

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND
THE POLICE INTEGRITY COMMISSION**

GENERAL MEETING WITH THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

At Sydney on Monday 21 May 2012

The Committee met at 10.00 a.m.

PRESENT

The Hon. C. Cusack (Chair)

Legislative Council
The Hon. S. Mitchell

Legislative Assembly
Mr K. J. Anderson
Mr L. J. Evans (Deputy Chair)
Mr P. G. Lynch

DAVID DANIEL LEVINE, AO, RFD, QC, Inspector of the Police Integrity Commission, affirmed and examined:

CHAIR: Welcome to this hearing. Before proceedings commence I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. If your phone is on silent, please switch it off completely. I declare open the hearing in relation to the review of the Inspector of the Police Integrity Commission Annual Report for the year ended 30 June 2011. It is a function of the Committee on the Office of the Ombudsman and the Police Integrity Commission to examine each Annual Report and other Reports of the Inspector of the Police Integrity Commission and report to both Houses of Parliament in accordance with section 95 (1) (c) of the Police Integrity Commission Act 1996. The Committee welcomes the Inspector of the Police Integrity Commission. I convey the thanks of the Committee for your appearance here today. Can I clarify this point: You have returned answers to questions on notice from the Committee; are you happy for those answers to be published?

Mr LEVINE: Yes.

CHAIR: The Committee has received a detailed response from you and the previous Inspector to its questions on notice. I understand that those responses can form part of the evidence today and be made public.

Mr LEVINE: Yes.

CHAIR: I understand that you would like to make an opening statement before the commencement of questions and that you would like this portion of the hearing to be conducted in camera.

Mr LEVINE: Yes please.

CHAIR: I ask that the room be cleared. Under the legislation witnesses are entitled to request in-camera hearings.

CHAIR: First of all, can I just thank people in the public gallery for your consideration of closing the hearing. The Committee is appreciative. We welcome the Inspector and we are very eager to have a positive relationship with him.

We will now move to the formal part, which is the questions and I might ask Mr Lynch to commence questions to the Inspector.

Mr PAUL LYNCH: I understand from the media that you have had referred to yourself the issue of the Report of Task Force Emblems. Is that correct, has it been referred to you?

Mr LEVINE: What has been referred to me is connected, as far as I understand it, with Task Force Emblems and it was referred to me towards the end of the week before last.

Mr PAUL LYNCH: What has been referred to you then?

Mr LEVINE: As I have not read it all yet I cannot answer you because I do not quite understand what the material is about. But as far as I can indicate what has been referred to me, it is a bundle of material that relates to a first investigation which I believe might have been initiated in 1998 during the course of which, as I understand it so far, the Crime Commission obtained – to use a general phrase – a surveillance warrant from the Supreme Court in which apparently in excess of 100 names appeared. The name of the operation the Crime Commission was conducting I have seen, but presently escapes me.

Mr PAUL LYNCH: Can I interpose, is it perhaps Mascot?

Mr LEVINE: Thank you. Consequent upon the issue by the Supreme Court of a warrant, complaints were made I think on behalf of the Police Association to the Commissioner of Police, who initiated what is now known as the Emblems Inquiry. The warrant issued by the Supreme Court was issued in 2000 and as far as I am aware anything in connection with either Mascot or Emblems, for reasons unknown to me, if it be the fact, came to an end in 2006, and the issue has only now just been revived and the Minister has asked me to look at it and

I have looked at the bundle of papers and for me to say very much more than that would be imprudent because there is some of it that even as a matter of language I simply do not understand.

Mr PAUL LYNCH: Accepting that it is, by the sounds of it, quite early days for you, have you formed a view about the possible release of the Taskforce Report?

Mr LEVINE: No.

Mr PAUL LYNCH: It is clear I think from what you have said though that the behaviour complained of was by someone at the Crime Commission?

Mr LEVINE: If I am correct in my understanding that the applicant for the warrant was the Crime Commission and the application to the Supreme Court was in the usual form, it would have involved supporting material lodged with the Judge of the Supreme Court by the Crime Commission.

Mr PAUL LYNCH: And the Emblems Report or the Emblems Taskforce is a Police Taskforce and therefore the Report is a Police document?

Mr LEVINE: As far as I understand, yes.

Mr PAUL LYNCH: The interesting thing that strikes me is that if you are the Inspector of the Police Integrity Commission whose job it is to look after the Police Integrity Commission why has it been referred to you to look after or to inquire into things that do not seem to be directly related to the Police Integrity Commission?

Mr LEVINE: I think that one answer is that the Minister has the power under section 217 of the Police Act to refer it to me and my knowledge of the history of the matter is that it has been referred to me as it was referred to a prior Inspector in 2002, and it was the Hon. Mervyn Finlay, QC. Why it has been referred in a general sense, that is pure speculation on my part.

CHAIR: Can I just clarify: what did the Minister ask you to do?

Mr LEVINE: To give consideration as to whether or not the Task Force Emblems' Report, which I hasten to add I am having some difficulty in identifying discretely what documents constitute it, should be the subject of release, what public interest would be served by its release, what public interest would be prejudiced by its release and I suppose to use the jargon whether there would be any added value in the release of whatever that Taskforce Report is.

CHAIR: What sort of volume of documents are we talking about?

Mr LEVINE: Two centimetres thick.

CHAIR: So it is a fairly substantial task?

Mr LEVINE: Yes.

CHAIR: Do you have the resources to undertake that?

Mr LEVINE: I am the only present resource and I first have to read, assimilate and understand everything that has been given to me. I can do that, and then I will decide whether I need any further information, if I can obtain further information as a matter of law, as a matter of fact and as a matter of utility, but I have nowhere near reached that point because I have not finished reading it. It is as simple as that.

Mr KEVIN ANDERSON: Did the Minister give you a time line in which to respond to looking into the Report?

Mr LEVINE: No. No, I have no recollection of a time being fixed.

Mr PAUL LYNCH: In terms of the opportunity you have had to date to look at the material, can you determine whether copies of the original affidavits requesting the warrants are contained in the bundle?

Mr LEVINE: Affidavits in support of a warrant application from my own judicial experience have a sanctity attached to them that even when I was a Judge of the Supreme Court was often beyond my comprehension and what became of them after a warrant was either issued or declined remains to me to this day unknown. I can say to you that my perusal of that bundle indicates that no such affidavits are included in it.

CHAIR: Is it possible to make an assessment without the affidavits?

Mr LEVINE: Possible, anything is possible, yes. Yes, I will say it is possible.

CHAIR: The absence of the affidavits actually seems to have become the issue itself so whose responsibility would it be, if anybody is to be able to access those affidavits?

Mr LEVINE: The only way I can answer that at the moment is: whoever has what appears to be an absolute veto over their disclosure waiving that right and that would be at least the Crime Commissioner. It may well be that in my consideration of such documents that I have received that I will have to consider the question of access to the affidavits.

Mr PAUL LYNCH: Can you determine as yet whether Task Force Emblems had access to the affidavits?

Mr LEVINE: No, I cannot determine that.

Mr KEVIN ANDERSON: In your opinion why do you think there is so much interest in relation to the suppression of this document and the Reports relating to it?

Mr LEVINE: I am not sure whether I can answer that. The interest might be political in which case I have no interest in that as a reason. I am of course instinctively alert to the fact that this is a very, very old matter and naturally I am conscious of the issue, which might be summed up by saying, "Why now?" If it died, as it presently appears to have on the little I have read of it, in 2006, why is it that six years later is it being revived, I ask rhetorically?

CHAIR: Have you seen the resolutions of the recent Police Association conference in relation to this matter?

Mr LEVINE: Only as reported in the press.

CHAIR: I just wondered if you had any response to that.

Mr LEVINE: I cannot stress how early the days are in relation to this.

CHAIR: Yes.

Mr PAUL LYNCH: One of the comments made by a previous Inspector was—to paraphrase—that he thought that the fact that there were 114 names referred to in an application and 116 when the warrant was issued was a fairly minor matter. Have you formed a view as to whether you agree with that?

Mr LEVINE: The previous Inspector to whom you are referring is the Hon. Mervyn Finlay.

Mr PAUL LYNCH: Yes. It was included by the Hon. Morris Ireland in his Report.

Mr LEVINE: I do not recall seeing any Report by the Hon. Morris Ireland. I do recall reading about that difference in numbers and I recall that Mervyn Finlay did not consider it to be of much significance. It would be a very unusual state of affairs for me to dissent from any view expressed by someone as eminent as the Hon. Mervyn Finlay.

Mr PAUL LYNCH: I do not think this has been asked, but do you have any sense of how long it will take for you to finalise the Minister's request?

Mr LEVINE: To be frank, no.

Mr PAUL LYNCH: When you have completed it I would be fascinated to know your view of how doing this work fits into any of your principal functions in accordance with the legislation.

Mr LEVINE: With respect, it would be a matter of great interest to me as well.

CHAIR: I refer you to correspondence to Minister Costa from the Hon. Mervyn Finlay—that is, a letter dated 29 April 2002 under the reference C-0702-AR. There is an issue on which I would like your comment, either now or on notice, relating to the Listening Devices Act. He suggests that he has Crown Solicitor's advice that a warrant can be issued in relation to a person even though that person is not under suspicion of having committed any crime and not even suspected of having any knowledge about any crime that has been committed or will be committed; that is, it is still valid to issue a warrant for them to be covered by a listening device. That astounded me in terms of the limits on issuing warrants for listening devices. Do you have any comment and is it still the case?

Mr LEVINE: I cannot say whether it is still the law because a new Act has been passed since the Listening Devices Act was enacted. I think I am sensible of what you are getting at. Correct me if I am putting words in your mouth, but the issue is whether or not the mere fact that a person is named in a warrant, either as a matter of law or by rational inference from the naming, is in some way infected by that fact that the person is named. I understand that there are probably arguments for and against that proposition. My reading thus far has planted the seed in my mind of the view that the mere naming of a person by itself in the warrant should not lead to that conclusion. My recollection of what I have read is that Mervyn Finlay had the benefit of advice from the Solicitor-General, Mr Sexton, along those lines. At this point in time I am inclined to agree, although my mind is otherwise open until I can assimilate all the material.

CHAIR: I understand that that inference should not be made legally and that is the legal position. However, for Officers and civilians named in those warrants that is not the public position. That seems to be the issue here.

Mr LEVINE: I understand that.

CHAIR: It is not a legal issue but an issue of the impact it has had on people's reputations.

Mr LEVINE: I understand that that is the matter that concerns the Police Association. I can understand why that might concern that association or anyone who finds out that their name is on a warrant issued by the Supreme Court under the Listening Devices Act. That would be a natural human reaction, I suppose.

CHAIR: A tremendous shock?

Mr LEVINE: Yes, for some.

CHAIR: We look forward to the progress of your enquiries. I am eager to assure you of the Committee's support if you feel you need access to independent legal advice, which you do not appear to have at the moment.

Mr LEVINE: That has been exercising my mind. If I need it, I will commence the process of asking for it.

Mr KEVIN ANDERSON: Given your propensity for protracted unfinished past matters to be resolved, and you appear to have a rather large one in front of you notwithstanding others that you would be looking at as well, do you think it would be timely to second staff given the interest in this issue? Would that ensure a timely resolution given that people's reputations are hanging in the balance?

Mr LEVINE: In relation to the Strike Force Emblems matters?

Mr KEVIN ANDERSON: Yes.

Mr LEVINE: I would be happy to think about the secondment of staff, but I would need time to determine the nature and function of that staff. Only I can read the material. I am yet to determine whether I want any further material. Let us say that I have everything that is lawfully and legally available to me, I will

then consider what resources I need to answer the Minister's enquiries and to address the issues raised by this Committee.

CHAIR: We understand that the whole idea of the Police Integrity Commission and its activity is to enhance the Police Service.

Mr LEVINE: Yes.

CHAIR: When an activity appears to be diminishing the service, causing rancour and dragging on for as long as this has, I think I speak for all Members of the Committee when I say we are anxious to have it resolved and to assist you in any way we can. Please do not hesitate to let the Committee know if it can be of assistance.

Mr LEVINE: I certainly will not hesitate.

Mr PAUL LYNCH: Once again, subject to what opportunities you have to look at material, Strike Force Emblems was not an investigation into the Police Integrity Commission; it was an investigation into Police Officers or the Crime Commission.

Mr LEVINE: I do not know. I do not know in the sense that I am not prepared to say yes, it was into X, or yes, it was into Y, or no, it was not into Z. It was an investigation by the then Police Commissioner flowing from complaints to him by people who, I gather through their industrial organisation or otherwise, learned that they had been named in the warrant. That is as far as I can go and am prepared to go.

Mr PAUL LYNCH: It would obviously be a matter of considerable concern to people around this table and elsewhere if the Police were investigating the Police Integrity Commission, but I dare say we will have to wait until the conclusion of your work to be certain of that fact.

Mr LEVINE: I might be naive because of many reasons, one of which is having only been in this part-time job since 1 February, but I can assure you that it never occurred to me—and I perhaps should thank you for raising it—that this is an exercise in the Police investigating the Police Integrity Commission or its Inspector, which would be an extraordinary state of affairs.

CHAIR: Thank you for answering those questions, which are of intense public interest.

The Hon. SARAH MITCHELL: I refer you to some of the responses you gave to questions provided on notice. Of particular interest to me, you talked about assessing the necessity of both the Police Integrity Commission and the Inspectorate, and I was hoping you could elaborate this morning on how you plan to do this and what factors you take into account.

Mr LEVINE: That would be a long-term exercise. I must say that it is at least interesting that if something happens involving the Police there appear to be so many avenues for investigation and complaint and examination. The Police Integrity Commission and its Inspectorate evolved, as we know, from the Wood Royal Commission, which commenced early in the 1990s and involved Police culture at that time, historically and of course since. The proposition that interests me, and which I included in my answer to the question, is that in 20 years I am sure there have been changes in the culture of the Police and an understanding of the need for integrity and transparency. Whilst I am not troubled, I am intrigued by events being the subject of examination by X under the supervision of Y, which might end up in the hands of Z. That is not fair either to the Police involved or to the respective examining bodies. It might be that over the next three to five years, or however long I am in office, or my successor is in office, the whole nature of this area of governance will have to be re-examined. Do we really need, in relation to the Police, so many interested bodies? That is all I meant by that answer, and I cannot provide the answer.

CHAIR: They would often end up investigating each other.

Mr LEVINE: Yes.

CHAIR: Have you contemplated what sort of process could be put in place to achieve a rationalisation of governance arrangements?

Mr LEVINE: Only very superficially. A distinction I think must always be drawn between Police conduct which might be described as incompetent but not necessarily improper or corrupt merely because the Police are involved in a certain incident. A mechanism of identifying the true nature of that in terms of whether it is corrupt and improper or merely an accident or bad luck or an operational mishap might have to be drawn a lot earlier, and thus would facilitate a very quick examination and resolution of any issue. They seem to blur at times and merely because X happens the worst is thought and conclusions are leaped to too quickly.

CHAIR: The word "integrity" is a very powerful word, is it not?

Mr LEVINE: Yes.

CHAIR: An inquiry into someone's integrity by an integrity body may not be appropriate if, as you say, someone has just made a mistake, which we all make. Are you suggesting a gatehouse approach?

Mr LEVINE: Possibly, but then who is the gatekeeper? That is another problem. Should it be a senior Police Officer or someone else? At present my view is that the current structure leads to more questions than answers and in due course I would hope to be able to re-examine or examine the total structure, and I will do so with the assistance of my colleagues, whether they be the Ombudsman or the Independent Commission against Corruption or anyone else. That is the end objective I have. I have to read the papers in the matter we have been talking about. Prioritising is difficult.

Mr PAUL LYNCH: Can I suggest, if you are going to look at those issues, the statutory review of the Police Integrity Commission Act, which is on the Department of Premier and Cabinet website, is not a bad place to start. It canvasses the arguments, and there was an inquiry by this Committee about six or seven years ago that goes through all of those arguments as well.

Mr KEVIN ANDERSON: Do you think that the community has lost a little faith in terms of the issues we are talking about, Police investigating Police and making sure that everyone is taken care of to a certain degree? Do you think there needs to be that independent body that is quite separate? I know you are talking about giving thought to a gatehouse process, but is the community asking what is the point? If the fox is in the henhouse, they are talking to each other.

Mr LEVINE: Has there been a loss of community confidence in the Police? As a general proposition, I do not believe so. I think we would be at the point of anarchy if there was community-wide want of confidence in our Police Force. Our Police Force does not deserve that view being held by the community at large—might I make that clear. The Police investigating itself is not an objectionable state of affairs in circumstances where the criteria for such an investigation are clearly established, and that forms part of what I was talking about before that might require examination and greater definition. It is no different to the judiciary examining itself through the Judicial Commission of New South Wales—Judges judging Judges, but they are the criteria fairly well established and the occasion is rare. But I do not think it is fair, with respect either to the community or to the Police, to say that there has been generally a lack of confidence merely because the Police often investigate themselves. It would be unfair to say that, the more so because for the past 20 years we have had a Royal Commission and the existence of the Police Integrity Commission and the Ombudsman to whom people can complain. So I suppose in the end I am saying no to your question.

Mr PAUL LYNCH: Is it not the sign of a corruption-resistant organisation that it can investigate itself? Should not one of the aims be to have a Police Service that is sufficiently corruption free that it can quite easily and properly and with everyone's confidence investigate itself?

Mr LEVINE: Yes. In a perfect world that would be wonderful but we do not live in a perfect world. A corruption-free Police Service would not require self-examination on corruption issues because it begs the question but a corruption-free Police Service could well examine itself as to technical or operational competence, for example, that does not involve notions of corruption.

CHAIR: I think the issue of biggest concern perhaps is the innocent Police Officer who is falsely accused. Is there a process that has sufficient integrity to make an outcome that is in a timely way that he can have his reputation intact and continue on, because all the integrity organisations seems to be—

Mr LEVINE: I am glad you have raised that because I have not been asked or I did not feel there was any room otherwise to comment, but in the short time I have been in this office the progress of matters has at

times been glacial and that is fair neither to any victim nor to the complainant. As in other areas of law and governance, promptitude to attain finality is vital and I must say that I have been struck by how long things seem to take. That does not mean that if they were done quickly they would be done in a better or worse way; it might be attributable to the fact that some of the Officers are part time and some are not, all sorts of reasons. But I think the desirable end in the public interest is for prompt, thorough and final disposal of such issues.

CHAIR: The Emblems case is an example where one strike force leads to another strike force leads to another strike force—I mean, the code names over the years—and there seems to be no outcome. Here you are today having a bundle of papers given to you because of the inability of the system to achieve an outcome. I guess, putting the issues of Emblems aside, that is an unsatisfactory process for the Police and for the community.

Mr LEVINE: Yes, it is. About the Emblems matter, I am prepared to say this, if I have not already said it. I am troubled by the fact that something that appears to have commenced in 1998 died in 2006 and is now revived. Whatever I have to do, I will do it in accordance with my statutory obligations and duties, but I am human like everyone else and I just look back at this and say, "Why now?" The end might have to be determined provided it is determined lawfully, but what value is the best value in any outcome?

Mr PAUL LYNCH: It is no secret that the relationship between the previous Inspector and the Police Integrity Commission was poisonous. It seems to me there was a lot more aggravation in there than you would expect from the normal tension between an agency and the oversight body. My questions are these: Where do you think the fault lay in that? Secondly, perhaps more importantly, what do you think needs to be done to make sure that relationship does not deteriorate back to the way it was?

Mr LEVINE: That is the relationship between my predecessor and the Police Integrity Commission?

Mr PAUL LYNCH: Yes.

Mr LEVINE: You describe it as poisonous. That is different to it being described as toxic, the more popular word. I am not prepared to concede that it was that. I do not know that. I happen to know Mr Cripps and I have known Mr Cripps all my professional life and have had some prior acquaintance with Mr Moss. I have seen in published Reports that I have had occasion to read some certainly very strong language used by one about the other but that is the past. You now have a new Police Integrity Commissioner, you now have a new Inspector. There have been some legislative changes. There might be legislative changes affecting the New South Wales Crime Commission. I think all of that, being new and being fresh, will be good. Of course I know the new Police Integrity Commissioner and have known him for some decades since he first appeared before me as a Crown prosecutor yonks ago. To the extent that we are friends, it was a friendship based purely on a professional acquaintance. I have the utmost respect for him and I hope that that is reciprocated. Thus far our contact has been minimal but cordial, and that is how I anticipate it will continue.

CHAIR: Thank you. That brings our questioning to a close. If the Committee has further questions, would you be willing to take them on notice?

Mr LEVINE: Yes.

CHAIR: Before we close, I will ask the Committee to agree to a motion that, with the exception of those parts of the *Hansard* marked in camera, those parts of the transcript available for the public and the answers to questions on notice be published subject to corrections?

Motion agreed to.

(The witness withdrew)

(Short adjournment)