

The Right Honourable Justice de Jersey,
Chief Justice,
Queensland Supreme Court,
Brisbane.

AJA Letterhead.

21 June 1999

Dear Sir,

IAN CALLINAN, BARRISTER.

Now that the Full Court of the Federal Court has not reversed any of the findings made against Ian Callinan in the judgement of Justice Goldberg in *Whites Industries v Flower & Hart*, it would appear appropriate for steps to be taken to decide whether Justice Callinan should be struck off the roll of barristers. For the time being we would postpone the issue of any other barrister's involvement in the White's case. Justice Callinan was the senior barrister who was in charge of the case in court who literally "led" the other barristers, and was described as the "leader". The purpose of this letter is to request that you commence the appropriate proceedings against him, in your capacity as Chief Justice of the Queensland Supreme Court.

AJA understands that you are the most appropriate person to do this, because, according to the discussion paper prepared by the Department of Justice and Attorney General in December 1998 on proposed Legal Profession Reform:

"There is no disciplinary or complaint process specified in legislation for barristers. Any disciplinary action would rely on the inherent powers of the Supreme Court." (at page 12 of the Discussion Paper, photocopy enclosed)

The original improper "delaying" litigation was commenced in December 1986, and Justice Goldberg found as a fact that:

"The evidence does not enable me to determine whether the purpose of deferring or delaying White's recovery of monies under the building contract was the brainchild of Mr Meadows or Mr Callinan. However the evidence does enable me to be satisfied that by the time the proceeding was commenced Mr Meadows' purpose in commencing the proceeding was to delay and defer White's recovery of the money due to it and that Mr Callinan had acquiesced in that purpose and approved of it."

The letters and opinions which revealed the unethical behaviour were unearthed in 1992. It is now almost the year 2000. AJA understand that no disciplinary proceedings have been commenced by anyone against any of the lawyers involved. If so, this is a scandalous state of affairs. AJA believes such proceedings are long overdue.

It might be suggested that any action taken now would have the appearance of pre-empting proceedings in the Australian Senate or House of Representatives, but in AJA's respectful submission this cannot be so. The issue of whether he is still entitled to remain enrolled as a barrister seems to lie fairly and squarely with the the Queensland Supreme Court, alone.

But as well as the issue of the improper commencement of litigation, there is another issue raised by the judgment of Justice Goldberg which strikes right to the core of Justice Callinan's entitlement to remain enrolled as a barrister. First it is necessary to repeat what Justice Goldberg held:

"...the evidence does enable me to be satisfied that by the time the proceeding was commenced Mr Meadows' purpose in commencing the proceeding was to delay and defer White's recovery of the money due to it and that Mr Callinan had acquiesced in that purpose and approved of it"

The proceeding was commenced on 23 December 1986, in other words, late 1986. Justice Goldberg, presumably referring to Justice Callinan's sworn evidence either by affidavit or oral evidence in court, states that:

"Mr Callinan said that in late 1986 and early 1987 he did not understand that a desire merely to postpone a need to make payment to White was the motivation for the proceeding"

If AJA's reading of the judgment is correct, Justice Goldberg concluded, as a fact, that Justice Callinan's sworn evidence was not true. There was other evidence which appears to support that conclusion. Justice Callinan himself had written in September 1988 that :

"You will recall that when this action was commenced in December of 1986 the expectation was, not that the action would succeed, but that the institution of proceedings would probably defer payment.....for some twelve months..."

If Justice Callinan committed perjury, then urgent action is called for.

Yours faithfully,