

**Submission
No 23**

**REPUTATIONAL IMPACT ON AN INDIVIDUAL BEING ADVERSELY
NAMED IN THE ICAC'S INVESTIGATIONS**

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Partially
Confidential

Submission to ICAC Committee by Andrew Cornwell

“The commission will not be able to simply allow such persons' reputations to be impugned publicly by allegations without coming to some definite conclusion.”

Greiner Second Reading Speech of the ICAC Act 26 May 1988

Executive Summary

In July and August 2014, I gave evidence in the ICAC inquiry known as Operation Spicer. I was not a person of interest in the inquiry. Prior to the public inquiry I was given written and verbal undertakings that they would protect my reputation, however I was deceived. ICAC Inspector, Mr Bruce McClintock SC made findings last year in his report into ICAC's control of counsel assisting that Watson's conduct in my case was inappropriate.

On 7 August 2014, counsel assisting made false allegations that made my position untenable as government whip and member for Charlestown, and days later I was forced to resign from parliament triggering a by-election.

Despite the fact that I was not found to have acted corruptly and was subsequently cleared by the Office of the Director of Public Prosecution (ODPP), the reputational consequences on my family have been severe.

My wife was "offered" a voluntary redundancy from her employer of 17 years.

Family bank accounts were unilaterally closed including my 9-year-old son's school bank account.

Six years after the inquiry, my wife was the preferred candidate for a NSW government position, however, she was not appointed to the position due to a failed integrity clearance based on the Operation Spicer report.

For hundreds of years an allegation of criminality has been required to meet a standard of "beyond reasonable doubt" in order to protect citizens from unfair outcomes. This is not the case with the ICAC.

Furthermore, implicit in the ICAC Act is an assumption of infallibility. No organisation is perfect and ICAC is no exception. It is virtually impossible to challenge flawed or incorrect findings. This must be addressed by ensuring ICAC is subordinate to the law.

If they are to maintain their extraordinary powers, then those individuals who appear at an ICAC inquiry and are not found to have acted corruptly or found guilty of criminality should be protected from disproportionate outcomes.

The best way to adequately achieve this without dramatically changing the function of ICAC is to suppress those sections of the report and inquiry transcript that relate to those affected individuals following the release of such a report.

ICAC's conduct in relation to me

On 17 July 2014 I gave evidence in a private hearing at the ICAC. At the conclusion of that hearing, Mr Greg O'Mahoney (junior counsel assisting) spoke to my solicitor, Mr Robert Mangioni and myself. Mr O'Mahoney thanked me for my forthrightness. He then asked me to consider if there were any other matters the ICAC would be interested in and encouraged me to come forward if there were. After we spoke with Mr O'Mahoney, with the assistance of my solicitor, I prepared a statement.

On 23 July 2014 my solicitor contacted Mr O'Mahoney informing him that I had further information that I was willing to provide.

At 4.00 pm that afternoon, my solicitor and Mr O'Mahoney met in Mr Watson's chambers, along with Mr Watson SC, and Mr Don McKenzie, a solicitor from ICAC. I was not present for the initial part of that meeting.

Around 5.00 pm Mr Mangioni telephoned me and asked if I could attend the meeting.

At 5:50 pm I arrived at Mr Watson's chambers with Mr Mangioni. Mr Watson greeted me. I was offered a seat. After a couple of minutes of pleasantries Mr Watson congratulated me on my honesty.

He then said:

"We've reviewed your statement. It contains information which will be of significant assistance to ICAC";

"We have a lot of flexibility in the report and the focus of findings";

"In the public inquiry, it's necessary for you to give evidence";

"I will promote you as one of the heroes; as we did with Rees, Keneally and Sartor";

"I will stake my reputation on protecting your reputation."

"You've done the right thing";

"You'll come out of this better. I will present you as a white hat. This will be an opportunity for a platform for your future political career; and

"You and Tim Owen were not experienced politicians. You were taken advantage of by the party machine".

Mr Watson provided me with a written undertaking that he would seek an order from ICAC that my statement, and anything said in that meeting, would not be used against me. The undertaking is attached.

Mr Watson then served wine to all of us at the meeting. We consumed two bottles of Riesling between the five of us.

The public hearings resumed on 6 August 2014. Counsel Assisting, Mr Watson SC made the following remarks about me:¹

"...Commissioner, Andrew Cornwell is the Liberal Party Member for Charlestown. Mr Cornwell has given considerable assistance to ICAC. ...

¹ Spicer Inquiry, Opening Address, T4783/46-T4783/48; T4785/08-T4785/25, 6 August 2014.

...Mr Cornwell [was an] outstanding candidate for Parliament, ...[he] had a lucrative career and ...[he] was making a sacrifice in seeking political office. [He was not] a career politician, [he was] not [a] party machine [man] and [he was] being enlisted by the Liberal Party because [he was] and outstanding candidate. One can see how [his] experience...made [him] susceptible to being manipulated by wealthy individuals who wanted political preferences, especially if those wealthy individuals had [the] pre-existing support of elements in the party machine.

Mr Cornwell has been helpful to ICAC. He has given cooperation. His actions may have been unwise but it would seem to us, this is just an expression of opining between Mr O'Mahoney and myself, but it would seem to us that those actions may have been the product of a degree of inexperience in the face of high pressure tactics from some pretty determined characters. I should add that there is no evidence which suggests that Mr Cornwell actually gave any preferences to Mr McCloy or Mr Grugeon".

I took Mr Watson at his word; however, I was deceived.

After ICAC was adjourned on the afternoon of 6 August 2014, it appears that Mr Watson received untested information from a journalist, [REDACTED], about me. Several days later Watson was forced to concede the information was false.

On 7 August 2014, my wife and I gave evidence at ICAC. I was cross-examined by Mr Watson, and my wife was cross-examined by Mr O'Mahoney.

On this morning, and without any warning from Mr Watson to either myself or my wife, the attitude of Mr Watson had changed. My wife and I were now considered to be deceitful and corrupt.

My wife and I were re-called to evidence on 21 August 2014. I was accused of taking bribes and attempting to mislead ICAC. It was a personal attack. Not only was this allegation totally false, it was a legal impossibility – I was not a public official at the time.

My wife was accused of collusion and perjury. That was also a personal attack. In the space of a few weeks Mr Watson was now characterising me as a person who had taken a bribe.

Mr Watson broke the undertaking that was given to me.

I was completely misled and deceived by Mr Watson.

He undertook to protect my reputation. Should I sign the statement, he promised to portray me as a 'white hat'. He promised to portray me as one of the heroes.

He did not.

Mr Watson inferred that he could influence findings in my favour where he said that, "*We have a lot of flexibility in the report and the focus of findings*".

He did the opposite and influenced those findings adversely.

Mr Watson gave undertakings, both written and verbal, in my favour and then unilaterally, and without warning, broke those undertakings.

His behaviour and actions were treacherous, deceitful and misleading.

As Mr Watson freely admits, and as described in the Mangioni statement, he provided me with alcohol in his chambers. He did this to consummate the agreement we had struck, whereby I

provided him with a signed statement, and he gave me verbal and written undertakings that he would protect my reputation.

Two bottles of Riesling were consumed between the five of us at the meeting.

Mr Watson's conduct is currently being assessed by the NSW Bar Association.

The Report and Referral

ICAC released their report from Operation Spicer in August 2016.

I was not found to have acted corruptly however my wife and I were referred to the ODPP for allegedly lying. There was no mention of bribery – that falsehood had already been exposed as ridiculous however the allegation had already triggered a by-election.

Knowing that we had been utterly truthful at great personal cost we wrote to the ODPP asking them to deal with the allegations expeditiously.

Eventually, in October 2018, the allegation completely collapsed.

The ODPP found there was insufficient evidence to proceed and ICAC accepted their advice.

The Consequences

1. Undermining the democratic fabric of NSW

Despite his promises on 24 July 2014, Mr Watson accused me of bribery in my public examination on August 7 2014. It created headlines in Australia and overseas.

The allegation was utterly false, and soon collapsed.

The following day I was forced to resign from the Liberal Party and release a statement that I would not recontest the seat.

The following Tuesday I was forced to resign from parliament triggering a by election.

Mr Watson's breathtaking treachery, and recklessness in his questioning, undermined the democratic fabric of our state.

2. Immediate reputational destruction

I resigned from parliament in August 2014 and returned to my career as a veterinarian.

Shortly afterwards my wife was offered a separation package from her employer of 17 years, [REDACTED].

On 20 February 2016, ICAC referred my wife and I to the ODPP in relation to whether we had committed any criminal offences.

One week later the Commonwealth Bank of Australia (CBA) unilaterally closed all of our personal accounts, our self-managed superannuation fund and my business accounts.

The CBA also cancelled my business partner's credit card without warning.

The bank even closed my then 9-year-old son's school banking "Dollarmite Account".

3. Lingering impact despite being legally innocent

On 5 December 2017, 3 years and 4 months after the inquiry was held, the ODPP informed ICAC that there was insufficient evidence to prosecute my wife.

On 23 October 2018, 4 years and 2 months after the inquiry was held, the ODPP wrote to ICAC to inform them there was insufficient evidence to prosecute me.

In November 2018, the Commonwealth Bank issued me with a written apology.

In December 2019, the Inspector of the ICAC handed down his report. It was critical of Mr Watson's conduct in relation to me.

I have been cleared at every point of this saga yet the stain of ICAC's inquiry still lingers.

4. Impact on my wife's career.

As previously stated, shortly after the public inquiry my wife [REDACTED] was offered and accepted a redundancy from [REDACTED].

This year, [REDACTED] was identified as the preferred candidate for a senior policy officer role in the NSW Department of [REDACTED] having undertaken the interview, a working with children check, assessment tasks, referee checks and personality and aptitude tests. Despite an immaculate work record and outstanding character referees, she failed the integrity clearance.

Despite the fact [REDACTED] was not a person of interest in the inquiry, and no evidence of wrongdoing whatsoever ever emerged, the stain of the inquiry precluded her from the role. The correspondence from the Department of [REDACTED] (attached) states that she was rejected due to her "conduct (and that of others) in relation to a political donation" and the fact she was referred to the ODPP despite the fact there was no case to answer.

This clearly demonstrates the disproportionate damage of both being a witness and a referral (even when it fails) can do to an individual.

[REDACTED] appealed the decision however this too was rejected. In their correspondence they state that:

"In conducting an assessment of a candidate's personal integrity, it is not the [REDACTED]'s role or responsibility to analyse the merits of decisions made by judicial bodies or findings of fact made by quasi-judicial commissions. Rather, the [REDACTED] considers all relevant and verified facts that remain in-force at the time of such assessments."

While ever this report remains on the public record, [REDACTED], a person innocent at law, will have her career forever diminished.

Contrast this with say, Michael Coutts-Trotter. No one would question his outstanding contribution to the administration of NSW. He has been allowed to put the serious indictable offence of drug trafficking behind him and serve the people of NSW with distinction.

Available remedies

There is only one remedy currently available to anyone adversely mentioned in an ICAC report. That is to have the report overturned in the Supreme Court of NSW. Because of the sweeping powers given to ICAC, this is a difficult and very expensive course to pursue, out of reach to most citizens.

Suggested reforms

a. ICAC should be identified as subordinate to the legal system

The findings in an ICAC report carry the same legal weight as a police officer's report on a traffic accident. It is an opinion by a public officer. The police officer can recommend prosecution, provide an opinion on what happened, or make no finding at all. Ultimately, the courts will determine guilt or otherwise, taking the officer's report into account. Like the police officer's report, if a party is not found guilty at law following an inquiry, then the report, having been tested in court, should then be removed from the public record. To leave criminal allegations that have either not been substantiated to a criminal standard, or not tested to that standard, on the public record is repugnant to our entire system of justice.

b. Suppression orders should be used to protect those not found corrupt

I submit that an ICAC report should be able to be released following an inquiry but would be subject to a suppression order except for individuals found to have acted corruptly. Then if this finding results in no criminal prosecution, a suppression order is then applied to the report in relation to those individuals when all legal avenues are exhausted. This should apply to both the report and all relevant transcript. The report is still able to make its recommendations in terms of corruption prevention. This should apply retrospectively to right a litany of previous wrongs. The impact of this is demonstrated by the letter to [REDACTED] from the Department of [REDACTED].

c. When a referral to the ODPP is rejected or when a prosecution fails all references to that individual should be immediately removed from the "Prosecution briefs with the ODPP and outcomes" page on the ICAC website.

If a person has been referred for prosecution but either the ODPP declines to prosecute, or the prosecution fails, then they should become subject to a suppression order and references to them removed from the "Prosecution briefs and outcomes" page on the ICAC website. To leave it on the ICAC website unfairly maintains the stain on their reputation. It is akin to publishing that an individual was not found guilty of a heinous crime. The element of doubt always remains with the reader. The impact of this is demonstrated by the letter to [REDACTED] from the Department of [REDACTED].

d. The Commissioner should be more proactive in their use of "in camera" interviews when the content of the interview may cause a disproportionate media response.

If counsel assisting intends to make a serious allegation against a high-profile individual, then the Commissioner should conduct all relevant interviews in camera until such times they are convinced the allegations are supported by all available facts. Reckless conduct by counsel assisting cost our state a Premier, a Police Minister and numerous MPs, none of whom have ever been required to answer such allegations in court. The media will clearly always take a keen interest in allegations against a high-profile individual, however this can result in these individuals paying an enormous personal price based on an allegation and not on fact. This has the potential to undermine the democratic fabric of NSW.

e. Repeal retrospective legislation

After the Cunneen debacle in 2014/15 the government introduced retrospective legislation to make ICAC's illegal actions legal. For many people this denied them any natural justice. The ICAC validation bill should be repealed to allow natural justice to occur. The court system will then determine right from wrong.

Conclusion

ICAC has been given wide ranging powers that remove many rights enshrined since the Magna Carta. The commission is legally allowed to make criminal allegations to a civil standard. If the ICAC is to maintain such extraordinary powers, there needs to be some enshrined protections for witnesses. When an allegation fails to result in a successful prosecution, or the allegation falls short of a corruption finding, then those individuals should be afforded the right to have these allegations removed from the public record. What remains on the public record should only be findings of corruption supported by a successful prosecution. This way ICAC will no longer offend the centuries old standard of "beyond reasonable doubt".

Those individuals who are witnesses in an inquisitorial inquiry and all the fanfare that goes with it have a right to be forgotten.