

The Holyrood Inquiry

September 2004

A Report by The Rt Hon Lord Fraser of Carmyllie QC



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Information received which did not relate to the Inquiry's remit, contained commercially confidential material or which has been deemed to be potentially threatening to the security of the Scottish Parliament has not been posted on the website.

All coded documents referred to within the footnotes to the Report can be viewed on the Inquiry website **www.holyroodinquiry.org**. The alphanumeric codes identify the provider of the document to the Inquiry. These can be viewed by clicking on the "Transcripts & Evidence" tab, which opens a page from which the full documentary evidence and transcripts of public sessions can be accessed.

The Holyrood Inquiry

**A Report by the Rt Hon Lord Fraser of Carmyllie QC
on his Inquiry into the Holyrood Building Project**

This report, presented to the First Minister, Rt Hon Jack McConnell MSP and the Presiding Officer, Rt Hon George Reid MSP, is laid before the Scottish Parliament by the Rt Hon Lord Fraser of Carmyllie QC and is published by the Clerk of the Scottish Parliament under the authority of the Parliament in accordance with a resolution of the Parliament of 24 June 2004.



15 September 2004

SP Paper No. 205

Session 2 (2004)

Acknowledgements

The conclusion of my Report could not have been achieved without the masterful work of Derek Bearhop as Secretary to the Inquiry. As this Report will reveal, I am not uncritical of the performance of a number of public servants from which criticism Derek is wholly excepted. Scotland should be proud that it has in Derek Bearhop such a fearlessly independent public servant with a keen eye for detail, unswerving objectivity and a preparedness for hard work.

Diane Barr from the Scottish Parliament has, to my advantage, demonstrated her high intelligence and her incomparable capacity for hard work. She and Derek were central to the task and I acknowledge, with the greatest respect, their contributions.

Lauren Drummond was irrepressibly charming and helpful and if she had not already achieved her ambition of joining a Ministerial Private Office, that would have been one clear recommendation I would willingly have offered the First Minister.

Jonathan Elliott was a quiet but thoroughly effective member of the Team and valued by all.

John Campbell, Counsel to the Inquiry, is now, with cause, after the brilliance of his questioning throughout the Inquiry probably the most famous QC in Scotland. He could not have achieved that immense reputation without the tireless and assiduous work of Douglas Tullis assisting him. Lawyers do not come better than Douglas.

Jim Cassidy and Archie Mackay of Media2k have been invaluable with their shrewd and skilled media advice.

We were all working on the principles of openness and transparency. Neither could have been achieved without the contributions of this small Team. The mould of past inquiries in Scotland has been broken and their workings will never again be allowed to become remote or opaque.

ISBN 1-4061-0013-7

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Introduction

I was invited by the First Minister, the Rt Hon Jack McConnell MSP and the Presiding Officer of the Scottish Parliament, the Rt Hon George Reid MSP to undertake an inquiry into the cost over-run and the delays in the construction of the Scottish Parliament building. My agreed terms of reference were:

“To review the policy decisions in relation to the Holyrood Project taken prior to its transfer to the Scottish Parliamentary Corporate Body on 1st June 1999 and subsequently.



To build on the Auditor General's existing findings in respect of procurement strategy and cost control, contractual and project management arrangements and to extend the consideration of these issues to cover the subsequent stages of the project.

All with a view to producing a full account of the key decisions and factors which have determined the costs and value of the Parliament throughout the life of the project and the processes involved in reaching those decisions and to identifying the lessons to be learned for the procurement or construction of major buildings in the future; and to report to the Parliament and the Scottish Executive as soon as reasonably practicable, taking account of the Auditor General's intention to examine the economy, efficiency and effectiveness with which resources have been used at all stages of the Scottish Parliament building project.”

There are a number of features of this remit to be highlighted. I am invited to “build on” the work of the Auditor General for Scotland and I have sought to do that utilising his Report of September 2000 and more recently his Report of June 2004. Apart from an opening Press Conference and a preliminary hearing we have not sat together but we have maintained regular contact with a view to avoiding unnecessary duplication and to ensuring no relevant issue was overlooked by both of us. In addition there has been regular and useful contacts between our respective Teams.

I am not invited to offer any observation on the aesthetics or architectural value of the buildings. If I had been invited to do so, I would have declined. That assessment is not for me but for this and future generations of Scots. Prior to 1997 I was Sponsor Minister for the North East of England and I received regular entreaties to intervene to prevent the erection of the Angel of the North. I did not do so as I could not see what I could have done even if I had wanted to. Once it had been erected, it immediately became one of the best-loved pieces of public art anywhere. In similar fashion once the Scottish Parliament building has been stripped of all

cranes and scaffolding and all construction activity has ceased, the Scottish public can make up its own mind on the architectural merits of the buildings.

Nor was I invited to comment on the workability of the building as a Parliament and rightly so. That assessment is properly and exclusively for MSPs, their staff and the staff of the Scottish Parliament itself.

Donald Dewar harboured an aspiration to be “the most important patron of the architecture of government for 300 years” and it is not difficult to understand why he was so enthused by what Enric Miralles presented to him in concept. The eloquent and perceptive Miss Joan O’Connor put it thus:

“His heart was in developing a contemporary icon. He wanted to make a landmark building that would identify that particular moment in Scotland’s history.”

Sadly, at the present time my measured consideration is that the quality of what he sought to achieve has been mired in never-ending complaints of spiralling costs and ever-extending delays.

With the honourable exception of Sir David Steel on behalf of the SPCB accepting some responsibility for increased costs, the ancient walls of the Canongate have echoed only to the cry of “It wis’nae me”. That has made my task more difficult. Ian Rankin has written a cunning Rebus novel with the Holyrood site at its core but in my book there is no single villain of the piece. Rather there has been a series of systemic failures and an unwillingness of those involved in the Project to call a halt and demand a re-appraisal. The few that tried were quickly shown the door.

It is a matter of dismay to me (and I understand this view to be shared by the First Minister and Presiding Officer) that the BBC and/or Wark Clements Ltd have declined to allow me other than the most restricted access to tapes accumulated for a proposed programme “The Gathering Place” to be shown publicly in one or more episodes in late 2004 or early 2005. I repeatedly made it clear that if my request put anyone’s life at risk, I would immediately desist. However, no such risk has been claimed. All I wanted was access to tapes to be shown to the public at some point in the future, to allow me to be confident that no stone had been left unturned and that there was no contradiction on tape, from the late Donald Dewar or the late Enric Miralles or other primary players which would cause me to re-consider the conclusions of this Report.

I was first told that contractual agreements with those filmed precluded any showing of the tapes. However the evidence before the Inquiry did not support that. For example, John Home Robertson MSP (Convener of the HPG) told the Inquiry that he had been filmed repeatedly. He had neither signed nor had he required any agreement to be signed to the effect urged by the BBC. It is true that some of those interviewed did require no disclosure prior to the showing of “The Gathering Place” and declined to give any waiver and I would have respected that, however unwarranted I regarded it. However that option was never offered to me.

Introduction

Having voiced this dismay and criticism of the BBC and having been unable with an application to the Courts to require that the tapes be handed over, I am bound to say that I remain nevertheless doubtful whether anything relevant to the Inquiry will be revealed in “The Gathering Place” beyond that already before the Inquiry. However, for the greater caution, I have to advise the First Minister and the Presiding Officer that I cannot formally close this Inquiry until I have seen the programme(s).

It causes me particular discomfort to level this criticism against BBC Scotland as I have nothing but unstinting praise for the manner in which Val Atkinson and her Team covered the Inquiry. It was done in groundbreaking fashion and I received not a single complaint that the coverage was intrusive or unacceptable. On the contrary across Scotland the coverage has been lauded. For the early evening news Brian Taylor was unerring in his assessment of the significance of the evidence on any particular day and I concur with *The Scotsman’s* observation that the analysis on Newsnight Scotland of the Holyrood Inquiry was “unmissable”. That is rightly quoted with pride within BBC Scotland’s Annual Report.

I have seen it alleged that my criticism of Sir Muir Russell will be muted on account of the fact he was once my Private Secretary when I was the Junior Minister for Agriculture and Fisheries in Scotland. While in time he did head up Agriculture, Environment and Fisheries in Scotland, I was never a Minister with these responsibilities and he was never my Private Secretary. He had been known to me from his time as Principal Private Secretary to the late George Younger in the 1980’s and it would not have been difficult then to predict his rise to the top of the Scottish Office but I do not hold back from personal criticism on account of a familiarity 20 years ago.

In my view he was unwise to write the report set out in Annex B to the Auditor General’s Report of September 200 but as Permanent Secretary of the Scottish Executive he possibly had no option. He would not appear to have been engaged in the calculation that led to the non-reporting of the cost-consultants risk estimates to the late Donald Dewar and was not personally to blame. Nevertheless he fell on his sword and attracted the criticism of the Audit Committee that if as Accountable Officer at the Scottish Office he was not given information on cost estimates from the earliest stages, he should have done more to seek it out. That led the Committee to conclude that he was “semi-detached from the process”.

I heard no new criticism during the course of the Inquiry and note only that he bristled with righteous indignation that words like “illegality” and “impropriety” had been used, albeit not in evidence, in relation to the selection of Bovis as Construction Manager, but he declined to offer a judgment on that selection in the light of the later decision in Harmon and the advice from the Comptroller and Auditor General. He cannot be criticised for that, but it would have been interesting to have heard the views of a former Permanent Secretary.

There have also been accusations made that the Holyrood Inquiry has resulted in an increase in costs and had an adverse effect on the programme. For example, John Home Robertson MSP made the claim that

having key people preparing the Inquiry was causing costs to rise and delays to the Project and asked that it be put on record that Mr Brian Stewart had attended the Inquiry from October through to December 2003 and that: "His absence did give rise to some difficulties."

Mr Stewart gave evidence for half a day on 3 December 2003 and was timetabled to give evidence in March 2004 on a date convenient to him. Mr Stewart's attendance during 2003 had therefore been, with one exception, entirely a matter of personal choice. Mr Stewart in turn claimed that the client's decision to appoint the Inquiry at this time had caused delays and cost increases:

"The point is respectfully made that the decision to appoint the Inquiry – to sit in the very months when completion by July 2004 was to be such a 'drop dead' objective for all concerned – is in itself evidential of the at times contradictory nature of the client's demands."

Mr Home Robertson was requested to provide information to the Inquiry Team of any delay to the project occasioned by the Inquiry. To date no information confirming this has been received from either Mr Home Robertson or any other party.

I conclude that although the timing of the Inquiry may not have been ideal given the deadline for completion, I have received no evidence of it having contributed in any significant way to the cost of, or delay to the Project.

The revelation during the course of the Inquiry that MSPs on the Holyrood Progress Group were being asked to choose between a linoleum floor cover at £75/sq m or oak at £100/sq m for their Block has given rise to the impression that the whole Project was nothing but a surfeit of extravagance and self-indulgence. As I trust my analysis reveals, that is nothing like the whole story.

In my view at relatively early stages a number of decisions were taken which were fundamentally wrong or wholly misleading. It is the consequences of those decisions which have caused the massive increases in costs and delays. Coupled with that the situation was admirably summed up in a curt handwritten note by Mr Ian McAndie, a partner at Davis, Langdon & Everest as far back as March 1999:

"Nobody tells Enric to think about economy with any seriousness."

Little in this Report improves on that early astute observation.

Finally, this Report is delivered by its due date and within budget.



The Rt Hon Lord Fraser of Carmyllie QC