

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration

Melbourne — 18 June 2014

Members

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Witnesses

Cr S. Thomann, deputy mayor, City of Port Phillip, and

Mr P. Holland, campaign manager.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIR — Welcome to everybody here today and in particular our witnesses. As I am sure you are aware, today the committee is hearing evidence for the inquiry into the impact of social media on Victorian elections and Victoria's electoral administration. I welcome you here today and inform you that all evidence given at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise witnesses that any comments you make outside the hearing may not be afforded such privilege. Have you read the guide to giving evidence at a public hearing pamphlet that the committee provided?

Mr HOLLAND — I have.

Cr THOMANN — I have.

The CHAIR — Could I ask both of you to state your full name and business address and whether you are attending in a private capacity or representing an organisation and, if so, which organisation and what position you hold in the organisation.

Mr HOLLAND — I am Peter Holland; 64 Chaucer Street, St Kilda. I have been a long-time office-bearer of unChain Inc. — unChain St Kilda, as it once was — and I was the campaign manager for Cr Thomann in the 2010 state election.

Cr THOMANN — I am Cr Serge Thomann, deputy mayor of the City of Port Phillip. I ran as an Independent, even independent of unChain, at the last state election. My business address I would say is the town hall in St Kilda, 99 Carlisle Street. As I said, I ran as an Independent. Peter was my campaign manager at the time, but I was not endorsed by unChain. I did it off my own bat because I was sort of disillusioned with the political process and felt that I could make a difference.

The CHAIR — The evidence that you are about to give will be recorded and transcribed and will become public evidence in due course. I invite you to make a verbal submission to begin with. We will then follow up with some questions and we will take it from there. I will hand over to you for opening comments.

Cr THOMANN — I have to say that I am only here more to answer questions. Obviously Peter Holland is the one who made the submission to this inquiry. I am here more to add some additional comment or basically answer questions, as I was the victim of potentially defamatory comments.

The CHAIR — Mr Holland, would you like to take it from there?

Mr HOLLAND — Thank you. Just quickly summarising my written submission, I start by explaining the candidacy of Cr Thomann, who was running as an Independent. It was an interesting election.

The CHAIR — For the record, was this in the seat of Albert Park at the last state election?

Mr HOLLAND — This was in the seat of Albert Park. Cr Thomann was running as an Independent, and because he had quite a high profile it was likely that he would get a significant number of votes, unlike I think most Independent candidates. In the end, the Labor candidate, Martin Foley, won narrowly on Greens preferences. Cr Thomann's card split the vote between the Libs and Labs, and had the Libs been able to persuade Cr Thomann to preference them, possibly the Libs would have won the seat. That is the background.

It was a quite interesting election, and it was marred by some Google advertising. In the midst of the campaign there was some advertising on Google. My submission is focused on just paid advertising, not on other forms of social media. There were four quite false paid Google ads such that when somebody did a search on Google for either Serge Thomann or Ann Birrell, who was the Greens candidate, a paid ad came up — and I think you have copies of the ad — saying that Serge was lying to get elected.

Cr THOMANN — Can I add something? When everybody made a comment about St Kilda, Albert Park, Martin Foley — there were more than just me and Birrell — and searched on those, there were quite a significant number of words that were kind of connected, so for anyone who looked up St Kilda the ads would have come up.

Mr HOLLAND — The other three ads said that Serge was a celebrity-obsessed paparazzo — he was a professional photographer at the time — or something far more sinister: ‘Say no to this Liberal deception’; ‘Don’t trust sleazy Serge’. These ads carried no endorsement, they were false and we immediately complained to the VEC. I do not think it is really the task of the Electoral Matters Committee to investigate who did it. That is not really important — it is a long time under the bridge — but I think it is important for the Electoral Matters Committee to work out whether our institutional arrangements are satisfactory and to head off at the pass the abuse in the social media, so I think this is an important test case for our electoral laws.

We complained to the VEC, saying that we thought this was a breach of the Electoral Act that required an authorising person to authorise political advertising. The VEC looked into this. You are probably familiar with the VEC’s report. On page 4 of my submission I say that the VEC ‘concluded that it lacked the power to enforce the law’. It said:

... since Google AdWords was not conducted by Google Australia, the VEC [was told that it] should direct its request to Google Inc., of California ...

Then the VEC got a bit of a run-around. Eventually Google Inc. of California said that they:

... may accept ‘an order signed by a judge or magistrate’ served by registered mail.

But of course they also may not have, so there is a significant problem there that that indicates about the use of sites that are located offshore. The VEC referred the matter to Parliament, suggesting that they should be empowered to require information to be provided about the publication of electoral matters. It is our submission that this alone may not be sufficient. Just because the VEC has the power to ask for certain information does not mean that a foreign entity like Google California will comply. It is our submission that the Electoral Matters Committee might consider this as a bit of a test case about the willingness of overseas entities to comply with our electoral laws and authorities.

As I understand it, this committee has the power under section 28 of the Parliamentary Committees Act to send for the person’s documents or other things. This committee has the power to do the equivalent of issuing a subpoena, I suppose. It is our submission that the committee should consider using that power to ask both Google Australia for the information, which they say they have, and also Google California for the information. This will be an interesting matter to see to what extent Google is prepared to comply with our legal authorities.

The CHAIR — When you say to ask for the information, do you want to know who was responsible for it?

Mr HOLLAND — Yes, who was responsible. It is quite stale now — it is four years old — but the important thing for this committee is more the preparedness of Google California in particular to comply with our electoral laws.

Mr SOMYUREK — How can we be sure that they have given their correct details to Google?

Mr HOLLAND — We cannot; they may well have given a false — —

Mr SOMYUREK — So they might have given false details?

Mr HOLLAND — Presumably they have given a credit card or something, so we can chase things down.

Mr SOMYUREK — You can buy prepaid cards.

Cr THOMANN — No, you do not. With Google ads, the way it works is that you have to give a credit card and you put a credit on it. You have to use a credit card to pay for it.

Mr SOMYUREK — But you can buy prepaid cards from Australia Post.

Mr TARLAMIS — For \$9 now.

Cr THOMANN — Yes, potentially you can do that.

Mr SOMYUREK — The whole thing can be — —

Cr THOMANN — But the thing is there obviously has to be a name attached to it.

Mr SOMYUREK — You can do all that.

Cr THOMANN — I do not think that there were credit cards available at the post office four years ago.

Mr SOMYUREK — I think there were. But anyway that is beside the point.

The CHAIR — It is worth checking out.

Mr HOLLAND — My basic point is that there should be effective regulation of the online advertising. We do not want to stop it. I do not think we can be King Canutes and try to turn back the tide. Online advertising on social media is very important. It does things that normal political advertising cannot do, and this is a double-edged sword. Because it is so important, it is important that it be done properly and we do not have some sort of anarchy in this area.

I ran through some of the considerations for the importance of online advertising in the submission, but just to single out one, the fact is that online ads can target voters waiting in the queue at the polling booth. You have your sausage with the bread from the parents committee in one hand and the iPhone in the other, and you are googling the candidates. The managing director of an American online strategy firm said that the US experience is that the number of people googling candidates while they are standing in the line at the polls is staggering. I think this is an important possible source of good and bad things.

We are probably all familiar with the experience of having an anonymous letter drop on the eve of the election. In our area, for instance, we had two mayors of St Kilda. One was John Callanan, a Liberal, and there was a letter drop on the eve of an election that was mocked up like a police report saying that John Callanan had been arrested for interfering with boys in the Blessington Street toilets but had used his position to cover this up. It was a terrible thing to say. There was a similar thing against John Broderick, who was a Labor-oriented mayor of St Kilda, where there was an anonymous letter drop on the eve of the election saying that his policy was to give an important area of land on the Upper Esplanade, overlooking St Kilda Beach, to an Aboriginal collective for free.

In the past we have had this experience, but those sorts of anonymous letter drops have a couple of problems. One is that people may not pick up the mail from the mailbox on a Saturday morning when they go out to vote and, two, you might be caught delivering this. The potential for Google to circumvent this is quite significant — that, by definition, you have somebody who has googled the candidates. It might be young kids who are not familiar with the political parties and the candidates who google the candidates and come up with this anonymous, defamatory, false sort of statement. And it overcomes the problem of having to deliver the things and possibly be caught in the act on the eve of the election.

That is the sort of thing we want to head off if we can. Social media is a wonderful device, but it also has all sorts of potential problems. That is why I am submitting that we should be regulating online media and that we have a problem with overseas entities such as Google and whether they will comply. I admit that, even if they comply, there might be ways that clever Machiavellis can circumvent this. Nonetheless, will Google comply? We are asking two things: one, for the Electoral Matters Committee to consider using its powers to require provision of the information; and two, if things are not satisfactory, to perhaps consider what can be done.

I tried to do some research on modern American electoral laws but did not come up with the answer. I believe anecdotally that in some areas in the United States it is compulsory for American political advertising to use an American website and an American service provider. The equivalent here would be to say that, if you are going to advertise politically, you have to use Google Australia; you cannot go through Google AdWords or Google California. I am still going to try to chase that up to find out if I can track down the actual legislation, and I will submit that later. That is enough on our submission.

The CHAIR — Thank you, Mr Holland. I have to say that what you have told us today has confirmed my deep concerns over a long period of time that this sort of activity can influence elections, given the closeness of the Albert Park result and given the closeness of the overall Victorian result. It could have had a quite significant effect on who formed government. Clearly it is a very important matter, and I thank you both for bringing it to the attention of the committee. Are there any questions, gentlemen?

I should also say, before I go any further, we have an apology from our fifth member, Mrs Inga Peulich, who is also the Cabinet Secretary. She is caught up on cabinet matters today and puts in her apology.

Mr SOMYUREK — I do not have any further questions, but it is good to get a specific case of the types of things we are after. I am sure we will do some follow-up, and speaking to Google is a very good idea.

Mr DELAHUNTY — Firstly, I congratulate you on the work you have done in putting a submission to us. It summarises it very well. Peter, you have done a fair bit of research on this matter and you talked about the American experience. Have you looked at any other countries as part of your research?

Mr HOLLAND — No, I have just tried over the last couple of days to chase it up, and I have one or two contacts to chase up.

Mr DELAHUNTY — Did you ask for the ads to be removed?

Mr HOLLAND — The Greens asked for them to be removed, and they were removed very quickly, but it does not overcome the problem of the ad on the eve of the election.

Mr DELAHUNTY — I know; I understand that. In other words in this case, the way you have written it, it could have been an independent person who has Greens leanings who did it.

Mr HOLLAND — We do not know; anybody could have done it.

Cr THOMANN — Can I intervene?

The CHAIR — Yes, please do.

Cr THOMANN — Obviously I was very upset at what was said about me, because it was totally untrue. What made it even worse was that it was linked to the Greens. With Google ads, if someone does something for a pizza place, the minute you do the thing it is not the guy next door who is the one who puts the ads in, like for McDonald's or Burger King. Do you really want to go to McDonald's? Then you click and you bring up Burger King. Normally the people who pay for the advertising are the people who will benefit.

Obviously in this case we do not know who was going to benefit, but the Greens were as frustrated and upset as I was. Ann Birrell, who is a good friend and a member of unChain, was the Greens candidate. The last thing she would have done would be to do anything like that. I was alerted by someone who did a Google search and discovered the ad. That is how I found out about it, so straightaway I contacted Ann Birrell to tell her what was happening. She looked on the computer and was surprised by the ad. The Greens straightaway asked for the ads to be removed before even we started to do something. That sort of double, misleading thing makes it even worse.

The CHAIR — Councillor, can I ask who you believe benefited from this advertising?

Cr THOMANN — First of all I think Google has been quite quick to remove the ads. The ads were only on air for a few days, so it was not the whole campaign. Obviously Google agreed to remove the ads. We have not been able to get the name of the person who paid for them or the name on the credit card that was used to pay for them, despite trying.

I did get some legal advice. What was the name of the firm? He is an expert on matters like that. He was quoted quite a few times in the newspapers as being an expert on these issues. I cannot remember the name now. We had a meeting with him. But for me to actually try to find out who did it was going to cost me \$10 000, which I did not have, because basically I would have had to put together a court order against Google and basically use defamation laws and all that kind of stuff.

Obviously, firstly, I am too busy doing other things, and also I did not have \$10 000; and as much as I am frustrated about finding out who said all these lovely things about me — —

Mr SOMYUREK — Did you get a legal opinion in writing that you can share with us?

Mr HOLLAND — No, just verbally.

Cr THOMANN — It was just verbal, because it was cheaper. We paid for the advice. But I will have a word — —

Mr SOMYUREK — We would not want you to go to further expense.

Cr THOMANN — I know, but I know someone who actually works with that firm, so maybe there is something he can do at this time just to add to the submission — I might see — without costing anything.

Mr SOMYUREK — We will talk to you offline perhaps about us speaking to people at that law firm.

Cr THOMANN — Yes, I can give you at least a name.

Mr HOLLAND — We will do that offline, yes.

The CHAIR — That would be good. But who do you believe benefited, if anybody, from this campaign?

Mr HOLLAND — We were running against all of the political parties, really. Our intent was to get 20 per cent of the vote, which would get us above the Greens.

Mr SOMYUREK — Chair, I think he says it could have been Greens, it could have been Labor, it could have been Liberal.

The CHAIR — I know it could have been — a lot of could-have-beens.

Mr HOLLAND — Our immediate target, I suppose, was to get above the Greens, and then to get their preferences to get above Labor, and then to get their preferences to get above the Libs. So basically we were running against everybody. So it could have been anybody, I suppose.

Cr THOMANN — I have suspicions, but this is not the place to say it.

The CHAIR — Fair enough.

Mr DELAHUNTY — The only comment I will make is that this is of growing significance. There is no doubt that we are all aware of that. Social media and that type of thing are important parts of our community. It is not only Google but a lot of other social media. Peter, have you done any work in relation to other forms of social media that have been used?

Mr HOLLAND — It seems to me there is a difference between paid advertising and people blogging, using Twitter, commenting on Facebook et cetera, so I think there should be special rules for paid advertising.

Mr DELAHUNTY — As there are for written paid advertising.

Mr HOLLAND — Yes.

Cr THOMANN — Obviously one of the problems is the number of letters or characters you can use. Even in Google ads you cannot be over a certain number of characters, so if you have to put ‘Authorised by Peter Holland’, like all the other written advertising, that takes half the space already. One of my suggestions is that potentially I think it is very important to have who the person is who has put it in, but as long as eventually the person who put the ad in can be traced.

Maybe one of the suggestions is that, if a candidate puts advertising through media, he has to register with the electoral office and get a number or a code, so if Peter Holland would like to put in an ad, in the ad there just should be a number — say, ‘123’ — so if it is potentially defamatory the head of the electoral office can say who registered under 123. I am just trying to find a way, because obviously there are limitations; we cannot control what people put in a blog, and I am sure, Mr Finn, you have been abused many times — —

The CHAIR — And sometimes in blogs too.

Cr THOMANN — That is right, in blogs and things. You know, you are known to have opinions that do not necessarily please everybody. But we cannot control that, but at least when it comes to paid advertising, it is like

a how-to-vote card or a flyer that you put in a letterbox — it is very similar to that — and it should be treated that way.

The CHAIR — Gentlemen, thank you very much. You will receive a copy of the transcript in about a fortnight. You may check that for typing errors, but no changes to the substance, please. But we would be delighted to hear from you about any typing errors or anything along those lines. Apart from that, thank you very much. You have made an invaluable contribution to the proceedings this morning. You have set up the inquiry very nicely. Thank you.

Mr HOLLAND — Thank you very much. Good luck with your deliberations.

Witnesses withdrew.