

REPORT OF PROCEEDINGS BEFORE

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

**INQUIRY INTO PROCEDURES FOR EXAMINING COMPLAINTS
MADE AGAINST THE POLICE INTEGRITY COMMISSION**

At Sydney on Monday 26 October 2009

The Committee met at 11.25 a.m.

PRESENT

Mr K. A. Hickey (Chair)

Legislative Council

Ms S. P. Hale
The Hon. C. J. S. Lynn
The Hon. L. J. Voltz

Legislative Assembly

Mr M. J. Kerr
Mr P. R. Pearce

CHAIR: The Committee will now conduct its inquiry into complaints handling by the Police Integrity Commission.

PETER JAMES MOSS, Inspector, New South Wales Police Integrity Commission, on former oath:

CHAIR: The Committee has received your answers to questions on notice. Do you wish to make an opening statement?

Mr MOSS: I do not think I could add anything at this stage to what I have responded to you, Mr Chairman.

CHAIR: Inspector, would you provide the Police Integrity Commission with a copy of the original complaint on commencing a complaint investigation? Can you think of any circumstances where that may be inappropriate?

Mr MOSS: I have always obtained the complainant's express consent before providing the complaint. The only time I think I have held a paragraph back was at the request of a particular complainant and that was because of the vitriolic language in the paragraph, which did not add anything to the complaint. I informed the Commission, of course, that there was a paragraph being held back but it had nothing to do with the complaint.

CHAIR: During the conduct of an investigation would you provide the complainant with the information provided to you by the Police Integrity Commission?

Mr MOSS: Unless there is an objection by the Police Integrity Commission, and from time to time there have been objections. They have put forward the view that the complainant does not need to know this particular information and it may reveal unnecessarily the workings of the Police Integrity Commission. So far, I have not had a problem with that. I have not always understood what the objection was, I must say. But rather than argue about it, I have simply said okay and informed the complainant that there is material that I have seen and that the Police Integrity Commission does not agree to the complainant seeing it. I do not think for a moment that it has affected any of the complaints or the justice of the matter or the outcome of the complaint.

Mr MALCOLM KERR: In the context of complaints and procedural fairness, Mr Justice Hall wrote a book in relation to inquiries. Have you had an opportunity to read that book?

Mr MOSS: Yes. Since then, Mr Kerr, there have been a lot of texts. Particularly the High Court has developed this jurisprudence to such an extent that I think anything written even two or three years ago has been overtaken. They keep on churning out cases on procedural fairness. When I say "churning out", I do not mean that disrespectfully. Particularly in relation to tribunals such as the refugee tribunal board, those sorts of organisations, almost not a month goes by without my seeing yet another case from the High Court on procedural fairness. Although you

think you might have read them all before, there is always a twist that was not in a previous case. I do have texts on the subject, but rather than rely heavily on the texts I do prefer to rely on the High Court judgements themselves.

Mr MALCOLM KERR: Have you found that the Police Integrity Commission has kept itself abreast of the development of law in relation to procedural fairness?

Mr MOSS: I do not really feel equipped to answer that. It would be rather difficult for me to put that question to them, I think, Mr Kerr.

Mr MALCOLM KERR: Perhaps if you put a question as to whether a mechanism exists in the Commission to keep themselves up to date. Obviously it impacts on their work.

Mr MOSS: Yes. On the other hand, in all those complaints that were upheld I put before them a large number of cases on procedural fairness and they have responded as to those cases—the solicitor in particular. So I have no evidence that the Commission's solicitors are not up to scratch with procedural fairness. I suggest if they were not when I started they probably are now.

Mr MALCOLM KERR: But it is still developing monthly?

Mr MOSS: It is. The basic material is there. It is just that these cases come up with a twist in the facts that was not there before, and it depends on which side of the line the facts fall. Sometimes it is a pretty fine distinction.

Ms SYLVIA HALE: Mr Moss, would you agree as a general principle that in providing complainants with information from the PIC about their complaints the complainants should not be given access to information that otherwise would not be available to them?

Mr MOSS: Yes.

Ms SYLVIA HALE: You would say that that was acceptable as a general principle?

Mr MOSS: Yes, Ms Hale.

Ms SYLVIA HALE: Do you need a general principle in that regard, or would it be a case of assessing things on a case-by-case basis?

Mr MOSS: On a case-by-case basis.

Mr PAUL PEARCE: Based on your earlier response you said that you would, however, let complainants know there was information that was not available to them?

Mr MOSS: Yes.

Mr PAUL PEARCE: Without disclosing the nature of the information?

Mr MOSS: Yes. I would send both parties the letter that I was sending to the Commission. If the Commission wrote back with a response and said, "We do not want this to go to the complainant", I would write to the complainant and say, "I have received a response to that letter, but the Commission does not consent to you seeing that response."

Ms SYLVIA HALE: What would you do if you were of the strong opinion that the complainant needed to see that evidence?

Mr MOSS: That has happened, Ms Hale. I have written back to the Commission and said, "I cannot agree with this. I think this has to appear in my forthcoming report and, therefore, the complainant needs to know your response to it." That has happened once or twice and, from recollection, the Commission has then withdrawn its objection.

Ms SYLVIA HALE: So it has reconsidered its position?

Mr MOSS: Yes.

Ms SYLVIA HALE: The provision of that evidence really is dependent on negotiations between the two offices. From your perspective, so far that has produced an acceptable outcome?

Mr MOSS: It has.

Mr PAUL PEARCE: The ICAC provided the Committee with a copy of a memorandum of understanding between the ICAC and the former ICAC inspector. Do you think a memorandum of understanding would be useful in clarifying aspects of complaints handling between the two agencies?

Mr MOSS: I must say that I have not found the need to date, Mr Pearce. That is not to say that it could not be thought about, but I have not felt the need of it to date.

CHAIR: Inspector, do you think that the process of investigating complaints against the PIC has led to improvements in its practice and procedures? You said earlier that it had in relation to procedural fairness, but what about complaints handling overall?

Mr MOSS: Complaints handling against the Commission?

CHAIR: Yes. Do you think there has been a major improvement in the way in which it has been handling complaints overall?

Mr MOSS: I think so, yes. I think the timeliness has improved in that regard.

CHAIR: Do you think there could be an improvement in other aspects of its complaints handling?

Mr MOSS: As I said in correspondence to the Committee, I would like to wait and see what the position is once I am finished with the two outstanding complaints that I have mentioned. As I said, a draft of one has now gone to the Commission and the complainant, leaving only one outstanding. I would like to wait and see what the pattern is once those complaints have been disposed of, to see whether there is a distinct fall in the number and substance of the complaints, which is what I anticipate is likely to happen.

Ms SYLVIA HALE: Mr Moss, returning to the issue of the memorandum of understanding, I gather that the Inspector of ICAC has developed a memorandum of understanding, and the Inspector believes that it has worked particularly well. I revert to the earlier discussion we were having when we were talking about how the personalities of both the Inspector and the Commissioner may be important in determining the issues.

Mr MOSS: Yes.

Ms SYLVIA HALE: Do you not think a memorandum of understanding might provide a solid foundation for the way in which complaints are investigated, so that it would not be so dependent on the personalities of the key participants?

Mr MOSS: All I was suggesting about the personalities is that if you get two strong personalities in these positions you might have a different situation from the situation you might have if other types of personalities were in the position. I am not suggesting that it makes a difference as to how the complaint is investigated or how the Commission responds to the investigation, and I am certainly not suggesting that it makes a difference to the outcome of the complaint. I would be perfectly prepared to have a look at the memorandum of understanding to which you are referring to see whether we could learn something from it. It has not occurred to me to date, but I am perfectly prepared to have a look at it.

Ms SYLVIA HALE: I take your point that, no matter what is in writing, unless there is a spirit of cooperation that may be irrelevant?

Mr MOSS: Yes. Sometimes it is better to have flexibility than it is to have anything like a rigid framework. I am friendly with the Inspector of the ICAC and I have known him for a long time. I will ask him and I will have a good look at that.

Ms SYLVIA HALE: Thank you.

Mr MALCOLM KERR: Just referring to the Inspector of the ICAC, I took it that you knew him quite well?

Mr MOSS: I have known him for a long time, Mr Kerr.

Mr MALCOLM KERR: Have you had any discussions with him about his duties and your duties?

Mr MOSS: When he was first appointed I called on him, had a conference with him and we discussed a few matters. At that stage he had only been in the job

for a few weeks. We had a discussion. Since then I recently received his annual report and I have read that. I noticed that he is of the view that he has a few problems with the Federal legislation dealing with the intercept of telephone calls. But apart from that I have not yet had anything more to do with him.

Mr MALCOLM KERR: Once you have read the memorandum of understanding that might be a basis for some protracted discussions with him?

Mr MOSS: Yes, Mr Kerr.

CHAIR: We will now move into closed session. I ask members of the secretariat to clear the public gallery.

(Evidence continued in camera)

(Public hearing resumed)

CHAIR: I take this opportunity to thank you for addressing many of the questions put to you openly and candidly. Thank you for your forthright manner. Thank you for attending today.

(The witness withdrew)

(The Committee adjourned at 11.53 a.m.)