

2 December 2020

Opening Statement to ICAC Committee re: Inquiry regarding reputational impact on an individual being adversely named in the ICAC's investigations

Thank you for inviting me to appear today.

I would like to commend the Committee for the role it played over the past few years in pushing through much needed amendments to the ICAC Act which have significantly mitigated the risk of ICAC abusing its powers.

However, for some of us, those changes came far too late.

The findings in Operation Jasper, that were contrived to excuse the subsequent expropriation of valuable property rights by the State, remain a serious blight on the State's reputation.

Being labeled 'corrupt' has had very serious, long-term consequences for me, and my family. Not only was my hard won reputation destroyed but also my family's mental fortitude has been seriously tested.

Clearly your Committee already understands this issue.

The fact that you provided Lifeline and Mental Health Line contact details for those of us giving evidence today speaks volumes. That simple act reflects that you already understand the direct link between an unfair ICAC finding, public humiliation, social stigma, reputational damage and the potential to fall of a cliff. An exoneration protocol would at least help mitigate that very dangerous spiral.

But for me, even more relevant is the fact that I believe the stress attributable to the abuse of power perpetrated against me by ICAC, played a direct role in the death of my wife and the mother of our three children. That is the reason I have elected to give evidence today and the reason I continue to press for some form of public exoneration.

In my situation, it is uncontroversial that ICAC had committed a serious wrong against me. ICAC itself acknowledged that the corruption findings were illegal when agreeing to consent orders to overturn them.

In such circumstances you would have expected that Parliament would have done all in its power to right that wrong. Instead, they did the exact opposite.

In an extraordinary moment, retrospective legislation, The Validation Act, was enacted to cover up all of ICAC's illegal activities.

Just pause on that thought for a moment.

Normally, if someone acts unlawfully, whether a public official or a member of the public, they are held to account. A standard that is clearly appropriate to maintain a civil society.

But somehow it was determined that ICAC warranted a different treatment – it was above the law.

In the context of the Jasper Inquiry, an ICAC Commissioner was able to misapply the law with complete impunity.

Similarly, that same Commissioner was able to actively collude with the Executive arm of Government before, during and after the Inquiry to contrive a desired result - again with complete impunity.

Even more problematic are the actions of ICAC officers at the relevant time.

While making commitments to me, my Cascade colleagues and the Supreme Court that our corruption findings should and indeed would be overturned, it seems that certain powers were working hard behind the scenes to affect a different result.

The media was used to publicly advocate for Parliament to pass retrospective legislation to cover up ICAC's unlawful activities. Interestingly, the journalists showed little curiosity as to what or whom the legislation needed to protect.

Think about it. A government agency that has acted responsibly and within the bounds of its statutory remit should hardly need the cover of retrospective legislation to protect it from its sins of the past. The legislation was absolute. A victims right of appeal was abolished. Unlawful acts were given complete legislative immunity. Why?

What was the organisation afraid of? What else had they done?

Rather than ask these questions, Parliament meekly acquiesced and passed draconian legislation that acted to destroy the rights of many.

Admittedly, it is now clear that those involved casted their votes without the knowledge of all relevant facts. Someone chose to mislead them. Who?

Getting to the bottom of this very important issue is not easy. If it was an oversight, then so be it. However, if people at ICAC were engaged in lobbying for the retrospective legislation to be enacted then those individuals need to be held to account.

Mr Waldon gave evidence before this Committee that he knew about the proposed retrospective legislation in advance of it coming into law. Putting aside ICAC's legal responsibilities to the Courts in dealing with us on one basis while having knowledge that would potentially undermine that process, it is important

that we discover the role ICAC and its officials played in having the Validation Act enacted.

Did they lobby the Premier and Cabinet?

Did they lobby the Attorney General?

Did they reveal to members of Parliament that they had already agreed to our corruption findings being overturned or did they conveniently keep this important fact to themselves?

Did ICAC play a role in persuading the Supreme Court to push back the date of the hearing when our corruption findings were to be overturned to ensure there was time to pass the Validation Act first? Thereby making the consent orders redundant. Was the Court also kept in the dark?

Following Mr Waldon's evidence before this Committee, attempts have been made to get answers to these important questions.

Unfortunately, none have been forthcoming. ICAC's rules of engagement might have changed since August 2017 but sadly the culture that prevailed to destroy my reputation seems to be alive and well.

In his response to a GIPA request, Mr Waldon asserted that ICAC was exempt from providing the whole of the requested information. He claimed the information was exempted from production on the basis it related to an investigation and therefore ICAC was not obliged to provide the requested information. This is despite the fact that the information sought in the request related to lobbying and other matters unconnected with any investigation.

His reasoning seems desperate.

The Jasper Inquiry, which led to the introduction of the Validation Act and two other draconian pieces of legislation that expropriated our valuable property rights and effectively emasculated others and me for all time, finished in 2013.

The Validation Act was only dreamed up two years later, in 2015. It arose in response to the High Court's decision in Cunneen – which even ICAC acknowledged clearly proved that I could never have been regarded as corrupt if they had interpreted their own rules correctly.

Anyway, the New South Wales Civil Administrative Tribunal will soon determine whether Mr Waldon's reasoning for wanting these documents concealed from public view are justified.

But irrespective how the GIPA request plays out, I would urge the Committee to use its powers and demand the relevant information from ICAC and determine for itself whether ICAC played a role in misleading Parliament. The public has a right to know.

This issue goes to the heart of what this Inquiry is about.

My hard won reputation was destroyed by ICAC.

It is only right there should be a mechanism for innocent victims of ICAC to be exonerated. Those that argue against the proposition are naïve.

They argue from the very lofty heights of never having had the system turn on them wrongly. Instead, they allow themselves to believe that the system can never be wrong. They rely on rules being applied correctly at all times. Unfortunately, they don't allow for honest mistakes, or worse, blatant abuses of power.

Ironically, many of those who have provided the Committee with submissions arguing against an exoneration protocol have made their reputations sitting on or arguing before appeal courts. How they distinguish between criminals right to an appeal and an innocent victim of ICAC's right to an exoneration process is beyond me.

It seems that they believe that an adverse ICAC finding has little impact on someone's life. Presumably, they take the attitude that if you are innocent, well, that is just unfortunate. You haven't gone to jail so it can't be too bad.

Let them live through the nightmare and see whether their attitude changes. Death threats left in letterboxes; job offers pulled; defamatory google searches following you around for life. I suspect if they walked in my shoes, they would be lobbying for a different result.

We all know that power can corrupt. ICAC's past proves that it is not immune from that possibility. What happened to me at ICAC was wrong. What happened subsequently through the enactment of the Validation Act was disgraceful. Accordingly, I urge you to recommend amending the Validation Act so that my reputation can be rehabilitated and some semblance of dignity restored.

Similarly, I also call on you to recommend introducing an exoneration protocol. Reputations do matter. Innocent victims of ICAC deserve better. Organisations grow from recognising their mistakes. ICAC is no different. They should embrace this change rather than fight it. Both them and the public would be better served if they did.

John Atkinson