

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**REVIEW OF THE 2012-2013 ANNUAL REPORT OF THE INSPECTOR
OF THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

At Sydney on Friday 28 March 2014

The Committee met at 10.15 a.m.

PRESENT

Mr D. Perrottet (Chair)

Legislative Council

The Hon. N. Blair
Reverend the Hon. F. J. Nile
The Hon. L. Voltz

Legislative Assembly

The Hon. R. S. Amery
Mr A. R. Gee (Deputy Chair)
The Hon. T. George
Ms T. Mihailuk

DAVID DANIEL LEVINE, Inspector, Office of the Inspector of the Independent Commission Against Corruption, and

FELICITY CANNON, Officer Manager, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined:

CHAIR: It is the function of the Committee on the Independent Commission Against Corruption to examine each annual and other report of the Commission and the Inspector of the Independent Commission Against Corruption and report to both Houses of Parliament in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act.

The Committee welcomes the Inspector of the Independent Commission Against Corruption for the purpose of giving evidence today in matters relating to the Inspector's report 2012-13. Inspector, I thank you for your attendance. Would you like to make an opening statement before we commence questions?

Mr LEVINE: Yes, briefly, Mr Chairman. First, today is Ms Cannon's last day after five years with the Inspectorate of the Independent Commission Against Corruption [ICAC]. She is moving on and I express my thanks and repeat the expression of thanks from Mr Harvey Cooper, AM, my predecessor, for the splendid work she has done.

I took up office as Inspector on 10 February, the office having become vacant on 30 September 2013. I am also the Inspector of the Police Integrity Commission. The legislation enabling the one person to occupy both offices was assented to in September of last year. I anticipate that one effect of the one person occupying both offices will be beneficial in the financial sense that instead of there being six people there will be essentially three. Whether there will be any need for an additional staff member will depend upon the workload. The amendments last year usefully provided in the case of each Inspectorate for the appointment of an assistant Inspector. Secondly, on the subject of the financial aspect, it is too soon to say whether or not more than three days per week will be required for however many people. I anticipate that for some months, for reasons I will come to shortly, there will be longer periods than three days.

When Mr Cooper retired at the end of September, not surprisingly, and consistently with his management of his office, everything was up to date. There then was the period in which there was no Inspector in office—that is, from 1 October to 10 February—during which about 22 new files were opened. Since 10 February, 14 files are open and approximately five have been closed. That probably does not indicate very much because a lot of the files were new complaints or new matters from old complainants. Some of those opened and then closed were dealt with after my arrival on 10 February by the exercise of my powers, principally on the basis that the complainant, alas as is common in this type of organisation, could not articulate any matter of substance or, if the complainant could, it was beyond the jurisdiction of the Inspector.

Thus far the Independent Commission Against Corruption has been very busy. I have had no formal contact with the Hon. Megan Latham, the new Commissioner, who has been occupied in matters apparently of great moment. Nonetheless, a regime has already been put in place where I can have contact with an Assistant Commissioner of the Independent Commission Against Corruption and I have remote access to ICAC's records, which is a matter of the utmost efficiency and value. I will interpolate that now that I have, as it were, arrived at the ICAC the remote access will be put in place in my other capacity as Inspector of the Police Integrity Commission [PIC].

CHAIR: Looking forward to the year ahead, based on your early days in the job how do you see your ability to balance your two roles as the Police Integrity Commission Inspector and the Independent Commission Against Corruption Inspector?

Mr LEVINE: I think it will work. There are matters in the Police Integrity Commission Inspectorate of some substance and some age that will, in effect, be prioritised to dispose of them. Once that happens and once, if necessary, I have had the opportunity to confer with the Commissioner of the Independent Commission Against Corruption and the staff settle in and our equipment is in place, I am confident that, certainly within six months, we will be running fairly smoothly. That, of course, requires the rider that something could suddenly explode in one field or the other. But based on the history, I think it will work smoothly.

Mr ANDREW GEE: Inspector, I think you have already touched upon it, but are there any aspects of the Inspectorate's practices or procedures which stand out to you as requiring improvement?

Mr LEVINE: Yes. I do not intend to be critical of my predecessor or of what happened in the interregnum when there was no Inspector. I think the analysis of communications from the public can be streamlined. The complaining member of the public has, of course, a perception as to what happened before the ICAC, but the best source as to what happened before the ICAC is the ICAC. It will require, from time to time, I would imagine, some balancing but one thing I hope to streamline is the analysis and discrimination of the complaints as they come in.

Mr ANDREW GEE: How do you do that? How do you streamline it?

Mr LEVINE: There has been a practice of the complainant being called in to be interviewed. I do not propose to follow that practice, except in the most extraordinary of circumstances. The powers and functions of the Inspector can be exercised, in principle, without a collateral description of what happened before the ICAC given by a person who might have been adversely affected by the ICAC. That will be a major area of reform. If I perceive that there is some injustice or unfairness evolving from it, then I will reconsider it. But I have been overwhelmed, in fact, by the amount of paper accumulated during this interregnum period that is at least disproportionate to what I perceive the issue of complaint to be and now that I am there I hope, particularly with the assistance of my legal officer, to rationalise the process.

Mr ANDREW GEE: So, fewer interviews?

Mr LEVINE: Fewer interviews. I can say that in relation to the Inspectorate of the Police Integrity Commission where I have been since February 2012 I have interviewed one person. That has worked well, taking into account, of course, the vast difference in jurisdictions.

Mr RICHARD AMERY: I recognise that you are coming here to answer questions about a report in which you have had no involvement, so anything you might be asked about, I suppose there is an avenue for you to take it on board, or it may be something that is a reflection of your first 12 months in the job. I refer to page 18, as a starting point for my question:

Priority has been given to dealing with complaints and from 1 July 2008 to 30 June 2009 there were 188 complaints. In none of the complaints with which I dealt did I make a finding of misconduct on the part of the ICAC.

Which was great. My question to you, and in fact something that you might be looking at over the 12 months is—and it is probably too early for you to answer straight up—do you feel that the role of the Inspector should be expanded?

The Committee knows your role and that of the Commissioner but for the people making complaints there is a misapprehension that you are some sort of an appeals court, or something like that. I just do not know how the public perceives the role of the Inspector, if no complaint has ever been held up or has been bowled out because it does not cover the jurisdiction. I think this can be very valuable to the whole process, if you have these dual roles because you have a comparison situation and there is some work that has been done in other States. Do you think that in the future the role of the Inspector may have to be expanded to satisfy a public perception?

The other point I want to make is that the ICAC investigates a number of high-flying people who are well-heeled, if you do not mind my saying that, and they have a lot of resources. But many people are just employees of StateRail or the local council or something. Anybody can be challenged and I think an ICAC finding goes to a Supreme Court, or something like that. So those people have no avenue financially, they are restricted by their lack of resources to appeal if they feel an injustice. Maybe they are the people who are complaining to the Inspector, only to be told that the role of the Inspector is so restricted that their view, their case or their grievance cannot be dealt with. Can you say anything about a comparison between the two roles you have had and whether there is the potential in the future to expand it?

Mr LEVINE: The first step that can be taken is education. That is a fairly simple step and all public documents from within the Inspectorate make it even more clear what the present role of the Inspector is, either by way of pamphlet or, more commonly, on the website. People do not, I agree, understand that the Inspector is not an appeal court and are aggrieved if they are forced, quite understandably, to embark upon litigation in the

Supreme Court. But that is not that common. I would otherwise reserve my position about expanding the role of the Inspector.

One thing at present the Inspector does not do, should not do and should not be seen to be attempting to do is, in effect, to be present looking over everyone's shoulder down at the ICAC or the PIC from the commencement of an investigation to its conclusion. The audit function of the Inspector, the proactive function, does not extend that far, or if it did, why have it in a separate role of an Inspector? You could have the Ombudsman—I do not think his empire could accommodate much more—but you do not need someone down there all the time. Secondly, if the Inspector does have some appellate function that will result, and necessarily result, in a blowout of the resources that he or she will require, they will have to read all the cases, everything, and be like an appeal court, and I think that would be disproportionate in the end to the function.

I think the starting point is a legitimate one, because we keep coming across it, that people do not understand that if you want to complain about corruption by a public officer you go to the ICAC. If you want to complain about the misconduct of a police officer you go to the PIC. What they often see on the website is that above each Commission there is an Inspector, so they say, "Why not go to the top at the beginning?" It is a natural human instinct, I suppose, but then they are provided with a letter that says, "No. If you want to complain about a police officer you go to the PIC; if you want to complain about the weighbridge operator at whoop whoop you go to the ICAC".

Mr RICHARD AMERY: If you get one of those complaints and you saw it and you said, "Oh well, this is a straight crime matter"—it is stealing or an assault or whatever is the general complaint—do you have the authority then to say, "This is not a matter for me. I will refer this to the police", or to whatever authority?

Mr LEVINE: If it is a complaint that a police officer has executed a search warrant and has stolen a bundle of bank notes I refer it to the PIC in the full knowledge that that will be referred by it.

Mr RICHARD AMERY: But if they made the same complaint to you about an ICAC officer, would you refer that to the police?

Mr LEVINE: I would refer that to ICAC in the first instance. They are rare.

Mr RICHARD AMERY: I hope so.

Mr LEVINE: Yes, they are. I have not been in ICAC long enough, but even in the PIC it is extremely rare. There has been an example in the PIC that was, in fact, referred to it before my appointment, in the last year or so. But the best body to investigate it was ICAC.

CHAIR: You are probably well placed with the two roles, the dual roles that you have to make some observations in relation to the McClelland report and some of the recommendations into entering a memorandum of understanding between the ICAC and PIC, the sharing of resources between the two. What are your thoughts and observations on that?

Mr LEVINE: Memoranda of understanding are often no more than documents that state the obvious and are, more often than not, not required. I think that it is desirable not to be coy about the issue, and the real issue is, moving on from memoranda of understanding, why should the PIC exist independently of ICAC? That is the burning question, and on that I have a very firm view. The Police Integrity Commission has its origins, as we all know, in the Royal Commission in the 1990s. The police are part of the third arm of government: the administration of justice. The ICAC one might consider to be more part of or more related to the executive branch of government on a far wider field.

But the police are part of the administration of justice: to prevent crime, to solve crime and to initiate, where appropriate, through the Directors of Prosecutions, criminal proceedings in the courts of justice. I am, I suppose, a bit of a traditionalist but I think it is very important to view the police as part of the administration of justice and thus not easily capable of being merged into the executive branch, which I think the ICAC represents. Let us hypothesise that it happened. You would have to set up so many sterile zones to keep the executive away from the police as part of the administration of justice that you would reach the point of saying, "Well, why did you bring them in in the first place?"

That view, of course, does not exclude, where practicable, arrangements being made on an administrative basis, even on an investigation basis. I am speaking for myself but I view the Police Force as part of the administration of justice and it should enjoy independence from other branches or arms of government and be seen to be enjoying it. That would be to the benefit of not only the community but, importantly, the police. The police might not like the PIC, they might not like the Inspector of PIC. If everyone loved everyone no-one would be doing their job properly, I suppose. I can say no more than that.

CHAIR: Do you think that the PIC would suffer if the ICAC merged with it, in terms of more resources being allocated towards the ICAC rather than through the PIC?

Mr LEVINE: I am sorry I missed the first part of your question.

CHAIR: Do you think if the bodies were to be merged that the PIC would suffer and that more resources would be allocated towards the ICAC as opposed to investigating police incidents?

Mr LEVINE: Yes, that could happen. Also the ICAC resources, without the experience that is exclusive to the investigation of PIC matters, would impinge upon the efficiency of the PIC component of the ICAC. That is the fear I have. The PIC has developed its expertise, culture and the like and it should be maintained independently.

The Hon. LYNDIA VOLTZ: It would also be very difficult to encompass the only arm of government empowered to use force on behalf of the State into the ICAC model because of the very nature of what police do and the special Acts they operate under.

Mr LEVINE: I think I understand your question. Yes, it is a sign of the level of sophistication and civilisation of our governance that the Police Force has a special role in maintaining the order of our community. I do not think that would be beneficially affected by moving part or, indeed, the whole of it into some far wider body that deals with more discreet components of our community, whether it is infrastructure, local government or anything like that.

Reverend the Hon. FRED NILE: Without merging the two organisations, is it possible to share some of the resources?

Mr LEVINE: I think it would be possible to share some administrative resources and possibly some investigation resources, but the level of discretion that would be required would have to be extremely high. That is why I was talking about these sterile zones. If you extrapolate from that you end up in the position: If you are going to be so protected working with that, why join in the first place? Probably at some levels yes, but not at the expense of the independence of everything associated with police.

CHAIR: Would those administration issues be so minor that it would not be worth considering?

Mr LEVINE: That could happen. I do not know if it boils down to a "Can we borrow your car?" type of thing.

The Hon. LYNDIA VOLTZ: Or that the cost of trying to implement those administrative changes would be so great that it would obviate the benefit in doing so?

Mr LEVINE: Yes.

Mr THOMAS GEORGE: Ms Cannon, firstly, thank you for your service.

Ms CANNON: Thank you.

Mr THOMAS GEORGE: It is nice of you to spend your last day here with us. Is there anything you would like to bring to the attention of the Committee from where you sit within the organisation?

Ms CANNON: Not from my point of view at an administrative level. We have two Inspectors who have different management styles and that is going to be a big change to how it works, but not to Mr Levine's staff; they are very well organised themselves. It is going to be a better future. It has been lovely working there. I will miss the work, the topic and the content.

The Hon. NIALL BLAIR: My question may be more appropriate for the Commissioner rather than the Inspectorate, but one thing that has been raised with me is the lack of closure from ICAC referrals or complaints. When something is preliminarily investigated and then not continued with there is no feedback to those who maybe were either referred or subject to some investigation. Particularly, if it is made public by a party that someone is subject to a referral to the ICAC. The ICAC seems to be open-ended in that sense. Has that issue been raised with you or have you seen complaints made in relation to that area?

Mr LEVINE: The answer to the second part of your question is I believe so, to the extent that I have had the opportunity. In relation to the first part, it is probably a better question for the Commissioner whether of the ICAC or the PIC. The fundamental thing about each Commission is that they are inquisitorial and the public part might only be a very small part of it, but I would be very surprised if either Commissioner would dispute the proposition that reputational damage at least can be done by the mere mention of a name in connection with one inquiry. From some of the documents I have seen—I cannot articulate it very well but one is to the effect: "Hang on, six people were said to be affected, five have been referred to the DPP, I am the sixth. What has happened to me?" That is a PIC matter but it is a legitimate inquiry and it is being pursued. That is about all I can say.

Reverend the Hon. FRED NILE: There is no procedure where correspondence is sent to a person telling them the outcome of the hearing and so on?

Mr LEVINE: In that instance I do not know whether there was. That is what I am looking into. The ultimate document, of course, is any report that is handed to the relevant parliamentary committee, and the report should be clear, in my view, as to who goes to the DPP for further scrutiny and who does not and why because there is no evidence that would warrant it. I think people are entitled, subject to the inquisitorial nature of these Commissions, to closure if it can be given to them.

The Hon. NIALL BLAIR: But you are able to do that. You have mentioned that you open files and then close them. I guess you then correspond with the complainant to say that the matter is closed one way or the other?

Mr LEVINE: Yes, if I receive communication from someone and assess it. In one instance it might be that what you are really doing is complaining about alleged corrupt conduct by a councillor somewhere. The body you complain to is ICAC. Ditto, what you are really doing is complaining about the conduct of a police officer. The body you complain to about that is the PIC and for some bizarre—and it usually is bizarre—reason I forward the actual document and say, "Could you look into this, Commissioner", and they will take whatever course they think.

CHAIR: Thank you very much for coming in today. We appreciate your time.

(The witnesses withdrew)

(Short adjournment)