

PUBLIC HEARINGS ON THE 2012 REVIEW OF MMP

AT CHRISTCHURCH

ON 10 MAY 2012

HEARD BEFORE ELECTORAL COMMISSION BOARD MEMBERS

SIR HUGH WELCOMES KARENA BROWN

KARENA BROWN: The first thing I'd like to mention is that I actually made a typing error in the last line of the last (inaudible 09:29:57) and it should say that, "Proportionality is the key and it should not be reduced in any way or form. That was doing it online and not getting a chance to check it so I, I definitely do believe that.

Um, as – I won't speak to the whole paper. The one I really wanted to stress is about dual candidacy, because I have a real concern that if we actually separated that, you could only either be on the list or on, um, for a candidacy seat for an electorate route, then we really will diminish the electorate. Because people won't see the thing of putting themselves in seats that are marginal or are not in – safe if it means they're not going to get into Parliament by, through the list. And, um, I do believe we'll actually lose really good candidates standing in seats because they don't want to risk themselves not actually being in Parliament. And I really do worry.

And I know there's an issue where people say, "Okay, you got voted out of a seat and therefore they got into Parliament," but my feeling is most of the people who say that are people who wouldn't have voted for that person anyway, and they're really grumpy at them because they, they're the oppositional MP and they don't like them and so they wouldn't have voted anyway for Labour or for National or for whoever. And it's only because they're actually, they didn't like that person, they don't want them in

Parliament, but there's always someone else who liked that person and wanted them in Parliament. So it's always two swings. And, and I really do worry that we will actually reduce that strength that we put on the electorate and for a people in the electorates, um, they will not get a chance to actually vote for good candidates. Especially in the safe seats 'cos they, 'cos they'll, um, those people will have taken the, um, route to stay as a list candidate only.

And so, um, the rest of my paper, I do stand by it, but I just wanted – that's the one I really wanted to strengthen 'cos I know it's one that's talked about lots, but I don't think people have really thought through what it's going to mean to them if they made that decision as to when they actually get to vote for a candidate they'll mutter, "Why doesn't anyone good ever stand for us in our electorate?" and it's because they don't want to risk their position of being in Parliament.

And so after that I welcome any questions.

MR PEDEN: Thank you for your submission, Ms Brown. To what extent do you think that the sorts of concerns that are expressed by, around dual candidacy reflect people's attitudes to how parties select their list candidates, and do you have any comments around those processes?

MS BROWN: Um, well, I personally believe that – um, I'm a member of the Labour Party. I'll point that out right now. So, you know, 'cos I've – and so I actually go into voting for, um, in the list candidates 'cos we go to regional conferences as a, as a member of the party, so I go to actually vote for my list. Um, and I do believe that they're actually, if people actually wanted to really have a say in who wanted to be on the list, then they actually should belong to the party. Because it should be a party decision as to who they think. Because we're the ones who actually get to know our candidates and, and, um, in the area. Like, in our region I know, um, all my, all my local MPs. Um, I can speak to them all.

As a Labour Party member I feel confident to go and talk to them. The general person on the street isn't going to get to know the person to that level and not, not to know what their capabilities are. So they're not gonna know whether they should be high on the list or lower on the list, um, and it's gonna be solely who they think they can get captured by in, um, in a short period of time that they get to see the person or see them in the Parliament when they might see them what, theoretically misbehaving and they don't actually see the work they do in an electorate or what they do to actually, to help the people in constituencies if they're a list MP. Whereas we do get to see that. And that goes some would say for any party.

So I really do believe that the lot of the arguments around, you know, we should actually have more democratic votes, I mean, the people who actually want to, I feel, who want to vote out list MPs or vote out other people wouldn't, actually aren't giving their vote to that person. So why should someone who's not going to vote for Labour or vote for National or vote for New Zealand First then have a say where that person should be on that Labour's list or New Zealand First's list or National list because they not going to vote for them anyway.

And if they really believe strongly that they actually think that someone shouldn't be an MP then they should say okay I want to believe, I believe in this party but not that person then they should join the party and actually go through the democratic process. I don't know what the National process is but I know that both the Greens and Labour's processes are reasonably democratic. And, in fact, we go through an organisational review to look at how we can make it more democratic. So, um, it's not that people don't get a say in the list, and it, so, it's something that I really – and that's I worry about the dual candidacy will change the whole way people see the list and see electorates.

MS HURIA: This is very clear, thank you. I don't have any questions.

SIR HUGH: That last point's an interesting point. I've read recently in newspapers or something that the Labour Party's undergoing an organisational review. I think you're the first person who's told us that a part of that review is a revamping of the selection procedures for candidates to make it more democratic. Is that right?

MS BROWN: Yes, that's correct. Um, it was – in fact, we actually invited anyone outside the party who wanted to actually submit on it could as well. We had it on our webpage where people could do it. And one of the issues we talked about is how we select candidates, how we select, you know, both for the list, for the electorate. Um, that's part of the whole issue we're looking at. To see, is, is it the most.

SIR HUGH: That's very interesting. What, what point's the review reached?

MS BROWN: Um, at the moment it's getting, um, reported back – they collected all these, ah, submissions from both external and internal, um, and they brought it, bringing into a draft paper that are coming back to regional conferences. It got presented to the first one in Dunedin last, um, last week. It'll go through all the regional conferences and people – and the regional conference will have their say as to what they agree with, disagree with, so we're got a two-hour session to actually go through it and say, you know, "This is what's coming out, what we disagree with," and will then actually be taken away with all those points put into it to come out with a final paper that will be taken to the annual conference in November which is over I think the 16th to the 18th of November. And then it will be in – so the plan is that it will be in place, um, our next election process for the 2014 election.

SIR HUGH: My reading has suggested the review's a much broader issue, topic, than just candidate selection.

MS BROWN: Absolutely.

SIR HUGH: Oh, I see.

MS BROWN: It's a whole organisational review. It's looking at how we select our leader, how we actually – whether we have branches, whether we actually, how we actually create the structure within the regions, whether to strengthen regions, strengthen LECs. It's a, it's a whole big, the big view. 'Cos we haven't actually really reviewed the party since we brought in regions, um, 25 years ago. So it was just time again to actually have the –

SIR HUGH: All right. That's actually very interesting indeed, Ms Brown. Thank you very much. We'll probably – because one of the issues we are looking at is the, the democracy of the candidate selection process. We'll probably get in touch with the Labour Party I imagine and ask for a report as to where it's reached in that process.

MS BROWN: Mmm. Yeah, Moira Coatsworth, the president, is the one who's leading it, so she'd be the ideal person to, to push onto that.

SIR HUGH: Thank you. Thank you. I take the point that you make about dual candidacy. Currently it seems to me from looking at the many submissions we've had on the topic that the objection to dual candidacy might be a little narrower than even you've suggested. I don't recall any submissions which have suggested it's wrong – no, that it should be, should not be allowed, that a person standing for the first time shouldn't be able to be both a list and an electorate candidate. The concern seems to be in relation to either existing list MPs or existing electorate MPs standing in an electorate losing the, the electorate battle but still getting back into Parliament.

MS BROWN: But that, that's exactly what dual candidacy means. I mean, that's the whole point.

SIR HUGH: Right.

MS BROWN: I mean, even if they're a current MP, I mean if they're high on the list and they stood in an electorate, I mean the, the flow-on effect will be if

they say, “Okay, if you’re a current electorate MP you can’t go on the list.” The reality is they will then decide, “Okay, well, will I still – is, is my electorate at risk?” I mean, if I’m in a marginal seat, for instance Christchurch Central which is swinging between National and – they will say –

SIR HUGH: I take that point. Yes.

MS BROWN: – that therefore, “Oh, actually, if I can’t now,” you know, “if I, if I be on both, this is a marginal seat. You know, Labour’s not unpopular at the moment. I could lose this seat. I will actually give them – I won’t seek reselection for that seat now. I’ll just go onto, I’ll go onto the list.” So it’s going to have, still have that same effect when a marginal seat, even for a current, sitting MP, they will still make that decision. You know, ‘cos, let’s be honest, a lot of them actually, um, political people. They, that’s their career. They want to be career politicians. They don’t want to actually then put their, say, “That I’m here for the,” you know, “for the reason and I, I believe I can make changes in New Zealand,” and it’s not necessarily gonna protect these people in this electorate. I, I have a view for the whole of New Zealand.” So therefore I could think, “Well, okay, I’m not – it’s a marginal now. If I can’t do both then I’m going to give up that ‘cos I believe I can get better on my, on my list. Through, through my party.” And so it is still going to create that division.

PROFESSOR ROBERTS: Thank you very much and thank you for – I just want to echo what Ms Huria said. It’s a very clear submission. I just want to ask you about – you describe 5% as arbitrary. I once asked a member of the Royal Commission why they chose 4% and the answer was, “Well, 5% seemed a bit high and 3% seemed a bit low.” It seems to me 4% is also arbitrary. Any threshold is arbitrary.

0940

MS BROWN: I think that – I looked at the round wheel as it came – what does 4% mean for a party to actually bring in members. So that means that we’re going to bring in approximately around four or five MPs, and I think that becomes then that as a party they can actually contribute to Parliament.

PROFESSOR ROBERTS: Bring in Members of Parliament, yes.

MS BROWN: Yes, but I think you know, I believe five is too hard to meet, but if you get 3% you're down to having again, possibly three MPs, and I don't believe that's actually sufficient in a party, unless you've one electoral support to actually get you to actually have significant impact, so you could actually proportionally represent your party in Parliament, and actually have a very good go, because at the moment – and it's not just National, we're the same with the Progressive Party, you know, you have one or two seats, you know, that actually – and you know, first one's for that, and that, they were fine, they got 4 and a half percent, but if they only got 2 or 3% and only brought in three or four MPs, they were getting a proportionally powerful position because they got an electorate seat, when another Party who'd worked just as hard to get 3%, or 4%, and couldn't get any MPs in, so I made the choice on 4%, (a) because we were all commissioned out, and I knew it was arbitrary, but also to think how many MPs does that mean they would bring in to the politics that had actually – so Parliament actually becomes truly representative of the people's wishes.

SIR HUGH: Thank you. Ms Arseneau.

DR ARSENEAU: Thank you for your submission and like everyone, I have found it very clear. I did have one sort of thing I'd like to try to tease out with you. You said you're happy with the overhang situation as it is now. If we were to take away the one electorate seat waiver to the Party threshold, there's the potential that we could have larger overhangs. Would that change your mind about the overhang? You would be comfortable with a 128 seat Parliament for example?

MS BROWN: Well, one I would be very surprised – okay let's – the Maori seats are a bit different and that's why we end up with the overhang. I think if a Political Party could win two or three seats, the reality is, and they've actually got really good support in those electorates, and they would actually

then, I believe, actually be able to actually get that sort of percentage in the threshold as well.

The Maori seats are a bit different, because there is such close relationship with Ratana and all that with the Labour Party. The people still believe in the Party and believe that's the way to go, but they also believe that the Maori Party MPs would be a good idea, so it's a very unique situation that I don't think would cross over into other Parliamentary Parties, so I don't believe you'd actually get the amount of overhand that you're thinking because they'd actually have to get people getting a lot of small Parties winning electorates and actually getting a really low percentage of the Party vote, and in reality most times, it's – if they get one electorate seat because it's been – deals have been done either by Labour or by the bigger Parties not to stand, they actually hadn't really been able to get the Party vote around it, and if you look at ACT in, you know, that got 3%, so they actually only got one electorate seat, I really don't believe that you're going to get a lot of parties getting electorate seats and get low percentages, so you only get large electorate overhangs.

I really doubt that very much. I mean I could be wrong, and if I'm proved wrong, then I will live with 128 seat Parliament, but I really don't think that would occur. I think that the situation with the overhangs is very – is very unusual, and most times, most electives, Political Parties other than Labour and National, tend to only manage to ever win one electorate seat, because electorates for some reason, are quite comfortable with the big Parties and it's very difficult to take them away, because of the proportionality of the vote, often gets represented in the proportionality of the votes and it's often an individual who's broken away from a Party that manages to hold onto the seat, like Progressives, with Jim Anderton, like Winston Peters for while it's New Zealand First, they're breakaway Parties, rather than actual new Political Parties coming in, which is why, for instance the Greens, they have really good Party support, haven't yet been able to win an electorate seat. They had it for a little bit of time, and then it got taken away when the re-count came in.

DR ARSENEAU: Thank you.

SIR HUGH: Thank you Ms Brown, thank you for your assistance. Most interesting. Thank you for coming along.

MS BROWN: No worries.

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SIR HUGH WELCOMES ROGER PAYNE

ROGER PAYNE: My main focus this morning is to answer any questions you might have. As you can see from my written submission, my focus is on this vexed issue on what I and some others call selection fixing as demonstrated in the National Party in Canterbury in recent years at least since 2002, that I know about personally. I have steered clear of any discussion about proportionality issues because I felt that other submitters would be adequately covering those various arguments.

So I come to you today with a very considered view about what goes on within the National Party particularly here in Canterbury and it's not a good look. In fact, it's quite disgraceful. I think if the public of New Zealand knew what was going on in the National Party in Canterbury since 2002, they would just simply be disgusted but in my view there's a high degree of lack of knowledge, lack of awareness, ignorance of how a major party, National, selects its candidates.

As you've noticed in my written work, when you get a former Minister of Justice that was knighted for his services, particularly to things like Treaty negotiations but also public service as a senior politician telling me recently, in the light of my experience here in Canterbury, and he knows all about my experience here in Canterbury. He said "Well, Roger, the sad thing is, what you're reporting about Canterbury and National is commonplace and it's nationwide and it probably involves some of the other parties too."

The MMP Governance Act was supposed to try and stop it, that is the selection fixing. But when you look at the Hansard record of the debate that took place at the time the Electoral Act 1993 was introduced, there's a large amount of comment from politicians and some of them very experienced about what it was necessary to get into democratic selection processes within political parties. Having read why they were concerned, it is quite concerning that the Minister of Justice at the time, Doug Graham, basically opted out of a tight, a set of rules governing the democratic selection of political party's candidates on the basis that well maybe one day the Court will be asked to assist. He may or may not have ever expected that to happen, it didn't happen for 15 years and I came along and took up this option as recorded in my submission.

One of the, the very concerning things is that having exposed selection fixing in 2002 in Rakaia to the National Party at the very senior level through a 17 page very considered research report made available to the leader of the party, the board of the party and the Chief Whip of the party – it was commissioned by the Chief Whip of the party, John Carter, at the time, exposing how selection fixing was actually working, in those days in 2002 it was a case of taking out the strong candidates so that a relatively weak candidate favoured by a few, perhaps no more than two or three or four people, could win.

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Well, six years later in Selwyn, they went to more extreme lengths and they didn't simply select by taking out strong candidates, they took out every competitor to the one they wanted put in. There were five candidates and they took out four so there was no selection process and I put up my hand about all of this as I've recorded in my submission and it was only because I was prepared to document my concerns to the leader of the party, to the president of the party, that 35 ordinary members of the party came in behind me and said, "Look, this is not good enough. This has got to stop," and it was that power of one supported by 35 members that enabled the turning over of the decision that had been made very public.

That decision had been broadcast to every household in the Selwyn electorate via Christmas card signed out by the so-called selected – successful candidate at the time so, um, when a re-run was forced, I was punished by not being allowed to compete and then that led to the injunction through the High Court that I took and when the High Court couldn't complete that process, I was diverted under advice as explained in my submission, to an electoral petition. When that was filed I firmly believed that I had the right to do it. No one said that I didn't. No rule was presented to me that would prevent me from doing that and yet the High Court had to decide that the petition really was just a complete waste of time because I had no standing as a prospective candidate to take it in the first place.

That means that the only person that can really expose selection fixing, that is an unsuccessful prospective candidate. Has no power to do anything with the knowledge, so that means the law as it currently exists actually permits and even facilitates selection fixing and in my view, that has to be changed. The public need to know that this is the case and there needs to be quite a lot of very serious work put in to drafting some rules to make sure that it is stopped and we get better people into Parliament in all parties through better selection processes, particular in the major parties.

I don't think the smaller parties have the call on the most experienced people in our community like the major parties do. That's National and Labour. And I'm very interested to hear that Labour, from the earlier speaker, has got some action underway to try and improve their system but in National as far as far as I know there's nothing underway and I believe there's quite a few people would like to see the system stay like it is within National because they have been the beneficiaries of selection fixing so there's a vested interested to leave it the way it is so it's only outsiders like myself and then an independent organisation like your own that's charged with a review of the voting system that could come up with a better system in the interests of the public.

SIR HUGH: But do you suggest, as I take it you do from what you've just said, that there should be different rules for larger parties as opposed to smaller parties?

MR PAYNE: No, no I don't but, um, I think it should be the same rule for everybody. It's just that the smaller parties seem to find it difficult to get candidates in all the electorates so they really struggle to attract people to come forward whereas the major parties with their track record and so on should be, in my view, for every electorate attracting large numbers of people like, as I've pointed out in my submission, if a Government department or a private sector organisation advertises for an experienced managerial position, in this day and age and you can see this from the work that the employment consultants do and so on, it's commonplace to have 100 or so applications but in political parties, nowadays, even with major parties, under the way the system's been run in the past, they find it hard to attract more than one or two people.

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SIR HUGH: Well you're aware from your litigation experience of what section 71 currently says. What do you suggest it should say to guarantee the outcome for what you contend?

MR PAYNE: The Selwyn election petition of 2008 showed, for example, because it – I can't go into all the details here today but my advice is summarised in my submission but the petition shows, for example, that back at the time of Selwyn 2008, the major political party National had not registered its rules with the Electoral Commission and – so in my view, knowing quite a lot about the law, I was very much of the view that if they had unregistered rules, their rules should be irrelevant. They shouldn't count. They should have no weight in law but the election petition showed that it didn't matter. It didn't matter at all and the National Party lawyer, a man by the name of Peter Kylie from Auckland, was able to say that because there were no sanctions for not registering the rules –

MR PEDEN: Perhaps it's not so much the rules are required to be registered under the legislation, the rules are required to be provided to the Electoral Commission at the time – certainly at the time of registration of the party so – I mean but the point remains that parties are obliged to provide the Electoral Commission with copies of their constitution and their membership rules and the Commission's obliged to make those available to the public.

MR PAYNE: Yes, that's right. We see an old party like National that's reviewed it's rules from time to time and at the time of the Selwyn election, and this is a very interesting point because it sort of comes under the heading of natural justice in law. Their rule book was under extensive review and when I went and asked for the rule book in 2002 from the National Party head office in Wellington, I was told that no old copies were available but they were irrelevant anyway because the rules were under review, extensive review, and it would only be the new ones that I should be interested in.

Well, they couldn't provide the Electoral Commission with rules at the time of the Selwyn 2002 election, but they couldn't provide any of the candidates, including myself, with the rules and yet at the petition the opposing lawyer made a big play of the fact that they did have a rule that said that candidates could be rejected without reason. Now I tried to argue that the rules weren't available, they weren't registered, I had it in writing from the Electoral Commission that they were not registered. They didn't have even the immediate past set of rules at the Commission and yet the High Court, on that particular point, said that it didn't matter on the grounds that there was no sanctions for not providing the rules so can you see the predicament that I was in? They were claiming they had a rule. I was saying that they couldn't provide it to me or to the Commission. I can see why the Commission should have them because that's way of making sure that the whole public could see them.

So there were many unsatisfactory things –

SIR HUGH: Well, could I take you back, Mr Payne. Assuming you're right and there were some procedural deficiencies within the National Party, how – that's not a matter I would have thought that the Electoral Act can deal with. That's an internal administrative matter for the party. What I'm – I'm interested and you're telling us is that what you think the Electoral Act should provide to ensure democratic selection?

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MR PAYNE: Could we just keep to that particular point that I've raised for a moment?

SIR HUGH: Well no I'm sorry, we can't recommend changes to the rule making procedure of any private organisation like a political party. We don't have that power. The Electoral Act doesn't give us that power, and it's extremely unlikely I'd suggest to you, that Parliament would ever amend the Act to give the Electoral Commission power to investigate the internal administrative rules of a private organisation.

MR PAYNE: But on that point that I was raising Sir, surely the Commission on requiring the rules to be registered, should have some way of enforcing that requirement. There should be a sanction, because otherwise there's no point.

SIR HUGH: We don't, and I suggest to you, it would be most unlikely that it would ever eventuate, have a policing function. Section 71 currently requires Political Parties to deposit their rules with us, and put them on the website as you said, because you said the public needs to know what the rules are. It would be a significant additional step I suggest to you, for the statute to give the Electoral Commission a policing function concerning compliance with any Parties' rules as lodged.

MR PAYNE: But if in practice they don't need to honour the requirement to register their rules, or make them available to prospective candidates, what then, do people in our democracy do about that?

SIR HUGH: They issue, as you did, proceedings for an injunction or a judicial review, and that gives the Courts power to inquire into compliance with the rules.

MR PAYNE: Well could we then move onto another point in my submission, which is directly related? Having done what I did in the public interest, and there's a huge cost in terms of time and money doing these things, to find from the Court that I had no standing in law to do what I did. And as I tried to point out in my submission, there is no other person that could do it, other than an unsuccessful prospective candidate, because no other person would have the detailed knowledge that I had, and I wanted to share that, but look where it got me.

SIR HUGH: Well there have been many cases in New Zealand over the years, where members of bodies have challenged the correctness of the bodies' administration of its rules. And they do that, as I've said, by judicial review and injunction perceiving, or some litigation in the High Court. I think you'd be hard pressed to find any example of a body such as the Electoral Commission being given that supervisory function. That's essentially a Court function, a judicial function.

MR PAYNE: Well in the current law that it so. But I can't see anything useful coming from my Selwyn Election petition, because it's been now made very clear that an unsuccessful prospective candidate really has no access to the Court.

SIR HUGH: Which brings me back to the question I put to you at the outset of this dialogue. How do you suggest the Electoral Act should be amended to assist people such as yourself?

MR PAYNE: The, just keeping to the two points we've covered. I think it would be helpful if the Electoral Commission had some sanctions for not registering the rules or not making the rules available. And then secondly changing the rules to allow a prospective candidate to report as I did, and

have a chance to have a fair hearing. See, basically I ended up with what I would call an unfair hearing because I didn't have the standing to have the hearing in the first place. But I didn't know that at the beginning of the process and that need. You see both the Electoral ...

SIR HUGH: In what way could the Electoral Act be amended to make that clearer?

MR PAYNE: There are a-

SIR HUGH: Or put it in another way. What additional provision should be included in the Electoral Act over and above the provisions in the High Court rules and the like?

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MR PAYNE: Under the – what's commonly known as section 71, there are some rules. I think it's 71B from memory. I believe, um, that in discussion with – between someone like myself that has this inside knowledge about the practical situation and a law drafting expert, if we had the authority from people like yourselves, we could come up with some additional rules either under section 71B or in High Court rules or some other rules within the Commission that would bring about the enforcement of the requirement to register rules, bring about an opportunity for knowledgeable people such as unsuccessful prospective candidates, to report this issue of selection fixing which I think's quite abhorrent in our democracy and through those sort of processes and I've mentioned some other ones in my submission but my submission is not complete in terms of what sort of rule changes could be envisaged.

I'm of the view that the public would be made aware of the problem and would be much more interested – there would be less ignorance here, a lot of very able people in the Selwyn electorate were absolutely astounded to find what sort of barriers are up against very able people in Selwyn to coming forward to offer themselves for Parliamentary service.

SIR HUGH: We both know that, Mr Payne, but what I'm pressing you is to tell us that you – how you think section 71 should be amended. We've got your suggestion that an enforcement provision in the hands of the Electoral Commission should be incorporated?

MR PAYNE: Yes.

SIR HUGH: Some protection for unsuccessful candidates? Is that what you're proposing?

MR PAYNE: No, it's – to give unsuccessful candidates, perhaps the word is a "status", not necessarily a Court status but if we had to go through that process as was predicted by the Minister of Justice, Doug Graham, way back in 1993, if we had to go through that process again, there needs to be some status given to allow the case to be heard because the benefit – out in Selwyn the beneficiary of selection fixing could not be expected by anybody in New Zealand to report the selection fixing that had occurred because she was the beneficiary of it. She had a conflict of interest. She'd be undermining her own selection.

SIR HUGH: All right, thank you. I've detained you too long.

PROFESSOR ROBERTS: I was just wondering in response to your suggestion that if Mr Payne wanted to put something concrete, a suggestion for a draft, to the section 71 an additional clause or a change of the wording to submit that the Commission?

SIR HUGH: Well, we're always happy to receive additional material from those who made submissions and if Mr Payne cares to finish that line up, we'll certainly have a look at it.

MR PAYNE: I've offered to do that in the last paragraph of my submission but first of all I was keen to do what I've done and to engage in this oral

commentary with a view to just – testing the water for the opportunity, you know, it has to be an interest et cetera, otherwise, you know, I would just have to accept that the Selwyn petition was, um, ineffective. And you know, I just draw your attention to things like the whistle blower here in a commercial situation to do with fraud and so on.

You know this young Christchurch woman that's acted as the whistle blower has said here on the front cover, "If I'd walked away, I wouldn't have been able to live with myself." In other words, if she hadn't reported what she did, she couldn't live with herself. I felt exactly like that. Not so much after the Rakaia situation in 2002 because I did report and did – was encouraged to do so by the top level of the National Party but then after six years with no action on the report and seeing very blatant selection fixing, one where they wiped all the candidates except one, I thought to myself, "I have to report this. I can't live with myself if I just sort of walk away in disgust," like most of my other colleagues that were prospective candidates have done.

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And you see that's how the democracy tumbles down because we've got some very able people that just in this one electorate of Selwyn that was previously Rakaia, not in total but thereabouts, very able people walking away in disgust, saying nothing and saying never again and telling all their able-bodied colleagues not to be involved. Well, that's why we've got the tumbling down of democracy and it's shown up, as I've suggested in my submission, in the low number of candidates, you know, poor voter turnout, low interest in politics, et cetera.

SIR HUGH: Thank you for coming along and making the presentation, Mr Payne, we've made a note of your suggestions for amendments to section 71 and we'll certainly give them consideration. Thanks for coming along.

SIR HUGH WELCOMES KEVIN O'CONNELL AND MIKE PRITNEL

KEVIN O'CONNELL: Hi, thanks for the opportunity. I'm Kevin O'Connell, I'm the immediate past president of the ALCP. Mike Pritnel here is our deputy leader. We've got probably as much experience with MMP as anyone in New Zealand but we've seen the down side of it and the failure of it and the anomalies in it first hand and we've put in considerable effort over 16 years, all for nothing. In fact, it's been worse than nothing. As far as our representation is concerned, we've had none.

We've, we've had Parliament representing everything that's against us and what we stand for and we stand for, for all New Zealanders who understand that prohibition laws are dysfunctional and uncivilised, unduly harsh, ridiculously non-evidence based. There's half a million, statistically, cannabis-consumers in New Zealand and we're all third class citizens and we're not represented by Parliament in the slightest. We're discriminated against officially by the Parliament and government and the social conscience is missing from New Zealand's representation.

You know, you guys have recently highlighted the problems with non-voting, you know, one third of eligible voters not voting. Well, they've probably got as little faith in our MPs as we've got which is not very much at all, I'm afraid. If we want people to be involved, we've got to make sure that every vote does count and currently, quite a lot of votes count for nothing, they go in the trash, they're under that 5% threshold and those people who are getting squashed out who we represent and the sentiment that we represent are, are being failed by this pseudo-democracy that we've got in New Zealand.

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So just a few points. That was a bit of a summary there. There isn't a minimisation for drug policy or alcohol or any other problems in New Zealand, it's as if New Zealand seems to want to have problems unsolved, and we see cannabis as a crucial issue, the cannabis legal status, in resolving a lot of the dysfunction and alienation in New Zealand, a lot of a non-participation are the

people who are disenfranchised, discriminated against, treated as non-entities. It's just wrong in a civil democracy. And what's going wrong is there's – there's the lost sentiment for law reform, and when it's polled you find that most New Zealanders actually support decriminalisation.

The Campbell News poll after Don Brash made his comments last year about cannabis, and the MMP run up to that election. The poll showed 73% support decriminalisation, and yet Government has got a 100% mandate against the decriminalisation, and keeps appointing Peter Dunne from the United Future Party, one MP Party as the balance of power, and he's had the balance of power for the last four MMP elections with a caveat against any cannabis decriminalisation. Right?

Now any analysis that's done can't fail to see that this is an issue that meshes deeply into New Zealand's MMP and democracy, and yet is being squished out and being allowed to slip through the cracks, while the police get more powers, the sentences get longer, they're introducing work drug testing, so people like me are going to have trouble getting work in the Christchurch rebuild because of this ridiculous drug testing which seems to be a moral standpoint rather than a practical thing. Because, you know, evidentially the cannabis use is low risk, low to moderate risk, and generally incurs no harm whatsoever. Whereas the prosecution, persecution incurs incredible harm against people, individuals and society.

SIR HUGH: Whatever the merits might be, the argument Mr O'Connell, are these issues that amendments to the Electoral Act are able to confront?

MR O'CONNELL: Indeed, because Parliament's not had the debate on this, it hasn't had the to-ing and fro-ing of the argument, it hasn't resolved, according to principle, what's right and wrong about this. And because of the taboo in Parliament to discussing drug issues, it's not happened, and there's that 5% threshold which means we've missed out at the election. Meanwhile the Green Party, who everyone knows has a stance on decriminalisation of

cannabis, keeps collecting cannabis votes, as it did in 1999, when it went from 1 to 5% virtually overnight in its support.

The Green Party take that vote sentiment, and do absolutely nothing with it. They don't even – they don't – the Green Party don't even talk to us. Now that 5% threshold, we can't say anything good about it really. It's shutting out these minority voices that are supposed to be there in our democracy under proportional representation.

SIR HUGH: Well we understand from the submission you filed, that you want the 5% reduced. For myself it is not just quite clear, you've said 5% to 1% or one MP –

MR O'CONNELL: Yes, enough votes to allow one MP per unit of representation, being one MP. Not five MPs, the unit is one. So we – in 19 – for example in 1996, ALCPs got enough votes to – 1.66% it would've given us two – two MPs had there been genuine proportional representation. So we want that threshold at 0.83% or whatever it is, one, so that if we get enough list votes for one MP, that that's – well, what we get. I'll let Mike speak for a bit.

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MIKE PRITNEL: Well basically what we've been seeing as well through this last period with the MMP is that basically even though we have MMP, we still end up, we've still basically got First Past the Post. We've still got the two major parties with their support, clone parties. And what they do every time we get to an election is they polarise the New Zealand voter into voting either one or the other, black and white, there is an issue, they'll always create an issue where people, it's too important for them to give their vote to us for instance because if we don't reach the 5% their vote is wasted and the issue which will be generated by the parties and by the media will polarise most of New Zealand into having to vote for National or Labour over one of these issues.

And I mean, this is a thing that we're powerless to, because they've got the money, our money, government money. They've got the money, they've got the potential to influence, you know, the outcome right from the outset, basically, so usually it's a foregone conclusion and in fact it is always, it's going to be one party or the other, it's going to be National or Labour that's going to be running the show. Basically we've still got First Past the Post with, you know, with a few hanger's on but those hanger's on are only there to support the main parties, they're not there representing anything else.

SIR HUGH: Can I just make sure that I understand your submission? It is that the percentage threshold –

MR O'CONNELL: Is too high.

SIR HUGH: - should be reduced to 0.83% of the valid party votes cast in any election, is that right?

Mr O'Connell: Yes, yep, correct.

SIR HUGH: Right, thank you, I understand that. Mr Peden, anything you wanted to ask?

MR PEDEN: Well I think, just following on from Sir Hugh's point, that the problems that you seem to be describing don't appear to me to be related to the electoral system as such as more to do with politics and the relationship between voters and, and political parties. You talk about 400,000 people being disenfranchised. If those 400,000 had voted for you, you'd have over 20% of Members of Parliament and there's –

MR O'CONNELL: We often hear –

MR PEDEN: - nothing stopping anybody in the MMP system from voting for you, is there?

MR O'CONNELL: There is nothing but as you know there are apparent obstacles to people wanting to be involved in this, in voting process. One third of people, all these young people can't, don't see anything –

MR PEDEN: Just trying to see, though, the connection between your argument to reduce the threshold from 5% to 1% and you refer to the fact that 400,000 people are disenfranchised by the system and I can't see it.

MR O'CONNELL: We often hear, when we're out campaigning, "Oh the ALCP, that's a wasted vote." Right? Now, looking at our polling half a percent or whatever it is and going well why, why are we going to vote for them? Let's, instead of voting for us, they cast a tactical vote for a party that's already safely over a 5% threshold. So there's your linkage. People won't vote for us. If we had that threshold that we're requesting, the 0.83 or whatever it is, you would suddenly find that we're not just a half percent party after all.

We'd have a snowball effect and we've seen this snowball effect happen several times where once people know an MP is safe in an electorate seat, Winston Peters or Peter Dunne or Jeannette Fitzsimons in 1999, all these MMP examples where that one MP has been able to, once they're secure, once that one unit of representation is secure, other people feel confident to vote, to throw their vote in after the, and I, I sincerely believe that if, if you had a, if we had a one, one MP list threshold, ALCP would suddenly have potential to become a 5% party and you've seen some of those 400,000 people –

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SIR HUGH: Well, that's a different threshold that you're contending for.

MR O'CONNELL: It is.

MR PRITNELL: Yeah, but what he's saying is that if we, if we lowered the threshold we'd find that we'd have more people, more people than we needed

to meet the lower threshold voting for us, because they're now confident that their vote may be worth something.

MR O'CONNELL: They know their vote's gonna count.

SIR HUGH: You suggest lowering the percentage threshold, don't you?

MR O'CONNELL: We certainly do.

SIR HUGH: Or do you suggest retention of the one-seat threshold?

MR O'CONNELL: It's, it's only, ah the one seat threshold, definitely. If you're not gonna lower the, um, the 5% threshold you've gotta keep that one, one MP threshold. And, ah, you know, we've got this wonderful due process here in, in, in New Zealand. We've been to a lot of select committees over the years. We've been to the Royal Commission, we've been to couple of other inquiries into cannabis-related matters. And we've – every time it's amounted to nothing. And one thing we have to say about this, this wonderful, ah, review of MMP is even if you guys agree with us, that democracy's being misrepresented by the threshold, 5% threshold, the govt has no interest in lowering that threshold. So no matter what you ask for, they're going to manipulate it their way.

SIR HUGH: We only have a power of recommendation to Parliament. We have no power to require Parliament to accept our recommendations.

MR O'CONNELL: So, so that, in a way, too, is a failure of, of our democracy. You know, this very process, I'm, I'm saddened to have to point out, could well be just another chapter in New Zealand's failure.

MS HURIA: I think I just wanted to point out number 7 on the back page of your submission, it refers to "potential voters fearful of being identified," and I guess I just wanted to make the point that people's vote is secret.

MR PRITNELL: No it's not.

MR PEDEN: How is it not secret?

Mr PRITNELL: When you go into your, when you go to vote, your name is ticked off a roll, your name –

MR PEDEN: Yes. Yes.

MR PRITNELL: – and the number is written on the voting form. It can be traced. It is not secret.

SIR HUGH: The only circumstance in which it can be traced is if you voted more than once.

MR PRITNELL: So I'm told, but I also know someone else who works for the Court who told me anybody can go down into the basement of the Court and look through the voting papers. They're, they're kept there for quite a while. So there is, there is – it is not secret.

MR PEDEN: If you're aware of such an instance, you should let us know because it...

MR PRITNELL: I'll look into it further and get back to you on it.

MR PEDEN: And it would be extraordinary because the papers are kept in secure custody by the Clerk of the House of Representatives in Wellington. And so your friend in the Court was misinformed.

MR PRITNELL: Mhm.

MR O'CONNELL: Aside from that there is a perception amongst a lot of our potential voters that their vote may be traced, and they might have a little home grow situation. There's, like, probably 20 or 30 thousand people

growing their own marijuana in New Zealand, even as we speak. They're, they're reluctant to associate their name with Legalise Cannabis in case the clampdown gets ramped up another notch and all ALCP voters get, have search warrants put on them. Because that's the society we live in. We are lowlife criminals in this society, and 400,000 others, we are the lowest of the low. We're the new Jews in our so-called civil society. Even though we make a valid contribution in our own lives, we are utterly discriminated against and it's, it's akin to Nazi Germany. Not so extreme perhaps, but it's the same kind of idea, and it's not a million miles away from the, you know, the lead up to, to the Holocaust, where this discrimination got completely out of hand. Unwarranted discrimination.

MR PRITNELL: It started as political discrimination.

SIR HUGH: I suggest to you that extreme language of that sort is unlikely to command a great deal of support from us.

MR O'CONNELL: We're just merely drawing a parallel, and it may seem extreme, but it's –

MR PRITNELL: And everything starts somewhere and leads somewhere else, as it did with that situation.

MR O'CONNELL: We, we have people have their property taken off them, their houses, their farms, ah, the police have a lot of power.

SIR HUGH: Mr O'Connell, that has nothing to do with the Electoral Act, and you know perfectly well that that's the case.

MR PRITNELL: Yeah, but he's talking about the fear of people voting and this, this is behind it. There is, it is ingrained into our society. We've had 30-plus years of the drug law in, in, in New Zealand. Um, it has affected just about, just about, you know, everybody. Everybody's neighbour, everybody knows somebody who has been affected by it, and we're talking about the

fear factor of people not wanting to vote for us back there, and this is related to that.

SIR HUGH: We demand that we move that we move on.

MR O'CONNELL: Come on, you've got to have something to say on this. I mean, there's a whole lot of people not getting their votes counted.”

SIR HUGH: Thank you, Mr O'Connell, Mr Pritnell. It's kind of you to come along, it's kind of you to make the submission. We will give it such weight as we consider appropriate.

MR O'CONNELL: Well, we look forward to seeing that recommendation about the 5% threshold so that people are encouraged to vote in this democracy.

SIR HUGH: We will certainly be looking at the 5% threshold.

HEARING ADJOURNED: 11.31 AM

HEARING RESUMES: 11.01 AM

SIR HUGH WELCOMES PAUL COMRIE

PAUL COMRIE: One of the most significant aspects of MMP is the threshold. In my submission I advocate this 5% hurdle remain in place. It is too soon to make a change. We've had just six MMP elections. If we reduce the threshold to 4% as many are proposing the number of parties in Government will increase and running Government could well become unwieldy and the very act of forming a Government difficult.

Let us retain 5% as the marker to pass and perhaps review this aspect once we've had a further – or had further electoral results to go by. I would suggest after 10 MMP elections, you would have the experience and judgment to make a better call. At that time in 2023 you can make a further MMP review on the threshold.

I would like to quote, as I did in my original written submission, Sir John Wallace, former chairman of the World Commission on the electoral system. "To my mind the decision on the correct threshold was a close call but 5% rather than 4% is significant in increasing the difficulty which a small party faces in gaining representation. Based on New Zealand experience to date and also on overseas experience I now quite definitely favour 5% in order to guard against the possibility of ineffective Government if there are too many small parties." I, myself, therefore advocate the 5% threshold be retained.

My submission also covered party lists. I have no further additional comments to make other than to repeat my wish that political parties remain in control of the ranking of party lists.

Thank you for giving me the time to speak today and I very much look forward to your report later in the year. Let us hope politicians pay due respect to the

Commission's efforts and recommendations and avoid the temptation to put their own powers and interests ahead of the wishes of the people of New Zealand. Thank you.

MR PEDEN: Your submission about the 5% threshold is very clear. What's your view on the one seat threshold?

MR COMRIE: My view really is that, um, yeah, for those parties that get minimal – or get an electorate seat, yes, they shouldn't be entitled to further seats unless they reach a threshold, yeah.

MR PEDEN: And what threshold should that be in your view?

MR COMRIE: I think similar, 5%. Yeah, rather than complicate matters and have a different threshold.

MR PEDEN: Mmm, and why is that your view?

MR COMRIE: Ah, I think it's unfair that a party can get an electorate seat and then bring in other members when another party can, say, get 4.99% and have no representation at all.

MR PEDEN: I found your discussion around the dual candidacy were all very, very well expressed.

MR COMRIE: Thank you.

SIR HUGH: Thank you for giving us the – how the percentage of votes would translate into actual votes received, Mr Comrie. Do you recall where Sir John Wallace actually said the words you've quoted to him?

MR COMRIE: Ah, yes. I do put that in a footnote in my submission.

SIR HUGH: I must have missed that.

MR COMRIE: So it's at the bottom of page 3.

SIR HUGH: I beg your pardon.

MR COMRIE: Yeah, so it's in a *Political Science* journal.

SIR HUGH: So that was in 2002?

MR COMRIE: 2002, yes.

SIR HUGH: Sort of ex – after the threshold had been chosen isn't it? By Parliament? He certainly takes the view now as Sir Kenneth Keith does, another member of the Commission, that the one seat threshold was wrong in their recommendations and they – I think they both still adhere to the 4% they recommended in 1986.

MR COMRIE: Oh, so they've changed sorry, have they?

SIR HUGH: Yes. I suspect that Sir John – I might ask him but I suspect that Sir John commenting on the threshold as it had been enacted by Parliament and the operation of that threshold in the years between 1996 and 2002.

MR COMRIE: Right, right, okay.

PROFESSOR ROBERTS: I was only on the first – I was one of the co-editors of *Political Science* at the time and it was a speech he gave at a law conference and we asked for permission to reproduce it but it was, of course, and you can see from the date of the – he was commenting only on the first two elections. The third MMP election hadn't even taken place.

MR COMRIE: Ah, okay.

PROFESSOR ROBERTS: An excellent submission. Thank you for adding the tables and the clarity of your argument and the footnotes from *Political Science*. What I was going to say is you included in the table the 6% threshold. Had you any ideas of whether, in fact, the threshold should be raised?

MR COMRIE: No, I don't believe it should be but I've just put that in just to give the, you know, the boundary, the four, five and six sort of thing so give it a range but no I don't think 6% is – would be a good threshold. I think it's too high. I think 5% is a good one on balance, yes. And I would say that my argument for getting more experiences and I think if we have four more elections, we'll have a much better idea of what 5% could throw up and I have the belief that with that experience we could find that 5% is giving some issues that we haven't actually had now and if we do reduce to 4% it would make those issues even worse, in effect, so...

DR ARSENEAU: Thank you also for your submission. I enjoyed reading it. I was interested in this notion of waiting – putting off a decision on the threshold until we have some more elections, so during a review after 10 elections, and we've actually heard from some other submitters that maybe what we need to be doing is doing ongoing reviews of the operation of things – looking at things like the threshold, perhaps every three elections or after, say, every 10 years. What would you think about that?

MR COMRIE: My view would be that it's not a good idea. Um, I think the public might get a bit tired of that.

SIR HUGH: The Electoral Commission might get a bit tired.

MR COMRIE: I think the general public has a positive view of MMP but there are a number of people who aren't keen on it and it could easily move into the negative so I think we have to be very careful how we tinker with MMP. So I'd be keen – sorry?

DR ARSENEAU: So you, you'd just advocate just one more review then?

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MR COMRIE: Yes, I would, that's what I'd say, yes.

DR ARSENEAU: Thank you that was really clear.

SIR HUGH: Mr Comrie I wonder just before you leave, there's one point I did want to ask you about, because I particularly appreciated your comments on the selection of Party Lists and the pre-eminence of Parties in that process. One of the suggestions you've made at 2.3 is that (inaudible 11.10.32) the Parties means that they can ensure that there are – that there's a regional agenda and an ethnic bias, well it's not bias, representation. Some people have suggested to us that if the Parties remain supreme in that area, that regional agenda, ethnic representation might shrink. Should we be thinking about including something like that in section 71, which deals with the Party selection process?

MR COMRIE: I – yes I'm not a member of the Political Party I've mentioned, but I

SIR HUGH: No, no I realised that.

MR COMRIE: I do believe that Parties need to manage their own internal workings., I think, is it Geoffrey Palmer, Sir Geoffrey Palmer said that there should be some control over the process, so that it's fair. So I think there's some validity to that. But at the same time, I think Parties shouldn't be hamstrung in how they deal with their internal bureaucracy.

SIR HUGH: And the Party selection process submissions tending, well as I see it, to resolve into submissions about the selection process up to the election itself, and site your separate question, which is whether voters should be able – at the election should be able to re-order the lists for themselves. Do I take it correctly, that you would be against voter –

MR COMRIE: Yes, definitely against that.

SIR HUGH: – public tampering?

MR COMRIE: That's right. Definitely against that, ayes.

SIR HUGH: Why do you take that view?

MR COMRIE: Because I feel that – that diminishes the power of the Political Party. And after all we vote for them. I think we should have a reasonably positive view of how they do things behind closed doors. I think there's a risk if you start tampering with their process. You could get special interest groups that could sway how a Party –

SIR HUGH: That would certainly apply wouldn't it, if any voter could re-order the list for any Party. But one or two submissions that have suggested that a voter should be able to tick Party X and then re-order the precedence of Party X's list candidates?

MR COMRIE: Yes, I have heard of that, but no, in my personal view I don't think that's a good idea.

SIR HUGH: Again for the same reasons?

MR COMRIE: Yes, yes.

SIR HUGH: All right. Thank you very much Mr Comrie. I agree with everyone else, the clarity of your submissions was exemplary. Thank you. Mr Marshall's next. We'll just take another break.

COURT ADJOURNS: 11:14 AM

HEARING RESUMES: 11.39 AM

SIR HUGH WELCOMES ALAN MARSHALL

ALAN MARSHALL: First, just a little bit about myself. I'm Alan Marshall. I'm a chartered professional electrical engineer. I've lived in New Zealand all my life and as you can probably tell from the colour of my hair that means I've been through a few First Past the Post and MMP elections.

I have actually supported the MMP opt in both referenda, but there are a few features of it that annoyed the hell out of me, which is why I made a submission and that will be the main part I'll be focusing on today.

The primary point of my submission is I'd really love to see the MMP election rules amended to stop a party being able to manipulate the voting system to achieve more voting power than they deserve based on their party vote. To my mind, and I think this is – seems to be enshrined in MMP, the percentage of the party vote you get after votes for parties that don't meet the percentage threshold get discounted should dictate what voting power you get in Parliament.

Um, a cornerstone of a healthy democracy is a general public that has faith that the election system is fair and, conversely, I believe there is nothing more corrosive to democracy than a public perception that the election process is unfair and vulnerable to being manipulated by people who have more money or more political power and use this to gain unfair advantage.

My specific points are, first of all, percentage threshold. I believe this should be kept to ensure greater stability of governments. Obviously that should get reviewed regularly, every two or three elections to check that it is set at the right level to achieve the – well, I understand are the two primary purposes: one, to produce relatively stable governments; but also not set too high a barrier for new parties to get the seats in Parliament.

SIR HUGH: I'll just interrupt there for a mo Mr Marshall. What you've just said I think would gain some ready acceptance by some of the people in this room, but as far as we're concerned, who do you think should do this independent review?

MR MARSHALL: Ah, I don't have a particular opinion on that. Just somebody who can be seen to be independent and not just stacked with parties that have a particular vested interest in the outcome. Um, as I say –

SIR HUGH: Some submissions have suggested, and they, the suggestions haven't come from this side of the table, that it's the Electoral Commission that should conduct such a review.

MR MARSHALL: If the Electoral Commission can be seen as being an impartial body by the public, that – identify' be quite happy with that.

SIR HUGH: We hope we are seen –

MR MARSHALL: Yes.

SIR HUGH: – that way.

MR MARSHALL: Ah, as I say it's just, just a independent party that the public perceive as being independent.

SIR HUGH: Do you think we're seen that way?

MR MARSHALL: I believe so. Certainly my perception of the, the brochure that invited submissions on MMP seemed quite fair and balanced and that certainly encouraged me to have that opinion. Mind you, I don't know how many members of the public actually got so far as to read that. But, yes. It – just, just so long as the public perceives the system as being fair and, and not unseen forces acting in the bg.

SIR HUGH: Well, we've had over 3000 submissions on this MMP review. A few people read –

MR MARSHALL: Yes. Yes.

SIR HUGH: – read our information.

MR MARSHALL: There's no greater motivator than to, to – for people to make submissions as to have something they're annoyed about and have the opportunity to explain this to people.

SIR HUGH: Very true.

MR MARSHALL: To vent. Which is, of course, my major motivation. So just moving on, the one electorate seat threshold, which is one of my main points, for getting additional MPs, I believe very strongly should be abolished. Um, my reason for this is, first of all, I can see no logical reason for this. I know the original Parliamentary group that, that set up the rules obviously saw some reason for this but I must confess to ignorance of these and I can, from an outside point of view, see no logical reason why such a rule should be there. I do believe it's manifestly unfair that a party getting one electorate seat and, say, 2.5% of the party vote can get additional list MPs when a party that got no electorate seats and 4.5% of the party vote gets none. And, of course, this has happened in a few past elections. And, of course, this weakness in the system, as, as I regard it, was very blatantly exploited in the 2008 election when National told National supporters in Epsom to vote for an ACT MP so that National/ACT could get five more seats than they would've been entitled to based on normal party vote principles.

Ah, I think this was a very public example of a party unfairly manipulating MMP rules and, again, I'd like to come back to my point. I, I really think it's critical for democracy that the public has faith in the system and they feel it's not being unfairly gamed. Ah, whichever party does it and however they do it.

Just moving onto my next point, list MPs. I think we need to kill the myth that a lot of people seem to have that people actually vote for people on the party list. In my experience, 99% of people vote for a party either for a party because of its policies or possibly even more commonly against another party, again because of its policies. Ah, I, I wouldn't know, I couldn't actually think of a single person who actually voted because of the, the names that were on the party list. I believe the party's list is a trivial side issue and I, I would actually believe if you took a poll in the street hardly anyone would recognise any of the names after the first six in their party's list. I believe party lists need to be recognised for what they are, which is simply administrative convenience for the party to implement its share of voting power in Parliament and, in fact, list MPs I feel should more properly be renamed party representatives and I believe they should be able to be changed at – should be able to be changed at any time at the party's will. 'Cos they are their representatives.

Specifically, and this is one of the points that has annoyed me in the past, if a list MP leaves the party, I believe that means they have automatically resigned from their list MP seat and the party should immediately be able to appoint a replacement. I believe it's undemocratic for them to remain as an MP because the voters never voted for them, they voted for the party's policies.

And as a corollary, I'd say I'm much more afraid of rogue MPs pursuing personal agendas the public has no opportunity to vote on than I am of list MPs frightened of not toeing the party line for fear they'll get dumped by the party. I, I – when I vote, I vote for party policies and, ah, to some degree it's almost irrelevant who, who the people are who implement those party policies.

MR PEDEN: Would your view remain the same if your perception was that it was the party that was departing from the policies rather than a MP that may be regarded as a rogue?

MR MARSHALL: Yes, the, the principle remains the same. I would punish them at the next election if I felt they stood for one set of policies and then pursued something different.

MR PEDEN: Mmm. But isn't that also, that principle also apply to the rogue MPs? That voters have an opportunity to punish the people they perceive as not behaving appropriately at the next election?

MR MARSHALL: Yes. But the problem is rogue MPs who, particularly if they leave early in the term, they get to stay as MP for another two years before the electors actually get any chance or the party gets a chance to say, "We don't like your personal crusade. We're not interested." Ah, I, I do think parties will be held accountable for whether they follow their general policies and principles or not, and we get an opportunity every election to give our judgement on that. And there's a danger in any system once a party's in power that it could go and do something different, and that has happened in the past, and the public have spoken on that in the past too.

The, the – if – my fourth point, I suppose, is that, is an important guiding principle that must apply for MMP, and that is that the parties voting power in Parliament must closely match the proportion of party votes it got, after votes for parties below the percentage threshold are discounted. I believe under the current two tier electorate seat, list seat system there's lots of ways you can cheat the system. We've only seen a small example in Epsom recently but I can think of an example that nobody's tried yet. If, for example, Labour were to encourage their supporters in safe electorate seats to vote Labour on the party vote and then vote for a new Labour supporters party in the electorate seats the Labour supporters party may get zero electorate vote but they could be, end up getting 10 to 15 electorate seats and they just become natural coalition allies for Labour and suddenly you've got 10 to 15 more seats than you deserve. Now, I know there's a system of overhang, there's a system for doing a little bit of tweaking, but without understanding the overhang system I suspect it couldn't handle trying to compensate for 10 to 15 more seats.

MR PEDEN: Well, I think the situation you're describing is what happened in Lesotho an election or two ago where you ended up with a massive overhang of something like 80 seats. And if a party was to adopt a similar strategy in New Zealand that would be the outcome. And what would be interesting would be to see what would happen at the next election. For the sort of reason that you were explaining earlier on.

MR MARSHALL: Well, I do actually have a radical suggestion here. There seems to be an underlying principle: one seat equals one vote, and I'd raise the question, why? Why can't you have, um, something other than necessarily one vote per seat? And, for example, if you had a party that got eight electorate seats but their party vote only entitled them to six seats, why can't each of those electorate seat MPs have six-eighths or three-quarters of a vote each? That gives their voting power right back to where their, where it should be and it – you still have the, the electorates get the, um, candidates they elected into Parliament.

And this concept does have a lot of other interesting corollaries. You can have an independent MP who obviously has zero party vote, one presumes. They could, for example, get 0.1 of a vote or even 0.01 of a vote, but they, they're still there as an MP, they're entitled to speak up and represent their interests or their electorate, but when it comes to voting they don't distort the natural voting power that the party vote, um, would otherwise show. I think this would remove any incentive to unfairly manipulate the system because it would be inherently self-defeating, and I think the guiding principle must be to preserve the wishes of voters as expressed by their party votes in the final voting power each party gets in Parliament.

Um, the slight corollary here, I understand, and I hope I'm correct in this, that New Zealand tax legislation has a catch-22 clause in it that basically says notwithstanding anything else in tax legislation, any loopholes people have been able to discover, if they come up with an enterprise whose primary purpose is to avoid tax, it's illegal. It's a catch-22, it catches all the clever little things people would do otherwise. I wonder, and I don't know if electoral law

already has this, but whether that needs a catch-22 that says if someone comes up with a really clever scheme that games the system to give them quite, basically more voting power than they deserve, ah, that that should be deemed to be inherently illegal, unacceptable, and somehow that would be redressed. One way of redressing it is to have other than one vote per seat. Could be possibly other ways. Overhang is, is only a way of addressing minor problems, I believe. But, um, I must admit that concept really appealed to me. It was very simple and it, it just stops, ah, yes. Clever people manipulating the –

SIR HUGH: It may be simple Mr Marshall, but it does cut across constitutional principle.

MR MARSHALL: Yes, and it does create this judgement call that – when do you judge that something is there – its primary purpose is to avoid tax as opposed to something else. And I appreciate that's a judgement call and that can be wrong.

SIR HUGH: Mmm. Tax evasion legislation faces the decision-making process initially of the Commissioner and then on taxation review authorities or the Courts. So there is an impartial Judge deciding the issue. It's long been constitutional principle that Parliament has plenipotentiary powers incapable of being circumscribed or challenged. The only circumscribing or challenging to Parliament's powers is the ballot box.

If you want, I can illustrate that. I mean, the New Zealand Parliament is the only one I know that once passed an act declaring a living man to be dead.

MR MARSHALL: That's an interesting...

SIR HUGH: Now that has always struck me as a lawyer as a remarkable exercise of Parliament power.

MR MARSHALL: So you, you feel it wouldn't be practicable to have a catch-22 in the electoral rules? Legislation? I'm not quite sure the right phrase.

SIR HUGH: apart from the practicalities of getting such a proposal through Parliament –

MR MARSHALL: Yes. Just setting aside that...

SIR HUGH: – putting all that aside, I think you would find – well, I suggest you would severely infringe the power of Parliament.

MR MARSHALL: Yes.

SIR HUGH: Which, in constitutional theory is essentially supreme.

MR MARSHALL: Yep.

SIR HUGH: It is subject to the doctrine of separation of powers but let's not get into that.

MR MARSHALL: Yes, I don't know whether the fact that this would occur before the election result was declared. Someone would have to look at this and say, "This is very dodgy and we'll put this on hold for a moment while we make a judgement that this is a sound electoral result." But how are they –

SIR HUGH: I suggest you'd have to accept that for practical purposes, it is not a proposal that's going to fly.

MR MARSHALL: Fair enough. I bow to your judgement there. Again, if I could just come back to the point that I think one of the key things here is not just that people get unfair – a party might get unfair advantage but if the public sees this happening, they're gonna start losing faith in the electoral system and I feel there's all manner of downsides to that that that'll filter through, it's a

fundamental of our society that people need to feel that they are being fairly treated, that they do have some opportunity if they have an opinion to express it by voting and that this – the voting system is fair and it produces the results it should.

I do have couple of minor matters I could briefly mention now or I'll be happy if you're short of time to leaving. The number of seats in Parliament, I think, should be the right number for an effective Parliament and obviously someone like the Electoral Commission or someone needs to make a judgement call on that or even Parliament itself. I think it probably is in the range of 100 to 120 but I obviously don't know exactly that.

SIR HUGH: Sorry Mr Marshall, I need to interrupt you again. There are two matters which by statute are outside the scope of this inquiry, one of which is that Parliament has 120 MPs.

MR MARSHALL: Ah all right.

SIR HUGH: That's a matter being considered by the constitutional process.

MR MARSHALL: Right, was it also outside the remit of this group how that changes in terms of population growth or gets affected by that?

SIR HUGH: No, that's part of the proportionality question which is in our, within our scope.

MR MARSHALL: My personal feeling is it shouldn't – it should be independent of population growth, except to the point if the population grows so much that you actually need more MPs in Parliament to operate Parliament properly then obviously you should increase it but I don't see why 10%, 20% increase in population means you need that many more MPs to do fundamentally the same job necessarily.

One other small point, perhaps radical concept, that did come through too, when you separate the concept that one seat equals one vote, it does raise one other very interesting possibility which electorate seats. At the moment, my perception is electorate boundaries are very strange. They are drawn to try to equalise population in each electorate and that means because of population growth in cities and decline in rural areas and this and that, you get some very weird boundaries trying to equalise all these populations which means you've moved totally away from what I think the original electorate seats were which were they represented a community of interest. They were back in the days when it used to take couple of weeks by steamer to get from Christchurch to Parliament and you'd have a representative who would represent the views of Christchurch or Ilam or whatever. They'd go to Parliament and they were the representative of that particular town or area.

It would be nice if electorate seats could get back to a more logical, sensible community of interest and if you move away from this concept necessarily of one seat equals vote, you could actually have one electorate that had 10,000 registered voters in it. They could have half a vote and the next electorate could have 20,000 votes and that's another obvious community of interest and they could have one vote and you could keep the voting power roughly proportional to the voting populations in the electorates without necessarily having very strange and distorted boundaries.

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I'm also mindful of the fact that under the MMP system as it should operate where normally parties are entitled to a lot more seats than they get electorate seats and they top up with list electorates, it doesn't actually – it's suddenly no longer so important that electorates actually had exactly the same population. If we're talking about that situation. If we're talking about a situation where you don't ever expect a party to have, be entitled to more seats than they get electorate seats, does it really matter that one electorate has 10,000 and another one has 20. In the end, the voting power is as it should be as dictated by the party vote, and hopefully that means you can get slightly more sensible communities of interest in electoral boundaries, electorate

boundaries. So I just floated that one in. That concludes my comments, if you, unless you had any questions, or?

MR PEDEN: Well, I suppose, Mr Marshall, the one thing I want to test in your submission is this notion that list MPs represent the party?

MR MARSHALL: Yes.

MR PEDEN: You don't believe that electorate MPs who essentially are selected as much by the party as list MPs also represent the party?

MR MARSHALL: I think they largely do, but I think there's a grey area there, which is why I've neatly sidestepped that issue. I think there is an argument both ways that people could've voted for the person, or they could've voted for the party, and for the life of me I cannot understand why most main parties keep encouraging double tick. I would've thought it's in their interests to do anything but double tick. I would've thought it's their interests to say, "Tick the party vote but actually vote some other coalition party partner in the electorate vote, or even vote for the opposite party in the electorate," just to stuff up their ability to appoint list MPs they want in Parliament. There's all kinds of mischief you can do in this system, and I've always found this double tick concept a very strange strategy.

MR PEDEN: I suppose the traditional concept of MMP is that once elected to Parliament, they are responsible not just to the local interests or to the party interests, but to the national interests and that they're actually elected not to represent the party, but to represent New Zealand's overall interests, and to represent that as best as they can?

MR MARSHALL: My personal feeling is that when people elect, either on the party vote or even an electorate MP, they are first of all looking at the party policies that they think are best for New Zealand, and that they support, but secondly they want to be sure the party and the individual or individuals are capable of usefully implementing those policies, and also bearing in mind new

issues are going to come up for which the party does not have a policy, and they want to feel those people are capable of handling that sensibly. So obviously the competence – perceived competence of the people is an issue, but the primary issue is still party policies, are you for or against asset sales, for or against tax cuts versus more services, are you, what's your particular preferences in terms of policies.

MR PEDEN: So it's a balance between being an automaton of the party and somebody exercising independent judgement about what might be best?

MR MARSHALL: Yes, I would be personally quite annoyed with a MP, whether he was list or electorate MP, that belonged to a party, who voted against the party on a matter of party policy that was published before the election and people voted on, but I would be quite happy for them to exercise their own personal judgement and good sense on issues that aren't covered by party policy, which is, let's face it, probably the majority of work at Parliament, new things come up, grey points come up, they're not really covered by party policy. Someone has to make a judgement call.

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SIR HUGH: From a practical point of view, Mr Marshall, how attractive do you think it would be for parties' members to be on the list when they can get into Parliament or pulled out any time by the party?

MR MARSHALL: Well, to some extent that happens now in terms of electorate seats, although if they're very popular in the electorates it would be a brave party that would pull them out.

SIR HUGH: Well, it's bit more than that, isn't it? I mean, your proposal about, about lists, an electorate MP is elected by the voters of that constituency. Once he or she is in Parliament there is nothing the party can do about it during the three years of Parliament. But you suggest that list MPs should, as I read your submission, be able to be replaced by the party any time that the party decides it wants to.

MR MARSHALL: Yes. I believe at election time the public will punish a party that uses that facility in, in something that's perceived as a bad or onerous way. I believe, as well as the policies, the public also tries to make a judgement call on whether that party and their list MPs and their hierarchy, which includes people behind the scenes that aren't even MPs, whether they're capable of delivering on those policies. How, how competent they are, shall we say? You want good policies and you want people who can actually deliver on them as well. Which is why we often find ourselves in this funny situation of saying, um, "He's a Cabinet minister in a party I don't support but he actually seems to be doing a good job." You know, you, you're impressed with his competency, you just don't like the party's policies. Um, they're two separate issues.

SIR HUGH: Well, have I got this right? It's your proposal that a party puts up for an election a list that's got A, B and C on it.

MR MARSHALL: Yeah.

SIR HUGH: during the three years of Parliament for whatever reason or no reason –

MR MARSHALL: Mmm. Yep.

SIR HUGH: – the party decides it doesn't like C and puts D in.

MR MARSHALL: Yes.

SIR HUGH: The only sanction would be at the ballot box at the end of that three-year term?

MR MARSHALL: Yes. And in actual fact, another corollary to that is I don't actually see it being that important to publish a party list for election. Ah, I, I always feel list MPs should be called party representatives. The party should

have control over publishing their own list, and that may actually include, um, party presidents and people who aren't actually going to be MPs. It, it might be the support hierarchy behind the party. This is – it's basically their way of saying, "This is how we're gonna try to implement our policies if we get into power," or, "How we'll implement those policies in opposition," for that matter.

SIR HUGH: Well, is not the logical extension of that that we shouldn't have party lists at all? That on any issue in Parliament the electorate MPs vote however they vote and party X says, "Oh, we'll throw 27 votes into this," in for or against, "because that's the number of list MPs we might have had."

MR MARSHALL: That, that would –

SIR HUGH: Definitely be a great cost saving, but it doesn't sound democratic to me.

MR MARSHALL: that, that – well, it is democratic because the list MPs are really there to make up the numbers to give the voting power in proportion to the party vote, and I believe the party vote is the, is the important vote in elections. That's the one that – where people choose the government and the policies they want, and that's the key bit of democracy that that gets adequately represented in Parliament. So, yes, I do see some logic in that, although the problem is when it's a black and white issue that is a clear party policy on that's easy, but there must be a hell of a lot of grey issues of interpreting party policy and that's where having a few more heads around the table would be helpful.

SIR HUGH: It also really collapses the role of Parliament. What you're talking about is the vote, which applies to one of the important aspects of Parliament, the enactment of legislation –

MR MARSHALL: Yep.

SIR HUGH: – but there are a lot of other things that Parliament does –

MR MARSHALL: Yes, you're right. They –

SIR HUGH: – including consideration of issues before select committees, for example.

MR MARSHALL: Yes. There's basic work that goes on behind the scenes that that public doesn't see a lot of. There's having a debate in Parliament, which actually requires a number of different people to stand up and speak and have slightly different views. You're right, there is a need for that. I am just saying I don't see an absolute logical connection that there has to be one person per list MP vote, necessarily. You need to address those issues and it's convenient to do it that way at the moment, and I don't see that as necessarily being bad.

SIR HUGH: Mmm. Well, I suppose the basic idea behind it is that elections are about electing representatives –

MR MARSHALL: Mmm.

SIR HUGH: – by the people to the Parliament, and that people are entitled to know who they are electing as their representative at the time of the election and to have some certainty about that.

MR MARSHALL: Well, unless I'm different from a lot of other people, when I vote in the elections, particularly on the party vote, which is the important vote for me, I'm voting for the party and its policies, and really the representatives who –

SIR HUGH: Well, I know that.

MR MARSHALL: – come from that are almost irrelevant.

SIR HUGH: I also know that you're an electrical engineer, and so you're a person who probably sees things in quite specific ways –

MR MARSHALL: Yep. Yes.

SIR HUGH: – and places some emphasis on statistical reliability.

MR MARSHALL: Mmm.

SIR HUGH: And I noted your percentage, 95%, more than 95% of voters vote for the party because of its policies.

MR MARSHALL: Well, yes.

SIR HUGH: And I heard in your oral submissions that that seemed to be a percentage derived from your personal observations rather than any kind of statistical –

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MR MARSHALL: I am not aware of any statistics out there to prove or disprove my –

MR PEDEN: Because I mean, we've had submissions from –

MR MARSHALL: – educated guess.

MR PEDEN: – submissions from people who do place a lot of emphasis on the value of the party list and of voters being able to assess the calibre of the party and its policies by the people that they're prepared to put up for election to Parliament.

MR MARSHALL: I would be very curious to know what percentage they made of the voting public though, 'cos I've had this argument with my father who was a very diehard National supporter and he was mostly really ropeable

about people who were going on the party list for Labour, but I knew, whatever his feelings were about that, it didn't change how he was going to vote at any election. He was going to vote diehard National regardless of what, who was on the party list for National or Labour, unless – sorry, I s'pose someone, well, particularly as a party leader, who he thought was very reprehensible was in charge of the party he wanted to vote for.

MR PEDEN: Well I am intrigued by your father's views and the fact that he was aware of who was on the Labour Party list.

DR ARSENEAU: Could I ask just a quick follow up on that, take for example New Zealand First voters, do you think that who's on the list is quite important to them, for example, Winston Peters being on the list, so in the sense that would you say that New Zealand First voters were voting for the policies or actually that it was important to them, who was on the list?

MR MARSHALL: With New Zealand First, there was a very close merger of party policies and Winston Peters. I don't think most of the public, although it might have been different with New Zealand First supporters, actually had much idea of who the other names on the list were.

DR ARSENEAU: But if I follow your argument correctly, you're saying that people who vote, in terms of their party vote, it's based on policies, and then somehow it leads to some questions about whether they're actually fully elected, or?

MR MARSHALL: Yes, I believe the people who are there as a list MP are there as a result of the party vote. I think that's clear, and it is my belief that the vast majority of voters vote the party vote because of the party's policies, not because of the, the list.

DR ARSENEAU: Not because of the people on the list?

MR MARSHALL: Yes, no.

DR ARSENEAU: So you would say that policies were more important for New Zealand First than Winston Peters for example?

MR MARSHALL: Yes, vastly more important, but there is a slight element of they need to have faith that the party has the competent people to implement them, which – ‘cos one of the problems with a party list, which I’m sure some people will have raised, is you either have to accept it or reject it as a whole, you don’t get the chance of saying, “I like that one and that one, but no, definitely not that one.” You don’t get to grade it.

DR ARSENEAU: Can I throw out another example to sort of, to see what your thoughts are? We’ve also heard from people that diversity on the list is important to them, so for example, I hear sometimes that for women, it’s important they look at the list to see if, for example, there are prominent women on the list?

MR MARSHALL: Yes, and for this reason, I would see it as being normal good sense for the main parties to still publish a list, whether they had to or not, of, “These are the people who we plan at this stage will be the representatives in Parliament depending on what the vote is,” and to show that they do have diversity and they do have capable people, and –

DR ARSENEAU: But it might be a reason for why people vote for that list?

MR MARSHALL: Yes, but it’ll tend to be for the list as a whole rather than generally for individuals. There’ll be the odd case where someone particularly likes one person and might, their party vote might be hugely influenced by that, but it’s mostly party leaders who would do, have that influence. And I don’t think you need a party list to know who the party leader is, and know that they’re definitely going to be number 1 list MP if they don’t get an electorate.

DR ARSENEAU: I’ll leave it there. Thank you for your submission, by the way.

SIR HUGH: Thank you Mr Marshall.

SIR HUGH WELCOMES DAVID CHILVERS

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DAVID CHILVERS: First of all I'd like to say that my career has been in the insurance industry and farming and apart from voting and taking a superficial interest in how the voting system works, I don't know – I have no practical experience of the detail so the sort of conversations you were having with Mr Marshall are above my head, okay?

SIR HUGH: You don't want to be asked questions like that?

MR CHILVERS: I don't want to be asked questions.

SIR HUGH: All right, thank you.

MR CHILVERS: So the thrust of my submission is, um, that MMP is working well but does need some tweaking as a result of subsequent experience and use. I see the main purpose of our original change to an MMP voting system was to achieve two things. Firstly, to make our voting system more proportional and secondly, to ensure that as fewer votes as possible were wasted, ie, they were meant to be to be something towards the final result. These are the principles I have tried to apply in addressing the specific questions which this review invites public to submit on.

With the exception of entrenchment which I will cover verbally now, these are the things that my submission covers. Firstly, the thresholds. I would like to see the abolition of the one seat threshold for winning representational seats in Parliament but to some extent to offset it, to reduce the percentage threshold to 4%.

On the question of the percentage threshold itself, it is necessary to guard against buying votes by small parties. Italy's experience in recent years with Silvio Berlusconi's under influence over Italian politics, not only because of the use of his wealth to influence voters but also because of the control of the

Italian media, are a good example. Whether the percentage set to guard against this sort of influence is to be set, I don't – I'm not – don't feel I'm qualified to know but I feel a drop to 4% would be not unreasonable in our circumstances.

As far as the list, I consider we should enshrine the proportion of list to electoral seats in Parliament by introducing a set ratio between them to overcome this problem of the drift of population to the north which I think has been covered, um, floated. Something that's not a problem now but could be and enshrining the proportion would overcome that. On the ques –

SIR HUGH: Do you have a view as to what the ratio ought to be?

MR CHILVERS: No. Just to stop the proportion drifting down and down in relation to electoral seats.

MR PEDEN: Yes, and I heard what you said about the level of detailed information you have about our system but just the term entrench has a particular meaning in our system.

MR CHILVERS: Yes.

MR PEDEN: Did – so entrenched provisions in the electoral system meant that you can't change them except by a special majority of Parliament, 75% of people voting and a referendum. Is that what you meant or just –

MR CHILVERS: I was going to raise that in the other matter.

MR PEDEN: Sure.

MR CHILVERS: That's what I meant in my original discussion. Okay, um, dual candidacy, um, first of all, oh, an apology. In my additional submission, I quote Sir Geoffrey Palmer as expressing a view that dual candidacy acts against proportionality and encourages gaming by parties. Sir Geoffrey did

say that but not in relation to that question but to the question of seat - electorate seat thresholds so I apologise for that.

MR PEDEN: That's fine.

MR CHILVERS: The elimination of one constituent seat threshold, if that is enacted, will go a long way to dealing with the problem to gaming generally but if it is still there then we also possibly have a problem with candidates able to stand for both electoral and list seats and for that reason I would suggest that that should not be allowed if the one seat threshold remains as an ability for a party to just be in Parliament.

MR PEDEN: Can I just ask why, why you see the connection between the two?

MR CHILVERS: Yes, I think it relates to the fact that if parties – oh, sorry, candidates are able to stand for both an electorate and a list seat, and get elected in both, they can make the decision afterwards as to which one they're going to use, and that seems to be being able to game the system after the electorate – election. Not a particularly strong point, but it is –

MR PEDEN: No, but if the one seat threshold was removed, then you'd be happier about candidates continuing to be able to contest the list and the electorate?

MR CHILVERS: Yes. Ordering candidates on party lists, ah, I think we should continue to allow the parties to do this, firstly because they are the only group who know all their list candidates and are in a much better position than anybody else to list them in order, and also that voters will probably punish them if they don't do a good job of it anyway. Under other matters, that's where I raise the question of entrenchment. It seems to me that, as I understand it, the current law is that Parliament can throw out MMP with just a 50% majority, and it seems to me that we should look at that once we've gone

this review and entrench it more than it is at the moment. They're my notes, any questions?

MR PEDEN: No, thank you Mr Chilvers, your submission was – you've answered my questions through the discussion that we've had, so thank you.

SIR HUGH: I note in your submission you just tabled, Mr Chilvers, you speak about, "Parties should institute an overview system of the list procedures?"

MR CHILVERS: Yes.

SIR HUGH: It's something we've had a bit of a discussion about, both this morning and earlier submissions, how do you think that should be done, what should parties have to do?

MR CHILVERS: I picked up this idea from Sir Geoffrey Palmer's submission, and to some extent was just following, because it sounded to me like a good idea. Without really knowing how parties go about choosing, ranking their candidates, I'm really not in a position to know, but it seems to me that somebody should keep an eye on them in some way or another.

SIR HUGH: So you're suggesting that Sir Geoffrey's proposal about the selection procedure becoming more democratic is one to be supported, but you don't have detailed proposals about whether selection procedures should first go to the party's members or be vetted by the party's board, or that sort of thing?

MR CHILVERS: Correct.

SIR HUGH: All right, thank you. Professor Roberts?

PROFESSOR ROBERTS: No, he's already answered, thank you.

SIR HUGH: Dr Arseneau?

DR ARSENEAU: No, very interesting, thank you.

SIR HUGH: Thank you Mr Chilvers, thank you for coming along, and thank you for your contribution.

COURT ADJOURNS: 12.25 PM

COURT RESUMES: 1.23 PM

SIR HUGH WELCOMES MURRAY HELY

MURRAY HELY: Okay. Yeah well my name's Murray Hely as you've guessed and we live down the Old Tai Tap Road, which is just out of Christchurch, about 20 minutes away. And I've mostly described myself as a reasonable conservative person but it's great the review's come along 'cos it certainly does, you know, my opinion is you should do it every 10 years. So in another 10 years, this is one of my recommendations, that the same thing should happen again because by then there will be a few more itsy bitsy problems that are there that might turn up.

SIR HUGH: Several people have suggested that to us, particularly here in Christchurch. I think it's fair to say there might be more enthusiasm that side of the table than this.

MR HELY: Yeah but you can understand I mean it's been 1996 it come in and I mean there's a few blatant things that I'll mention shortly but, you know, like anything it takes, in the old system they had First Past the Post and then it carried on for years and years and years and obviously things changed over a period of time. So that's what I'll start with, that I reckon there should be in 10 years time, there should be another thing and that's one of the recommendations I'd like you to take to the Minister.

The first thing is the threshold for seats and this is, you know, it's got to be seen to be fair and at the moment, you mostly – we got – we sort of bring the politicians but you've got Act and they're in parliament but they really had hardly any actual support at all and to be then you had the conservatives which got 2.8% and here they're not in parliament. So somehow this business of how they, you know, the percentages and how they get in somehow has to be made fairer and God knows how because that's a very, very difficult point.

One idea is I know the Royal Commission said it should be 4% before you get in and hear in Germany you don't have to have one MP like John – we might as well talk about the real thing, John Banks, what did he get, he got in but he only had a very small percentage of the vote but if you get one MP in you're in parliament. Now perhaps it should be two MPs. I hear in Germany that it's three, four, this is in the German equivalent parliament.

So that's sort of the things I think basically it's got to be seen to be fair and at the moment you have got some things that are not quite clear like Winston Peters I think the election before he got 4.8 or whatever he got and he missed out too. So I don't say we should have a lower threshold but I say whatever they dream up and this is particularly difficult, it's got to be seen to be fair and one of the things I suggest and I don't know whether it's right, (a) I said 2.5% of the vote and one MP winning an electoral seat, so you have a split system like the polies want to do with the age of drinking beer. So 5% of the vote only and then you could get the two MPs. I quite like the idea of the two MPs. You might have no – you get two MPs, you know, you don't have any threshold at all on the percentages. So I mean it's a very difficult one but I believe that it's not quite right at the moment but how do you make it right? Well that's a damn hard thing to work out.

MR PEDEN: And so Mr Hely when you say you'd like all three, do you mean you'd advocate having all three thresholds apply?

MR HELY: Basically have a system where there's more – so I believe that like if you look at the – we might as well talk about the polies, is you look at John Banks and the conservatives. I mean he got stuff all, you know, party vote but he got in and the threshold was say two, like in Germany I think it's four seats, that would stop that type of wroughting because the politicians will do anything to get power and you make it hard – anything that's hard for the politicians has got to be good.

MR PEDEN: So if you've got one seat, you'd have to also get 2.5% of the vote?

MR HELY: Something like that, yes, 2 or 5%.

MR PEDEN: If you got two seats, you're in.

MR HELY: That's right, yeah, so you could have –

MR PEDEN: And otherwise you have to get 5%.

MR HELY: Somehow you've got to – somehow you guys with all the brains and the degrees could make a fairer system, you know, so in other words it's fair to all. At the moment I don't see it's fair where you get one party could get 4.9 and not get a seat, say for instance and the other party gets, you know, .5% or .2% and gets in, gets a seat. You know, I don't think that's quite fair. Now somehow, you know, it's got to be made fairer.

This by-election – so that was my thoughts on that. The by-election business, I don't think – you shouldn't – it should be – you shouldn't be able to do the double dipping where you can be on the list and then go for a seat and particularly like Damian O'Connor, he stood on his merits, this was on the West Coast and he got in quite easily because if he didn't – he wasn't on the list at all. This business of being on the list and the thing, to me is, you know, it's like double dipping politicians, it's a –

MR PEDEN: Yes but that was at a general election wasn't it?

MR HELY: Yes.

MR PEDEN: And what we're asking about here under a by-election is where – so there's a vacancy and –

MR HELY: Yes well, yeah I believe they should have to resign if they're on the list. I mean, so put their name forward et cetera, et cetera, so that means

the next person on the list might get it and if he wins the seat he's in. You see what I'm sort of saying?

MR PEDEN: Mmm. I wonder why? How are they double dipping if, in a circumstance –

MR HELY: Well that's a very good question. I mean most people like me think that if you're on the list you're a second-class MP, even though they might – the politicians don't think so. I mean if you get past the case of, you know, being on the – got elected I mean that's a lot harder, usually, et cetera. So my, that's my opinion, they should be, you know, that sorta – it's, again, all these things you brought up are extremely complex and extremely hard, there's no simple answer to anything, you know, in your things, and well, you've obviously discovered that, 'cos everyone's got a different view, isn't it. There's no set, you know –

SIR HUGH: As far as the by-elections are concerned, go back a step, if you've got a job and you decide to apply for another job, you don't have to resign the job you've got to put in your application, why should a list MP, who wants another job, be the only person in the community who has to resign in order to apply for another job?

MR HELY: You've actually made a damn good point. I never thought of that one, but yeah, but you see –

SIR HUGH: How do you get around it?

MR HELY: Oh, you can't. So that's, you know, a lot of people do think similar sort of things though, don't they? And you actually brought it up several times before, but yeah, that's another hard one. I mean, all the things you've brought up, there's no quick and easy solutions, is there? I mean it's, when you get into the nitty gritty of MMP, it's quite a complex system, isn't it? I mean on the outside it looks dead easy, you get two votes and off you go. But when you really get into the grips of it, it's, ah, it's got a lot of little nitty bitty

things that on the outside or quite di – if you go to Australia or somewhere and try to explain our voting system, most people put their hands up and say, “Well what is all this about?” They don’t understand it at all, they’ve got no idea.

SIR HUGH: Well the example we’ve been putting to some people who’ve made submissions on this by-election question is that in the Mana seat, Hekia Parata stood for the electorate and on the National List in 2008. She didn’t get in in the electorate, but she got into Parliament as a National list MP. Last year she did the same thing. She stood for Mana on the electorate and on the list. She didn’t win the electorate, she got back into Parliament on the list. In the by-election that was held midway between those two elections she stood as the electorate, as a National electoral candidate. On your submission, she would’ve had to resign before –

MR HELY: She’d have to resign.

SIR HUGH: – she could do that.

MR HELY: Yeah, I see what you’re trying to say.

SIR HUGH: Why should she be able to be a list MP in 2008, a list MP in 2011, but have to resign as a list MP in order to stand in the intervening by-election?

MR HELY: You made a very good point, I s’pose, it has shot down my arguments somewhat. But yeah, I see what you mean.

SIR HUGH: I mean, one can understand the thought behind what you’re saying, but currently at least –

MR HELY: The practicalities of it.

SIR HUGH: – it looks to us as though it doesn’t stand up to the facts –

MR HELY: Okay, what about the main election then, you know, where you have –

SIR HUGH: Well that's a different question.

MR HELY: That's a different question, yeah.

SIR HUGH: So if we take what you say about dual candidacy, people standing for an election and on the list in general elections?

MR HELY: Yeah, well, I'll be honest, it is – I mean, I'm not a Labour supporter, but I've been living on the West Coast, know lots of people who live over there, they went and flocked out and voted Damien O'Connor 'cos they knew he put his, you know, his name on the line, that's why he got in against all – you look at Dami – may as well talk about politics, Damien gone and went completely against anything Labour – Labour lost ground everywhere, but he, he was the winner, so, so some ways the system does work in that respect, but I still think you shouldn't be able to stand for both, really. So that sort of dual – overhang I'm quite happy with that, I mean if you look at it, 30% of the people, this is number 4, split their vote, 30 point something. And to be frank, I always split my vote, I always try to vote for a minor party to support them and not always successful of course. I had – I've got this wrong, I didn't realise it's, um, is it 70, electoral seats and is it 50 on the list is it?

SIR HUGH: That's right.

MR HELY: Can that actually be altered, because as like, like a normal person, I always like voting for the, um, you know, the local MP, could they actually alter it so we get more, more candidates, would that buggger up the percentages and all the dramas or not?

SIR HUGH: Well, we can't look at the 120 MPs in Parliament.

MR HELY: Yes I realise that, yes, but can you look at the percentages of –

SIR HUGH: Yes.

MR HELY: – you know, who, you know?

SIR HUGH: But there is a formula in the Act as to how many electorates there are going to be in the country.

MR HELY: And in the South Island.

SIR HUGH: At first in the South Island, 16, and then in the rest of New Zealand, and every time that formula increases the number of electorate seats by one, let's say one, the number of list seats falls by one.

MR HELY: Right.

SIR HUGH: So, to maintain the 120 total.

MR HELY: So it's re-balancing itself is it?

MR PEDEN: So if you think back to when MMP was first introduced there were 65 electorates and 55 list MPs, and after every census there's a redistribution of the electorates, a re-drawing of the electorates.

MR HELY: The boundaries.

MR PEDEN: Yes, and there's, based on the information coming from the census and the Māori electoral option, we determine how many electorates there should be, based on the population changes, and the tendency is for the number of electorates to go up after every one or two censuses, and that's how we've got to have 70 electorates now, and the forecast provided by the chief statistician is that by 2051, we'll have moved to a position where are around 77 electorates.

MR HELY: So how does that af – do the proportionality [*sic*]?

MR PEDEN: Well in relation to proportionality, the advice we have is that MMP would still be able to be properly applied. It is a proportionate Parliament at that level and probably one or two seats more than that, before we start to get problems.

MR HELY: It needs a re-hash.

MR PEDEN: So, if those population projections are right, the point at which New Zealand is really going to have to look at this is 30 or 40 years away.

MR HELY: Where we're getting buried, basically, yeah. Yeah so, that's something I said but, yeah, as you say, it's mostly is correcting itself. I mean, I like to vote for a local MP because you can go and see him, where a list one seems to be a faceless person that is out there. But I can see the point of having lists like, um, the prime ministers and all, all the top guys, yeah, and, you know, in the executive of Government and the opposition members because then they can concentrate on, on being opposition members and don't have to worry about people coming to see them all the time. 'Cos I must admit, to do both if you're a, you know, if you're high up in the Government circles, must be a very difficult job.

SIR HUGH: Now that leads on to the next, your paragraph 5, Mr Hely, are you saying that the Prime Minister and leading cabinet ministers must be list MPs?

MR HELY: No, not necessarily, but I think that's a good idea. I mean, you can't instruct them to be, can you? Ah, but –

SIR HUGH: Well, it could be done but it might be difficult.

MR HELY: Yah, but, I think in some ways that's the better way to be, if you know what I mean, but I don't think you can instruct them to be like that, but

no, I don't think you could actually, I mean you can't tell anyone to do, you know, what you don't want to. So really that's about it, except as I said, um...

SIR HUGH: Well, can I just ask you about your paragraph 6? You want to be able to cross unwanted people off the party list?

MR HELY: Yes, yeah, yeah, that's a very interesting one, I don't – the more I thought about that, and I read all the submissions, how the hell do you do it? I mean –

SIR HUGH: I thought you're going to tell us?

MR HELY: – put that in your, your thing to do, but –

SIR HUGH: You're torpedoing your own cause a little, Mr Hely.

MR HELY: Yeah, but it's a very – I mean, I'd love to cross some of the, some of the ones I don't like off, but actually to do it is very difficult, isn't it?

SIR HUGH: Only, would you only be able to cross people off the list of the party you have voted for?

MR HELY: Yes, I agree that, yes, yeah, but –

SIR HUGH: Only that?

MR HELY: But to actually do that's going to be very difficult, isn't it? I mean all these things you brought up, and I brought up, there's no quick easy fire solutions to, is there? It's the real nitty, nitty gritty of it. There's – I've put on the page here, "It may be too hard to do this," but, you know, how the hell do you do it? I mean, imagine if you had lists that you could rank them all. I mean, that would be, that would be like Australia, it's just a nightmare, 'cos Australia rank them all.

SIR HUGH: Quite a lot of people have suggested we should put that forward as a recommendation, give voters the chance to re-order the lists, either generally or for the party for which they voted.

MR HELY: Yeah, the prob –

SIR HUGH: In fact, a lot of people have said it might be a nice idea, but it's just impractical.

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MR HELY: Yeah, well I've lived in Aussie and I don't know if any of you know, and you go to voting day and, you know, here you wander in, and that was one of my last things was that, you know, here you wander in and there's no one around. There there's, you've got lines of people and they're actually telling you how to vote. I mean I don't like that idea at all. I mean, ah, the way we've got it, this is jumping sort of ahead, with, um, you know, with, um, you know, a politician's free day on, on election day, I think that's the New Zealand one, and we've just seen the, the business now of all the, with John Banks and all the, the, you know, to keep – not it like America where you can put millions and millions into campaigns. I think that's very important too. So what, what, what you've done and the politicians in the last, you know, hundred years or whatever is not having huge campaign, you know, not, not completely out of control where money rules the, the, the wheels are, are very, very good.

SIR HUGH: The final thing you've suggested is that the Electoral Commission should do all these things and not Parliament.

MR HELY: I agree. I agree. That's what I agree because any, any –

SIR HUGH: Do you think parliamentarians would agree with that?

MR HELY: Oh no. Um, but I'll tell you what, one of the problems of politicians is you ask the average punter, um, when, when they used, they

don't do it now, but when they used to approve their, you know, their Parliamentary salary increases, it was always done in the middle of the night and it went straight through. So I believe that politicians have to be kept under control and that's what you guys are doing a good job to keep them under control.

SIR HUGH: That's what you guys, the voters, have to do.

MR HELY: Well, yeah, true, but, but, I mean, you guys are part of it too, to try to keep them under control.

Yeah, so, the, the last thing is really, ah, the, the 10 year thing. I really emphasise that, ah, you know, there should be a, you know, a – same thing in 10 years. Because there's bound to be a whole lot more like this come up.

SIR HUGH: We've picked that up from what you said.

MR PEDEN: I found your – with your oral submission you've clarified things that I had questions about. But just as a point of clarification, where you've , you've talked about the overhang. And, and when you were talking to the overhang point you talked about strategic –

MR HELY: Voting. I, I believe –

MR PEDEN: voting. Splitting the –

MR HELY: – that's marvellous.

MR PEDEN: Yes. The, the overhang, what we had in mind about the overhang was a situation where a party wins more electorate seats than the party vote would entitle it to.

MR HELY: Like the Maoris have done. Yes.

MR PEDEN: Maori Party.

MR HELY: I'm quite comfortable with that.

MS HURIA: I just wanted to bring up the point, if I may, round, through your submission, dual candidacy –

MR HELY: Yep.

MS HURIA: – where you say one or the other. We have had submissions which have said that if we go down that path where you can only be one or the other we'll end up with quite a limited choice for the voters in the electorate –

MR HELY: Yeah.

MS HURIA: – and I heard you say something about it's harder to win an electorate than it is to go on a list.

MR HELY: Mmm.

MS HURIA: So if that was true then that's going to limit people's interest in becoming electorate MPs and everyone's going to make a dive for the list.

MR HELY: Yeah, I see what you're trying to say.

MS HURIA: Which will strangle the, you know, people's choices –

MR HELY: Yeah.

MS HURIA: – in the electorate.

MR HELY: But even then –

MS HURIA: Possibly.

MR HELY: – you look as though some of the, you know, you look at the party politics of it, Labour, National, you quite often get the people in and, ah, they'll stand on the list and they'll have a – and they, they see how they go and the next time they might, you know, get a seat. You know, I mean, very few politicians come straight in from the cold. Usually they've stood for something and lost, didn't they? I mean, quite often, the – well, we're, we're in Amy Adams' seat, which is, you know, if you put a dog in you'd just about get – National would just about fly in if you know what I mean. Not that she's, she's a good MP. But, um, quite often you get a Labour person will be stood there and, um, then, um, well, Ron Mark stood in our seat and now he's the mayor of wherever he is and he was in New Zealand First, so quite often they use it, you know, as a, as a training ground, if you know what I mean.

DR ARSENAU: I want thank you for your submission. You've obviously put a lot of thought into it.

I was intrigued by your notion of striking off members.

MR HELY: Yes, I've always liked that. 'Cos you get someone you're really hacked off with, you can just put a line through them.

DR ARSENAU: I suppose theoretically what you could do is have – you need a certain percentage of people to agree with you and then you could drop, you could indicate that and drop a person to the bottom of the list.

MR HELY: Yep.

DR ARSENAU: The problem is what would you make it? Say 8% or something like that. But then you actually have more people who don't want to change that person's order, but they would still drop down. So, you know, at what point would you feel comfortable with striking somebody off of the list?

MR HELY: Well, this is the most, this is the most hardest thing. One of the problems is with – go away from that, striking the people off, you look at the Australian thing, they have a, you know, thing, and they actually give you a how to vote card and I don't know if you people have been in the election over there. And, ah, you'd virtually get to that era where you'd have to say, well, they have to put an ad in the paper and this is how you should vote, because 99% of the people don't know half the candidates. They might know the, you know, the Leader of the Opposition, a few of the, you know, the, the people, but they don't know all the nitty gritty candidates. So it's – yeah, to list anyone, this is shooting down my argument, but to start altering those lists is going to be a hell of a, hell of a job. I mean, how do you do it? Because people don't know. You know, unless they, as I said, like, you get someone you really can't stand, that would be the nice thing to be able to strike them off, but is it practical? I mean, you just don't vote for the party, you vote for another one, don't ya? If you particularly hate them.

SIR HUGH WELCOMES SETH WAGONER

SETH WAGONER: Well, I only, um, one real thing I want to talk about 'cos I didn't have time, I'm sorry, to, to research all of the points. But I, I think that's fairly common with most voters really. We, we don't have time to, to research everything. Um, and, and that's why I, I feel that the sort of the traditional way of doing things, where you have very large parties, um, and, you know, they represent broad interests, um, leads to so often a situation where you, you can't get that issue that you really care about brought, brought to a floor, if you like, in Parliament or, or actually mentioned, because it's just not convenient for the party that you, you want to vote for or the, you know, the – you voted for this party, you go to their, their politician, you say, "Well, you know, I, I really care about, about this. Why isn't it being talked about?" Um, and there are, you know, some really fringe positions that arguably you wouldn't want a, a New Zealand MP, you know, talking about in the media and having that sort of Parliamentary stamp and people look at it and say, "Well, New Zealand, my gosh. How could they do something so racist or so sexist," you know, or, whatever. Um, so I can see there are, there are downsides of allowing, like, a situation where one person can form a party. Um, but I've thought about it and, and I think, in my opinion, that, you know, those, those disadvantages are, are outweighed by the sort of – I, I think it would, it would just be more interesting, you know? It would more possibilities would open up, more things that people care about would get talked about, um, and, and just sort of – it would strengthen the democracy, really, to, to have these things, you know, actually discussed as opposed to just buried. Um, and, and you would get more sort of unpredictable and innovative, um, policy opts being, being discussed. Ah, and I think we're in a very, very fluid changing, you know, economic, political, social dynamic worldwide and, and flexibility is going to be, you know, quite important for, for everyone, and also we're just gonna have to get used to, you know, dealing with, with more complexity as, as a society and as individuals. Um, and, and I actually think that, you know, it's, it's worth it, if you like, to, to, ah, to allow this, these, these unpredictable and, and, I'm sure, controversial things to sort of come up because now it's possible for, you know, one person to say, "Look, I want," you know, "to

represent Asian interests,” or, you know, Slavic interests in the New Zealand parliament and that’s really what I care about or I want to be the MP for entrepreneurs, speaking as an entrepreneur. I don’t want to be the MP for entrepreneurs but, you know, I would certainly want to encourage somebody to take on that sort of thing and I feel and I’m not sure how common this is but, you know, I find it hard to vote for a party which has supported in the past or is supporting now, you know, a few things I don’t like, you know, as well as a bunch of stuff I do. So, you know, I would feel better represented by perhaps the smaller party which had a sort of narrower, you know, agenda.

Yeah, so I think the Israeli Knesset, for instance, has you know the sort of intricacy and well, you know, Israel punches above its weight and so does New Zealand and I think we could – I think we could do it and that it would be better than the tactical voting shenanigans, I would say, that tends to have gone on. I mean I like MMP I have say, much better than First Past the Post but, you know, you do get these strange scenarios where, you know, the people in the know are saying this and that and the polestars are saying that and it can be, you know, as with the last election, you know, most – almost everyone was wrong and, you know, it’s just, you know, they weren’t talking about policy they were saying, “Well we don’t Winston Peters” or, you know – I think it – I think there would be more discussion of policy which I think would be better for everyone if there wasn’t this whole tactical voting shenanigans. So I think that’s yeah.

MR PEDEN: Thank you Mr Wagoner. We had a submissioner, somebody present to us yesterday afternoon here, spoke about a similar theme in the sense of the level of uncertainty that the world is moving towards and – but rather than talking about more flexibility in parliament, he saw that as an argument for more stability.

MR WAGONER: Mmm, mmm, mmm.

MR PEDEN: And that the – to be able to, I suppose, be in a better position to cope with the crises that may be coming our way.

MR WAGONER: I've heard that argument before and I don't accept it really. Um, I – I think that a lot of people really do value what I would call faux certainty, you know, they think that, um, this party here is strongly representing their interests and that it's going to, you know, stick to that platform and they sort of vote out of habit. I'm probably just, yeah, you know.

MR PEDEN: Well I think what he was really thinking of and I suppose where my question's going is that our current system of MMP really balances two interests, doesn't it? Proportionality and the importance of that and stability or an effective government, on the other hand. The ability of an effective parliament and an effective government and you mentioned the Knesset and you're probably aware that the Knesset has something like an average of 25 months of – per government because of the number of small parties that contend.

MR WAGONER: It's quite unstable isn't it? Yes.

MR PEDEN: Yes and so you're comfortable with the potential for –

MR WAGONER: Well I think we have a civil service which does pretty well at, you know, doing the business of government regardless of who's in parliament and so long as there are strong processes sort of around, you know, who's hiring and, you know, HR issues I suppose and, you know, a process of sort of working through laws so you just can't rush something in and get it implemented in a month without all, you know, all the proper stakeholder consultation and massaging through the actual, you know, legal drafting and so, that we could afford to have, you know, a slightly more rough and tumble environment within the parliament. I mean quite famously I think, well actually probably not famous here, I mean probably nobody has realised but it was like Belgium I think went for like 530 days without forming a government recently which was, um, but you know, things just kept on going.

MR PEDEN: They were (inaudible 13:55:54)

MR WAGONER: It's not like, you know, it can't be done and so absolutely there are trade-offs but I think just, you know, it's worth it to be more flexible. I mean I suppose, you know, maybe people would like – definitely there will be people who would prefer to have things, you know, just politics go away for three years and, you know, we'll worry about that for the last two months, and we'll sort of focus on our own thing here but I think things are changing, you know, so fast and I think the make-up of New Zealand and I think, you know, it just – I think it's an advantage when it comes to sort of retaining people, particularly I think sort of young and, you know, bright people, the kind of people I like to hire for instance, who have got lots of options, you know, because they've got the right kind of skills and I think if we can offer a, you know, a more representative proportional and just sort of where – it's not – it's obvious that new opinions are being heard and also that it's not just a crony system and I think that's quite appealing to certainly me and a lot of my friends and the sort of people I like.

MS HURIA: I just wanted to ask when you said “faux certainty” did you mean F-O-E or F-A-U-X?

MR WAGONER: Sorry F-A-U-X, yes so not oppositional certainty but, ah, yes.

SIR HUGH: Mr Wagoner you contend for a threshold equivalent to the vote that elects a single MP is what you said.

MR WAGONER: Yes, I've thought about it and, you know, I'd be happy with like, you know, 1% or 1.5 or even, you know, I can see how there would be advantages to middle ground like you need two MPs or three and I think anything less than, you know, five would make me happier than I am now.

SIR HUGH: That threshold, of course, would alter with every election, wouldn't it, because of varying turnouts, the varying numbers of votes?

MR WAGONER: That's right and that's why I was thinking maybe just set it at one, you know, to make things simple, even though, you know, it's, you know,

you might get slightly more overhang or slightly more wasted vote. I mean you're going to some of that stuff anyway but I was thinking at one, you know, you just totally cut out the, you know, I'm pretty sure you totally cut out a lot of the tactical voting stuff. You get entirely new problems.

SIR HUGH: Last November, the number of votes to elect an electorate MP was about, if you've averaged across the country, is about 16 or 17,000 votes. So you think that every party that gets around that number of votes ought to be in parliament, that number of votes across the country?

MR WAGONER: I, um, I could see that we would get some very interesting positions, you know, at that and that I probably wouldn't agree with many of them but I – and I have said there's pros and cons on both sides and on balance I'd be happy with that but I'd also happy with, as I say, like, 1% to make things simple, or 2%, or, you know. I –

SIR HUGH: So can we take it you, you're actually contending for a slightly higher number of votes than the average to, to elect an electorate MP?

MR WAGONER: I can, I can see that, because, um, I can, I can, hmm. I think, I think making it simple to understand is – definitely helps. Um, and I think making it low to remove a certain amount of the tactical voting, you know, anti-patterns as, as you might call them. Um, but I, I can see how it wouldn't hurt to have a higher threshold as well. I don't know. I wish I had sort of – I wish I'd taken a lot of time to, ah, to think about this.

DR ARSENAU: Can I just be absolutely sure I understand. You've – in terms of the one electorate seat you've said eliminate it, and your preferred, your preferred position is that with the 1% or 0.83% party vote threshold it, it wouldn't matter. So do you – if the party vote threshold was something more than that, would you still want, no matter what, you want the one electorate seat eliminated?

MR WAGONER: Yes.

SIR HUGH WELCOMES IAN TINKLER

IAN TINKLER: First I'd like to thank you for allowing me to come here today. Um, I've been selected as the Alliance Party person to come and talk to the Commission, mostly because the absence of Kevin Campbell, our, our current – former MP who was unable to, to attend today. Um, I also separately put a submission in, which is in sometimes a bit contrary to, um, the Alliance Party opinion so I am doing my best to respond to that. Where – I represent a political party and within political parties you have differences of opinion, ah, and that's it.

Our, our basis of the, of the party was to lower the, um, threshold to, um, as the previous gentleman, ah, came up with, for a figure of, of one seat. Um, 0.83%. Um, I'm a mathematician and I know it could be lower than that. Um, and, um, and the reason why we, we submit this is that what's happened during the elections, we've had – let's take the ACT Party as the prime example. Um, their – they have done deals with other party to get that threshold lower for them by getting the, the one electorate seat. Ah, the – we have tried to contact the Labour Party to do the same for us, but, um, they didn't budge. Ah, but it's, it's not gone without saying that that is slightly dishonest.

SIR HUGH: Well, can I just ask you to pause at that point. Neither the ACT Party nor you are trying to get the threshold lower, are you?

MR TINKLER: Yes, we are.

SIR HUGH: The threshold's in law. So, leaving aside this review, what you would – what I suggest you were trying to achieve was a pre-election deal with one of the larger parties which might have made it easier for you to achieve the statutory threshold.

MR TINKLER: The – yes, correct.

SIR HUGH: Yes.

MR TINKLER: Ah, not to get the 5% but to get the, the other threshold, which is the one seat.

SIR HUGH: Sure. Even if, we'll say, the one seat threshold disappears, winning a seat only entitles a party to the share of the list seats which roughly translates from its share of the party vote. Winning a seat will still get the winner that seat, won't it?

MR TINKLER: You'll get that win of that seat, and if they're getting about 1.3%, another seat.

SIR HUGH: Right. The bit that I think people want abolished is the second stage of that, which is that winning one seat entitles the party to the share of the list vote translating from their share of the overall list votes.

MR TINKLER: I'll, I'll go back to what I was trying to say. I'm sorry, I, I –

SIR HUGH: Right. Can I just ask you one further question? Even if the current one seat threshold were to be abolished, there's still nothing to stop a party which wins an electorate seat doing a deal with one of the larger parties, is there?

MR TINKLER: Yes, but there's slightly less advantage in doing that.

SIR HUGH: Right. Of course there is. And that would still have that, that might still have the same consequence that voters will be more inclined or less inclined to vote for that electorate candidate because of the pre-announced – pre-election deal.

MR TINKLER: Correct.

SIR HUGH: Is that right?

MR TINKLER: Yes, but that's not really the basis of our –

SIR HUGH: Okay.

MR TINKLER: That was an – it was sort of an example.

SIR HUGH: Do carry on with your submission.

MR TINKLER: At the, the, um, our point is to, to lower the threshold so that if a party has the support of, say, 0.8% of the vote then they will get a seat so that these other deals don't come up. And I think – and, and that's so that the whole of New Zealand is representative and not just those, you know, the 94% who vote for the larger parties.

SIR HUGH: So your proposal is not to attack the one seat threshold that the current proposal is, but to lower the 5% to 0.83% of valid list votes?

MR TINKLER: Our, our party did not come up with a position on the, on the one list seat. I personally think it should be abolished.

SIR HUGH: And so you would be content with the statistic I put to Mr Wagoner, or Mr Hedley, was it? That if a party gets – if a party last November got about 16, 17,000 list votes across New Zealand they would be entitled to one MP?

MR TINKLER: If those are the numbers, yes.

SIR HUGH: Okay. Thank you.

MR TINKLER: Um, and, and, and it had – that in the previous election that would've meant the, um, Bill and Ben Party would've won a seat and if that's what the electorate of New Zealand wants then – and, and the majority of

those people were voting for young people, and I think that's another positive thing, if we can get more young people voting, good.

SIR HUGH: Well, we're certainly with you on that, but it's slightly outside the scope of this review.

MR TINKLER: Ah, that, and that's on the end of the threshold.

Um, the next thing is, is, is should MPs be able to stand in by-elections? Ah, I listened to your point earlier. It's, it's actually something I, I personally thought of in the last couple of days, my personal opinion, that, um, our policy is no. That if a list candidate, then they should not be able to stand in the – in an election. I can think of two sensible exceptions to that case. One is that the MP stood in that electorate at the last – at the previous general election and the second one is if that individual has lived within those electorates for the previous 12 months but other than that I can see no valid reason for a list MP standing in a by-election that a seat that they have no connection to.

PROFESSOR ROBERTS: Could I ask you to go down a third, I mean 'cos I like your ideas of clarifying it but what if the candidate – a list MP has already been adopted as the candidate for the party of the next election? A by-election is called eight months before and so you have no opportunity to waive the by-election. We know that candidate has been adopted by the party.

MR TINKLER: Well party – I'm not 100% sure how that works. It's a possibility. I'm not sure because lots of times political parties put MPs who – to represent a number of electorates around the country and I'm not necessarily sure that that shows that they've actually got the connection to them, whereas if they actually live in that electorate in some way, then they do.

The next bit is, should dual candidacies be maintained and we believe they should and we, as a small party, and we have a limited number of candidates. There's very – it's very difficult for us to get candidates and we don't get a lot

of publicity and one of the few things that we do get for publicity is local electorate meetings and you don't get invited to local electorate meeting if you don't have local candidates if you are a small party. So we think it's important that dual candidacies be maintained.

On a personal opinion, I'm not sure what this question's trying to answer. I think that the – that there is the issue that unpopular people are getting voted out of the electorates and then coming back on the list and this is my personal opinion, it's not the Alliance's, I personally think the number of sitting MPs on any list should be limited and that should be limited to a number probably between 12 and 20. That allows smaller parties to maintain their consistency. It allows the leaderships of parties to be on lists but it also means that there's churn of MPs because I don't think there's enough churn of MPs under MMP. They fall off being electorate and then they come back on the list. Where in recent elections under First Past the Post in places like Canada you can lose – or Queensland where just about the entire Labour Party got voted off and there's a whole lot of new people coming in, it brings new faces in and I think that's a benefit for democracy to have new faces and not the same people without having term limits which I don't approve.

MR PEDEN: There's also the interest in having not institutional memory but experience, isn't there, within parties represented in parliament?

MR TINKLER: Yes but they can – but that's why I'm not saying that no sitting MP can stand on a list. There will be very – there's very few parties that get more than 15 list seats.

MR PEDEN: So is your suggestion that the size of the list should be limited to 14 or 15 or the number of –

MR TINKLER: No, it's the number of sitting MPs on the list is 15.

SIR HUGH: Including list MPs?

MR TINKLER: Including list MPs. I see no distinction between the two 'cos I also think that if we ever get to a point where a party is getting 25 list MPs and they really need to have the churn as well. But that's my personal opinion and not that of the party.

SIR HUGH: We've noted it as such.

MR TINKLER: And the – with other issues the Alliance suggests that we have preferential voting for the electoral seat to allow people to perhaps select the best MP rather than just the MP of the two parties that may get in. We note that with the London Assembly elections for the mayoralty where they have an MMP-type system for their Council and this has sort of allowed for their Mayor, which is I know selected on sort of an STV basis on the side but we think that would be beneficial and finally we really want to get more people voting because say we have a proportional system but we don't really, with a million people not voting. If a million people don't vote then the proportion is only the proportion of those who vote. So we want to encourage people to vote and we're suggesting every three years for the election we hold a democracy day and that's a public holiday and we encourage people to – and we get people to vote on that day.

MR PEDEN: And what's the thinking behind a Wednesday?

MR TINKLER: It's the middle of the week. It was a suggestion that somebody read on a blog and picked it up. Personally I can see no difference if it's any day of the week but –

MR PEDEN: But the idea, it would be a day other than the weekend and that it would be a public holiday, except for, of course, all the 22,000 who work in polling places around the –

MR TINKLER: And people who have to work for emergency services and all sorts of other things.

MR PEDEN: And restaurants who charge a surcharge, yes but you feel that that would have – that would increase turnout, having a holiday or would that actually have the perverse – potentially the perverse result of – you see when we provide advice to governments on when to hold an election day, we advise them to avoid holidays. People go away on holidays, go away from home.

MR TINKLER: If it's a Wednesday you don't tend to go away for a long time. You might go to the beach.

MR PEDEN: Oh so it wouldn't be a holiday?

MR TINKLER: It would be a holiday.

MR PEDEN: No.

MR TINKLER: Yeah, you know, you go away on a holiday because it's a three day weekend. If it's one day in the middle of the week you're not getting away for a holiday.

MR PEDEN: Well the pressure to Monday-ise days like Anzac Day, wouldn't election day come to be – there'd be pressure to add it on a Friday or Monday?

MR TINKLER: The reason for having it in the mid-week would be so it wouldn't be making a long weekend, to discourage people from voting.

SIR HUGH: Well just while we're on that, this is something that just occurred to me, well since the French election actually. When New Zealand adopted a Saturday polling for general elections, which Professor Roberts can no doubt tell me off the top of his head was the date.

PROFESSOR ROBERTS: Oh no.

SIR HUGH: But it was long time ago.

PROFESSOR ROBERTS: It was a long, long time ago.

SIR HUGH: New Zealand closed for the weekend but nowadays Saturday is a normal working day for lots of New Zealanders. Should we have our general elections on a Sunday as France just has?

MR TINKLER: Well we're open pretty much Sunday as well. So it's not –

SIR HUGH: Well I appreciate that. It wouldn't entirely cover the problem but might it alleviate the – the Act now says employers have to give employees time off to go and vote on election day but a lot of people work on election day and the public opinion, public polls we had since the election last year, show that quite a number of people said, "I didn't vote because I was working." Can we alleviate that by shifting election day to a Sunday?

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MR TINKLER: I'm not sure that it would work. You could, you could change the Act to say that no one's allowed to work more than four hours on, on election day. Ah...

SIR HUGH: There would, of course, and justifiably, be objection from the churches. But there's plenty of time in a day when people could go and vote, even if they take part in religious observances. What do you think?

MR TINKLER: Ah, personally? I... Um, I don't work Saturdays or Sundays, so it's a... Um, it's, it – probably on balance Sunday would be, would be a better day. Or, or in many countries they have elections over two days. Um...

SIR HUGH: My personal view is that the size of our electorate wouldn't be sufficient to justify a two-day election.

MR PEDEN: Mmm. And in any case, we have an advance voting period that begins 17 days before election day.

SIR HUGH: And that's an option people are increasingly taking up.

MR PEDEN: That was really all I wanted to explore as far as the, the Wednesday proposal was concerned. Just on the idea of having preferential voting on the candidate side, so we have same ballot paper and people would mark the party vote with a tick, would they? And then mark the candidate side of the vote 1, 2, 3 down to whatever number they wanted to if they wished?

MR TINKLER: I think you need to reconsider how the paper or papers are –

MR PEDEN: Right, right.

MR TINKLER: – are, are created. I, um, I don't know if there is such a great advantage by having the two things next to each other. Is, is it something that's been tested?

MR PEDEN: Well, it's certainly – the feedback that we have from voters is that they find our ballot paper very easy to use. So there's a very – and I suppose one of my questions around your proposal would be any thoughts you might have over voter education implications that would arise. Because I think there is evidence to suggest that if you have different voting methods in the same election, that does result in a higher rate of voter informality.

MR TINKLER: So I think, within that informality things, um, you can – the possibility is people will 1, 2, 3 down on the, on, on the parties as well. Um, I think – my personal opinion is if someone's point a one where they should put a tick, you take the 1 as a tick, and if someone puts a tick where, where they're supposed to put a 1, you take the tick as a 1. Ah, because that's probably what they were, were thinking in the first place.

MR PEDEN: Probably. Our, our informality rules require us at the moment to allow anything which is clear, where the voter's intention is clear, but not to allow anything where it's not.

MR TINKLER: What I would is if someone wrote 1, 2, 3 and they're supposed to tick, then the 1 is the, is definitely what they wanted to vote for.

SIR HUGH: Mr Tinkler, we've had a number of submissions, not from the Alliance Party, but from people who are, are or have been members of other political parties suggesting that we should recommend changes to candidate selection process for political parties than are more democratic than they currently are. Can – do you regard the Alliance selection procedure as democratic and can you tell us a little bit about the way the Alliance Party selection procedure works?

MR TINKLER: Um, at the moment, well, we don't have much chance of getting in Parliament. Our, our selection is that our leaders go at first and second on the list and after that we have a committee to consider the other list MPs which have been selected. So they're nominated by, by the branches and then they are looked at on terms of gender and location and then, ah, and, and then the committee looks at, at, at the people, at people. Some, some – occasionally we, we reject some people for – as being unsuitable.

SIR HUGH: Who makes up the committee?

MR TINKLER: Um, who makes up the committee? We, ah, the committee is, formally it's the chairs of the, of the local branches. Um, we only have four or – about six local branches at the moment. And, and the, the national leadership. Um... Ah, it's a lot more informal than it used to be due to the fact that we've got, you know, 600 members.

SIR HUGH: In the – leaving aside the top one or two nominated by the leadership, do, does the membership at large participate in the nomination of the balance of the people offering themselves for candidacy?

MR TINKLER: Ah, no.

SIR HUGH: How is it done then?

MR TINKLER: Um, well, basically, at the moment, just about anybody puts their name in to be a candidate is actually selected as a candidate.

SIR HUGH: So they can self-nominate?

MR TINKLER: Um, well, they're, they're actually formally nominated by a member of their branch but, but they can, they can put –

SIR HUGH: Put themselves forward for formal nomination?

MR TINKLER: Yeah.

SIR HUGH: And that's an option open to any member?

MR TINKLER: Any member, yes.

SIR HUGH: Okay. Thank you. That's helpful.

PROFESSOR ROBERTS: You used to have, famously, the wonderful name, a knitting committee for putting a list together, and it stitched together the different gender balance, regional balance, ethnic balance. Do you not still have that?

MR TINKLER: Well, that's what we were doing up to – I, I joined in 2002 and, you appreciate, in 2002 we, we lost.

PROFESSOR ROBERTS: I was going to say something happened to the Alliance that year.

MR TINKLER: We, we, we split and in 2005 we still basically had that structure. But due to the fact of the lack of expertise we – that's a lot of work involved. We, we haven't since 2005.]

PROFESSOR ROBERTS: Right. Thank you.

MR TINKLER: If we got bigger again we – that is what we'd attempt to do.

MR PEDEN: So there's a lot of work involved in the process that you had in – prior to 2005 encapsulated in this knitting committee concept?

MR TINKLER: Well, there's a lot more, there was a lot more potential candidates.

MR TINKLER: Thank you for that explanation.

DR ARSENAU: Thank you for your submission and your personal views as well. I'm just wondering if you might be able to explain to me, in terms of the Alliance's position, in terms of not having list – or not having sitting MPs stand in by-elections. And the reason given is that it makes no sense for them to have a list MP come and run in the by-election because it brings somebody new in through the list, but it means you don't get some – so either way you're going to get somebody new in Parliament, right?

MR TINKLER: Yes, we're going to get someone –

DR ARSENAU: So does it matter that it comes in as an electorate MP or through the list? See what I mean, if the list MP resigns and is elected as an electorate MP, either way you're going to get somebody new in Parliament.

MR TINKLER: Yes, I'm aware of that. I, um, see, ah –

DR ARSENAU: So does it matter that it's from the list rather than somebody new elected in the electorate?

MR TINKLER: Um, it – the, the, the – and I, and I – and it comes back to, to – I'll go back to my personal opinion, the – I personally don't think one national list works, that it would be better to have some regional lists, but I think –

DR ARSENAU: Oh, I see. So it's the fact that –

MR TINKLER: So – but, but –

DR ARSENAU: – the new person –

MR TINKLER: Yeah. 'Cos –

DR ARSENAU: – comes in from, can come in from somewhere else? Right.

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MR TINKLER: Yeah 'cos it's representing something different yeah and I do realise that's the way the system works, yeah.

DR ARSENEAU: So that's why your own personal recommendation is that the list MP can only sit – can only run if he or she has lived in that electorate for 12 months?

MR TINKLER: Yeah, 12 months might be a long, you know –

DR ARSENEAU: Which again is a higher qualification than the normal candidate because we don't have that qualification for people running on the electorate, in electorate.

MR TINKLER: Yes, yeah. Someone said earlier that it's a – it's a job, yes but every three years that job has to be up for renewal and it's just coming up a bit earlier, yeah.

DR ARSENEAU: That helps, thank you.

SIR HUGH: Thank you Mr Tinkler. Thank you for coming along and giving us both your views, party and personal and thank you for the candour of your discussions, it's been really interesting.

That brings the Christchurch hearings to a close. We'll adjourn and embark on the next phase of our hearing process next week.

HEARING ADJOURNS 2.31 PM