

POLICE CORRUPTION SEMINAR – LEX LASRY QC

The Victorian Criminal Bar Association was formed in 1978, a couple of years after the last inquiry into police corruption in Victoria carried out by Barry Beach QC in 1976.

Members of our Association prosecute and defend so-called organised crime participants. Members of our Association likewise prosecute and defend members of the Victoria Police who are charged with criminal offences, some of whom may be regarded as being corrupt although that may not apply in all cases.

Our Association regularly takes part in public debates about the criminal justice system and when it does so usually they are about preserving what we regard as certain fundamental rights to be accorded to people charged with criminal offences.

We regularly discuss matters with Governments relevant to our interests and we are often asked by Government for comments on proposals they have for change or improvement in criminal justice system.

On the issue of how best to deal with the crisis of corruption in the Victoria Police force, we have not yet been consulted. We do expect to be consulted when the legislation mandating the new powers for the Ombudsman and the Chief Commissioner are formulated and placed before the parliament.

We are interested in the police corruption issue for the primary reason that it interferes with the criminal justice system. It is not only the police force that is affected. Indeed, the credibility of the whole system is diminished in the eyes of the public and that level of public confidence is important.

In the final report of his Royal Commission into the NSW Police Service in 1997, Justice Wood referred to this noting that for the public, a corrupt police service is unacceptable, by reason of:

- Its inability to combat crime, particularly that of an organised kind;
- The lack of mutual confidence and trust which are essential to a healthy, law-abiding community;
- The diversion of productive effort and financial resources into dealing with periodic scandals; and
- Its deleterious effect on the workings of the criminal justice system.

For months now in Victoria we have been involved in part of the debate about how this current problem is best dealt with. The Victoria Police has 12,800 members. We claim no expertise on how to manage such a large organisation.

However, the part that we are interested in is what form of external oversight body should be established to deal with police corruption. Unfortunately that debate has been diminished by its very political nature and is now somewhat polarised. The lawyers who

practice in the criminal law and deal with this problem day-in, day-out have insights into police corruption and how it might be dealt with.

Our members, as criminal lawyers, are constantly dealing with the detail yet their views, which are the product of experience, are dismissed by the Government either as representing some vested interest or the product of a desire on behalf of their clients to manipulate the process to their advantage.

As an association of criminal lawyers, what we want is a process that is demonstrably capable of fixing the present problems within the police force, restoring integrity and public confidence. We do not accept that success is to be solely measured by results in the Courts although they are an important element. At present, the fact that there are 25 officers before courts charged with criminal offences¹ is not by any means a solution in itself. 33 police were charged following the Beach Inquiry and none were convicted.

The resolution of these pending cases, in an over-worked Supreme Court, is still a long way off. In many cases the committal proceedings are yet to be held.

As I have said, we are by no means experts in the manner in which a police force should be managed. In dealing with the NSW police service, Justice Wood was of the view that strong internal affairs command and external oversight agency such as the Police Integrity Commission were an important safety net and he made the point that carefully planned strategies were needed at every stage. Our concern, like that of many others, is that the response in Victoria has been entirely ad hoc.

Which Course?

The object is to bring about change which will diminish police corruption. Part of that process involves the establishment of effective over sighting investigative body. I do not think that a Royal Commission can fulfill that role. As in NSW, I believe that we know enough to justify the establishment of a permanent standing integrity or anti-corruption commission.

With respect, I agree with the reservations that Sir Edward Woodward had about a Royal Commission in his speech to the Criminal Bar Association in May 2004. Royal Commissions are expensive and in this case would be severely inhibited by the fact of criminal proceedings against a number of police. In those areas there would be difficulties in carrying out the Commission's role and the principles in *Hammond v Commonwealth* (1982) 152 CLR 188) might well be an obstacle.

Putting that problem aside and assuming a Royal Commission found corruption of an alarming magnitude, it is hard to imagine the Commissioner would not recommend that a standing commission be established to deal with the ongoing issue.

¹ Article by Christine Nixon "Why Victoria does not need a Royal Commission into police corruption".

In 1983, after 3 years of the Costigan Royal Commission, the Stewart Commission and the earlier Moffit and Woodward Commissions of the 1970s, the Government issued a Green Paper for public consultation on the need for a national Crime Commission. A year later the National Crime Authority was established. That paper looked at the nature of the problem, alternative models and the potential functions and role of such a body. It also looked at its composition and accountability.

That kind of planning, consultation and analysis would be appropriate here.

In our view, whatever standing integrity commission was established for investigating, exposing and making recommendations about police corruption, it would need the following features:

1. It would be headed by a senior judge with experience as a criminal lawyer and trial judge who understood the police force and the underworld alike and had a keen aptitude for dealing with the issues;
2. It would be established under its own Act of Parliament with a clearly defined role, powers and provisions concerning the life of the Commission - those investigative powers would include the usual coercive powers and the power to tap telephones which it now appears will not be available to the Victorian ombudsman.
3. It would be completely independent of Government other than a requirement that it report on its work at particular times of the year;
4. It would not be required to give notice to anyone of its intention to commence investigations into particular aspects of corruption;
5. It would be properly resourced with investigators from outside the Victoria Police except where the Commissioner was of the view that the use of Victorian police was appropriate or necessary;
6. The activities of the Commission would be supervised by a joint and bipartisan Parliamentary Committee.

We would envisage that the Victoria Police would, of course, retain a direct responsibility to combat corruption within its ranks. It is not feasible for an external oversight body to that work.

We would envisage that this external Commission would take over the present role of the Ombudsman's office and upon commencement of standing Commission, the Ombudsman would return to the role for which his office was designed – that is the inquiry or investigation into administrative actions taken by Government departments, Public Statutory bodies or municipal councils under section 13 of his Act and also a police complaints role.

At present, the Victorian Government certainly gives the impression of being politically committed to the present arrangements with the Ombudsman's office and totally opposed to any form of independent Commission. The reason for that is something of a mystery.

In order to have a meaningful debate, and though we have not been asked for submissions on the matter, an important way forward may be for this seminar to establish a working party which would put substance to a detailed proposal for a standing integrity commission accompanied by carefully formulated arguments as to why such a purpose-specific commission is appropriate and required. That model would provide valuable information for an informed public debate.

Inevitably police corruption is a political issue and Governments of the day will be held accountable if their police force is corrupt.

It may be tempting to suggest that the present arrangements should be given a chance to work but they are not the product of planning or any real risk management. On any view they are a political solution. Unfortunately, at some stage their shortcomings will become all too obvious.

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