse of public funds, and likely to help misconduct to flourish.

### **Abuse of defamation proceedings**

Commissioner Fitzgerald was particularly critical of the political use of defamation actions.

"The right to voice dissent from the opinion of the Government and its manner of decision-making are no less important for the established Opposition party or parties.

"A parliamentarian's role to review and constructively criticize Governmental activity could be hampered by being inhibited from speaking out publicly by threats of claims for damages. This is particularly so if the defamation actions which result are funded out of the public purse.

"The use of public resources at any time or in any way to inhibit or suppress the expression of opposing political opinion or a criticism of any administration is wholly objectionable. Those in public life must accept the risk of criticism even if it is, at times, unfair, unfounded or even mischievous and couched in unflattering or abusive language. While personal abuse and wrong allegations are to be condemned, they do not justify the use of public resources to provide legal redress for individual members.

"There are ample opportunities for criticism or allegations to be addressed at a political level, in the parliament and by public statement. An elected representative's response to, or treatment of, wrong or unfair allegations is itself a yardstick for that representative's suitability and aptitude for the role.

"If politicians' public statements are wrong or misconceived or mischievous or malevolent, that should be demonstrated in public exchange. The politicians and their party will suffer the political consequences. That is the only detriment which should normally be involved (criminal offences excepted).

"If members of parliament (including Ministers) choose to resort to legal redress, it should be at their own cost just as any damages recovered would be to their personal material gain."