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Enzo Camporeale
Director, Legal
Special Commission of Inquiry into LGBTIQ hate crimes
GPO Box 5341
Sydney NSW 2001

File No. 010666666

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Dear Mr Camporeale,

Special Commission of Inquiry into LGBTIQ hate crimes

On 21 September 2023, Counsel Assisting made remarks that spanned some 10 pages of transcript (T5765-5776). Those remarks included criticism of Mr Willing and/or his legal representatives. We were not put on notice of those remarks, and we have not yet been given the opportunity to respond. We may seek leave to respond on the record when we are next before the Special Commission, particularly if this letter is not tendered. As a courtesy, we hereby give you notice of that fact, as well as a description of our concerns.

Calling witnesses

At T5770, Counsel Assisting submitted that if a party, including Mr Willing, wanted a witness to be called, that matter should have been raised with him and a statement provided.

In its terms, that submission seems to suggest that Mr Willing should have obtained a statement from Pamela Young, Penelope Brown and their friend, Emma Alberici.

However, the Special Commission was aware of all these potential witnesses and the potential relevance of their evidence. The Practice Guideline is not there to second guess Counsel Assisting or the Special Commission. The Guideline permits a process for witnesses unknown to Counsel Assisting, or whose evidence is not obviously relevant, and who would otherwise be prepared to cooperate with the relevant interested party, to provide evidence.

Mischaracterisation of Mr Willing's submissions

Counsel Assisting contended that Mr Willing had submitted that witnesses 'should have' been called. That is not an accurate summary of Mr Willing's submissions.

Mr Willing's submissions in relation to evidence not called are at [14c], [52], [54], [56] and [66] of our written submissions of 28 June 2023. We specifically noted at [56] that the Special Commission may have had good reason not to call witnesses whose evidence was obviously



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relevant. We did not say that the Special Commission 'should have' called those witnesses. Our submission was that without evidence from those witnesses, certain findings could not be made. We also submitted that serious practical injustice would be caused to Mr Willing if the findings contended for were made in the absence of evidence from those witnesses.

Ms Young's statement

One example of such unfairness was specifically adverted to at [54] of our written submissions. We wrote:

'Ms Young could have easily told the Commission whether she had called Mr Willing before or after her attendance at the ABC on 13 April.'

This has proven to be a critical fact in issue. Mr Willing gave evidence that he received that call when Ms Young was on her way to the ABC and that, by this stage, she had recorded an interview with Ms Alberici. Mr Willing said that the recorded interview, which would air that night, was a reference to a door stop interview which took place at Glebe Coroner's Court.

Counsel Assisting filed submissions dated 7 June 2023. In those submissions, it was contended that after speaking with Ms Young on the 5pm call:

- Mr Willing knew that Ms Young 'had recorded a filmed interview with Ms Alberici at the ABC that afternoon (13 April 2015)' [CAS 447]; and
- Mr Willing's evidence that he was not aware that Ms Young 'had given an interview that would be televised' was an 'untruth' [CAS 449].

On 17 April 2023, Ms Young signed a statement. She addressed the 5pm call with Mr Willing. In that statement she said that she drove from the Coroner's Court to the ABC Studio [57]. She said that the call with Mr Willing took place on the way to the ABC [58]. That statement was provided to the Special Commission.

On 21 April 2023, the Special Commission wrote to Ms Young. It acknowledged receipt of her statement dated 17 April 2023, and said that 'as things stand' the Inquiry does not propose to tender the statement or call Ms Young to give evidence.

We wish to make several points as a consequence of the above matters:

- First, we only discovered the existence of the 17 April 2023 statement from Ms Young as a result of this further hearing block, a hearing block which has only occurred because of the submissions made by NSWPF and on behalf of Mr Willing.
- Secondly, criticism was made of Mr Willing for not obtaining a statement from Ms Young even though the Special Commission already had a statement from her.
- Thirdly, Counsel Assisting submitted that Mr Willing lied when he said that the 5pm call took place before the studio interview, even though the Special Commission had a sworn statement from Ms Young confirming Mr Willing's evidence in that regard.

Neither Counsel Assisting, nor the Special Commission, disclosed the 17 April 2023 statement to Mr Willing. That statement was only served after all evidence and submissions had concluded.

Whether Counsel Assisting chooses to accept the evidence of Ms Young as to that call is a matter for him. But Ms Young's 17 April 2023 statement clearly ought to have been disclosed to Mr Willing and tendered by Counsel Assisting as it specifically addressed this fact in issue.

Further relevant matters arising from Ms Young's statement

We note that Ms Brown will also give evidence that the call took place en route to the ABC. The 17 April 2023 statement of Ms Young made it clear that Ms Brown was in the car and therefore may have been in a position to provide relevant evidence.

Further information requested

Given these matters, we would be grateful for an explanation of the following matters:

- Why was Ms Brown not asked to provide a statement;
- Why was the 17 April 2023 statement not tendered;
- Why was Ms Young not previously called to give evidence;
- Why was the statement of 17 April 2023 not disclosed in light of the questions which Mr Willing was asked before that date or after it;
- Why was the statement of 17 April 2023 not disclosed in light of the written Submissions made by Counsel Assisting of 7 June 2023.

Ms Alberici

The submissions of Mr Willing had previously raised the relevance of Ms Alberici's evidence (see, for example, at [66]). We were informed by the Special Commission that Ms Alberici would not be called, notwithstanding our submissions. We were then informed that she would be called. Mr Willing's counsel is, as you know, unavailable at the time Ms Alberici is to give evidence.

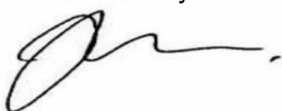
Mr Willing did not communicate with Ms Alberici before the Lateline interview aired. He did not 'encourage' the interview. The assertion from Ms Alberici that relevant text messages with Mr Willing were observed by her on Friday, but have since disappeared from her phone, must be rejected. We also note that she regards Ms Young as a good friend. If it is seriously to be suggested that Ms Alberici's evidence is to be accepted, her phone should be forensically analysed.

We agree that Mr Willing met with Ms Alberici in North Sydney after Ms Young ceased working for the NSWPF. He did say that he felt sorry for Ms Young. However, we reject the contention that he wanted the interview, for any reason, or that he thought the political pressure would stop. We also reject Ms Alberici's claim that Mr Willing discussed the thoughts of the Commissioner.

We do not understand why the Special Commission told Ms Alberici that 'Mr Willing said that Pamela Young had "gone rogue"'. The potential to contaminate a witness who was to give evidence was manifestly apparent. Especially when the witness regards the relevant officer as a good friend. What Mr Willing said about Ms Young going 'rogue' was clearly not something that required comment from Ms Alberici. We note that no reference was made to it in the detailed questions which Ms Alberici was asked to comment upon. It was also unfair in that the statement was made by his legal representatives as opposed to Mr Willing himself.

We will make further submissions about the evidence of Ms Alberici in due course, if it is necessary to do so.

Yours sincerely



Jonathan Milner
Partner