



PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
WESTERN AUSTRALIA

REPORT TO THE STANDING COMMITTEE
CORRUPTION AND CRIME COMMISSION ACT 2003
SECTIONS 196 and 201

Background

1. As Parliamentary Inspector I am making this report, pursuant to s.201 of the Act, to the Standing Committee, as in all the circumstances I consider it appropriate to do so. Before making this report to the Standing Committee, I provided it in draft form to Ms Moira Rayner, to give her a reasonable opportunity to make representations to me concerning matters relating to her which appear in the report. In its final form, the report has taken into account the representations which Ms Rayner has made to me.
2. The report arises from a notification which I received from the Commission, pursuant to s.197(4) of the Act, of a memorandum from the Director of Operations concerning conduct of the Acting Commissioner, Ms Moira Rayner. The matter was referred to me by the Commissioner, Mr Kevin Hammond, on 10 August 2005. The reason for the referral to me, the Parliamentary Inspector, was that the memorandum constituted an allegation of possible misconduct by the Acting Commissioner, which s.27(1) of the Act precluded the Commission from receiving.

3. For the purpose of assisting me in relation to my investigation of the matter, an officer of the Commission, Mr Trevor Wynn, was temporarily seconded to me, on 11 August 2005.
4. The matter arose from a s.33 investigation by the Commission into an allegation that one Laurence Marquet had stolen over \$200,000 from the WA Government whilst Clerk of the Legislative Council.
5. The investigation of the allegation against Mr Marquet by the CCC had commenced on 12 July 2005, and involved the approval and deployment of telephone intercept and surveillance device warrants issued in relation to Mr Marquet.

Ms Rayner comments:

"I was not privy to the investigation into Mr. Marquet that commenced on 12th July. As an Acting Commissioner I was not involved in operational matters. As an Acting Commissioner I did not participate in the management or administration of the CCC, executive briefings or the day-to-day discussions of operational officers. Commissioner Hammond had referred two unrelated matters to me, which necessitated my occasional brief attendance at the Commission."

6. On 2 August 2005 at approximately 2pm the Commissioner informed Ms Rayner, in her capacity as Acting Commissioner, that warrants had been executed on Mr Marquet, who was ill and a patient at the Cottage Hospice, and that drugs had been found on him. Some 2 weeks earlier, the Commissioner had informed Ms Rayner that Mr Marquet was being investigated by the Commission as a "person of interest" with respect to funds reported stolen from Parliament. She had then expressed great concern, and said that Mr Marquet was a close friend. In the



course of the conversation on 2 August Ms Rayner told the Commissioner that she was aware that Mr Marquet had been injecting drugs (although she had not witnessed him doing so) and that she proposed to see him at the Hospice on her way home. The Commissioner asked whether this would "compromise" her. She replied that it would not, and said she was entitled to visit an old friend who was very ill.

Ms Rayner comments:

"When Commissioner Hammond informed me that Mr. Marquet was a person of interest, about two weeks before 2nd August, I was astounded. I disclosed my personal relationship with Mr. Marquet. I made no move to alert Mr. Marquet or any friend or associate of his to this information. On 2nd August I told the Commissioner that I proposed to visit Mr. Marquet in the hospice. Commissioner Hammond advised me not to compromise myself. I disclosed nothing of what Commissioner Hammond had told me, then or at any time, to Mr. Marquet. "

7. On Wednesday 3 August 2005 Ms Rayner telephoned the Commissioner to state that she had called on Mr Marquet the previous day, that he was ill, that she doubted whether he was totally lucid, and that he might wish to make a dying declaration.

Ms Rayner comments:

"I telephoned Commissioner Hammond on 3rd August and told him that Mr. Marquet had indicated he might want to make a dying declaration to him, which the Commission might find useful. I also spoke briefly to the CEO a few days later when I next visited the Commission, referred to my visit and offered to make a statement about the conversation, which I said I had assumed the CCC had overheard. Mr. Silverstone did not respond and I made no statement."



8. For some time prior to 2 August 2005, the Commission Investigators had been intercepting telephone calls made by and to Mr Marquet. One purpose of those intercepts was to ascertain who his dealer was and what other persons may have been involved in the thefts, which the investigators considered may have been for the purpose of paying for drugs. Prior to 2 August 2005, Mr Marquet had spoken frequently, and unguardedly, on the telephone, as is apparent from the recorded intercepts made before that date, which I have heard. It did not appear that he realised, at that time, that his calls were being intercepted.
9. Before visiting Mr Marquet on the afternoon of 2 August 2005, and within minutes of her discussion with the Commissioner, Ms Rayner telephoned Mr Marquet on his mobile, from her mobile telephone. When speaking to Mr Marquet she said "*Well I'm actually in the offices of the triple C, which is why I'm ringing you from my mobile*". She then told him she would meet him later that afternoon, at some time before 5pm, at the Hospice.
10. Ms Rayner visited Mr Marquet later on the afternoon of 2 August 2005. After that time, Mr Marquet was very guarded in any telephone discussion, and it appeared to the investigators that this was because he was aware that his calls were probably being intercepted.
11. From that time Mr Marquet ceased to speak freely over the telephone, and the frequency of calls reduced appreciably. The concern of the Director, Operations, was that Ms Rayner's contact and discussion with Mr Marquet on 2 August had "a direct impact on the integrity of the investigation"; and that the perception of the



Commission's operational staff was that the Acting Commissioner's conduct, as well as some of her conversations with Mr Marquet, was "Inappropriate" in the circumstances.

Interview of Ms Rayner

12. On 16 August 2006, at 1.56pm, I interviewed Ms Rayner at the Commission offices, 186 St George's Terrace, Perth. The interview was recorded. Present was Mr Trevor Wynn. The interview was at my request, and on short notice.
13. During the interview I asked Ms Rayner why she had telephoned Mr Marquet on her mobile phone on 2 August 2005, rather than using a land line from the Commission. She said that she nearly always used her mobile phone and there was no special reason for doing so on that occasion. She added that Mr Marquet's number was in her phone directory in the mobile.
14. After hearing the audio recording of her telephone call to Mr Marquet, she also said that she didn't think that it was appropriate to ring from the triple C because it was a private call, but she agreed that she had, in the past, occasionally used the triple C land line for private calls, including private calls to Melbourne.
15. When asked whether she had used her mobile because of a concern that if she used the land line her telephone call might be intercepted, she stated that that was not the reason as she was "absolutely certain" that Mr Marquet's mobile phone would be monitored.

Ms Rayner comments:



"There was no improper motive in my using my mobile telephone rather than a Commission landline to call Mr. Marquet. There was no 'thought' involved. My words were clumsy because I was distressed having learned moments earlier that Mr. Marquet was dying in a hospice and because I was very surprised that he answered his work mobile telephone from what I thought was his deathbed."

16. During the course of this interview Ms Rayner agreed that when she visited Mr Marquet on the afternoon of 2 August 2005, she had advised Mr Marquet to the effect that he should not make any telephone calls because he was being "bugged". She also agreed that she had seen this as giving rise to a conflict, and that she had felt "most uncomfortable" about it at the time.

Ms Rayner comments:

"When I visited Mr. Marquet in the hospice I found him very changed, physically and mentally; obviously extremely ill and, he told me, believing his death was imminent. He talked liberally, often irrationally and at length. He received a telephone call in my presence. I was aware that Mr. Marquet might have attempted to pervert the course of justice that very day, which I did not disclose to Mr. Marquet. My concern was to discourage Mr. Marquet from seeking to conceal or destroy evidence, and from suicide. "

17. Ms Rayner told me that she had felt absolutely sure that Mr Marquet's telephone would have been bugged, and that she had assumed that her conversation in the Hospice with Mr Marquet would also have been "overheard".
18. When asked why she had advised Mr Marquet to the effect that his telephone was being bugged, or probably being bugged, and that he should not make any calls, her answer was that she was *"trying to bring home to him the fact that he was in serious trouble and needed to get legal advice"*.



19. When Ms Rayner was informed that from that time on Mr Marquet had ceased to make any further telephone calls (although he had been making telephone calls previously) her response was that he was "more with it" than she had thought, and that she had thought he was "out of it".

Ms Rayner comments:

"I believed, on 2nd August, that Mr. Marquet paid no heed to my advice. He appeared to have undergone a significant personality change; to have substantially lost his intellectual capacity, insight and memory; to suffer from dementia and to lack the capacity to appreciate the consequences of his actions. While I was away over the next few days I telephoned Mr. Marquet on his mobile number, leaving personal voicemail messages. When there was no response I rang the hospice to speak to him and was told that he did not have a telephone connected to his room. I left a personal greeting. I did not know until I returned from Melbourne and visited him again the following week that he no longer had a mobile telephone in his possession".

20. Ms Rayner agreed with me that, as Acting Commissioner, it was "injudicious" to have advised someone known to her to be a "person of interest", and whose calls she believed were being monitored, not to speak on the telephone. She explained that she had been "overwhelmed" at the time by her feeling for Mr Marquet "being in trouble" and "dying at the same time", and was not thinking about the fact that there might have been others involved with him who would be the subject of a possible investigation by the CCC.

Ms Rayner comments:

"My advice was injudicious. You said to me that, 'there might have been others involved with him who would be the subject of a possible investigation by the CCC.' I did not think of that at the time. I believed the CCC already possessed overwhelming evidence against Mr. Marquet and that prosecution and a likely outcome was inevitable. I was moved by



sympathy for a dying, anguished friend. I have said in my response to paragraphs 16-18 that my concern was to discourage Mr. Marquet from seeking to conceal or destroy evidence. I did not intend to protect parties to offences by him or to prevent the identification of other offenders. I did not believe my advice had the effect that you were told that it had, and so informed me on 16th August. I was dismayed."

21. When asked what she had had in mind that Mr Marquet might be doing, when she had advised him not to make any telephone calls that might incriminate him, she replied that she had no idea; that she had wanted him to get some legal advice.
22. It was put to Ms Rayner that telling someone whom she knew was under investigation (Marquet) that his telephone calls were being monitored, had the potential to change the way that he would react in making or receiving calls, and that it had had that effect. Her response was that she was surprised, as she had thought Mr Marquet was "out of it".

Conclusion

23. There are three concerns arising from the conduct of Ms Rayner, as Acting Commissioner.
24. First, knowing that Mr Marquet was the subject of an investigation, and that his telephone calls were almost certainly being intercepted, she (as she has freely admitted) warned him of that, and advised him not to say anything on the telephone which might incriminate him. The actual (and obviously potential) effect



of that was to frustrate the attempt of the CCC investigators to obtain, by intercepting calls, details of others that might be involved in the supply of drugs to Mr Marquet, and who may have received money from him for drugs.

Ms Rayner comments:

"I believed on 2nd August that the CCC already possessed overwhelming evidence of serious criminal offences by Mr. Marquet and that he was certain to be prosecuted, and I had a view of the likely outcome. Summons were issued and served on Mr. Marquet within days. I did not intend to frustrate investigators' attempts to identify parties or witnesses to his offences: I assumed that they had already been identified. I was dismayed to be told otherwise. My expectation of the likely outcome of the prosecution is unchanged."

25. Second, by telling Mr Marquet that his telephone calls and room were almost certainly being "bugged" (or words to that effect) she was, in her capacity as Acting Commissioner, revealing the methodology of the CCC as a law enforcement agency. Although it might often be assumed that such an agency would be using intercepts, investigators in such agencies are always cautioned not to reveal any methods used by the agencies in gathering information.

Ms Rayner comments:

"In my conversations with Mr. Marquet I was acting as a concerned friend, not an Acting Commissioner. I did not reveal the methodology of the CCC as a law enforcement agency, of which I know virtually nothing. I had no knowledge of the CCC's operational plans or activities in the Marquet investigation other than what Commissioner Hammond told me. You have said that investigators in law enforcement agencies are always, 'cautioned not to reveal any methods used by [such] agencies in gathering information.' I have never been an investigator in a law enforcement agency. Mr. Marquet spontaneously and repeatedly said that he believed he had been and was under surveillance. He did not



appear to me to be guarded in his speech: indeed, he spoke wildly. I did not interfere. I believed there was no reason to believe that Mr. Marquet, in his extreme illness, would modify his conduct because of anything I said. I believed the contrary."

26. Third, as the memorandum of the Director of Operations of 9 August 2005 states, what is perceived to be inappropriate contact and conduct by the Acting Commissioner is likely to create "a negative perception" on the part of Commission investigating officers, which needs to be countered. In other words, it needs to be made quite clear that this is viewed as inappropriate conduct.
27. I did not discuss with Ms Rayner the possible consequences of her conduct, nor suggest any course that she might take. However, later that day Ms Rayner tendered her resignation as Acting Commissioner. That resignation was forwarded to the Governor on 17 August 2005.
28. Ms Rayner has subsequently written to the Commissioner, by e-mail dated 17 August 2005, stating that she had no intention of ruining any investigation, that Mr Marquet had been caught "with his hands in the till and drugs on his person" and that she did not believe that her suggestion (ie that she should not make any telephone calls) would affect the laying of charges (against Mr Marquet). She further stated that following the discussion that she had had with me, the Parliamentary Inspector, she had realised at once "*That I should remove myself and there may be other consequences*".



Recommendation

29. Arising from the above, I recommend that existing Commission officers, and those appointed in the future, should have impressed on them that it is totally inappropriate conduct for any Commission officer to warn a person of interest that he/she is under investigation, or under any form of surveillance.

Ms Rayner comments:

"I accept the recommendation. When I visited Mr. Marquet on 2nd August I did so as his friend. I did not warn him that he was under investigation. CCC officers had searched his hospice room and person that day. He said that his home had been searched. It seemed to be obvious even to him that such searches were part of a criminal investigation. I have said why I referred to his mobile telephone use. I did not try to affect how he spoke thereafter. I let him talk."

Misconduct

30. The matter was referred to me as a case of possible "misconduct" by the Acting Commissioner. "Misconduct" is defined in s.4 of the Act in fairly broad terms. Paragraphs (a) or (b), both of which involve acting "corruptly", are in my view clearly not applicable, as I do not regard Ms Rayner's actions as "corrupt" as distinct from highly injudicious. Paragraph (c) is not applicable either, as Ms Rayner was not acting in her "official capacity" when she warned Mr Marquet.
31. A more difficult question is whether Ms Rayner's conduct falls within that part of the definition of "misconduct" contained in paragraph (d)(iii) and/or (iv) of s.4, as conduct which:

"(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or

- (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person*

and which "constitutes or could constitute –

- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct"*.

32. On that question, Ms Rayner has made the following submissions to me, against a finding of "misconduct":

- (a) That she did not withhold information from the Commission or intend to interfere with the completion of its investigation into Mr Marquet's conduct and the inevitable prosecution.
- (b) That she did not disclose any information or material acquired by her as a public officer in relation to the CCC's investigation of Mr Marquet and knew nothing about the investigators' methods or information other than what Commissioner Hammond told her.
- (c) That she told Mr Marquet nothing that she had been told by Commissioner Hammond, who did not tell her that Mr Marquet was under surveillance although she assumed that this was likely.
- (d) That she assumed the investigation had achieved its purpose by 2nd August.
- (e) That as Acting Commissioner her responsibility was limited to two matters that had nothing to do with the Marquet investigation.



- (f) That Section 4 (d) (iii) and (iv) and (vii) requires that the conduct of a "public officer" constitute or be capable of constituting 'a disciplinary offence providing reasonable grounds for the termination of a person's office or employment under the Public Sector Management Act 1994.'
- (g) That having regard to the above, to her frank and full co-operation with the Inspector's investigation, and to her vacation of the office of Acting Commissioner, her conduct does not amount in law to 'misconduct' within the meaning of the Act.

33. The facts stated in these submissions are all correct, and relevant. However, other relevant facts are:

- (a) Had it not been for the Commissioner informing Ms Rayner that Mr Marquet was under investigation, and that he was in the Hospice, Ms Rayner would not have had that information.
- (b) That information was given to her only because of her position as a public officer, ie Acting Commissioner. It was not information generally available on 2 August 2005, and the Commissioner could not, and would not, have given her that information had she not been the Acting Commissioner and therefore bound by the same statutory obligations of confidentiality and non-disclosure.
- (c) Although it may well have been the case that Mr Marquet was aware, by the time of her visit, that he was under investigation, it did not appear, from his unguarded telephone conversations to that point, that he was alert to the possibility that his telephone calls might be intercepted.
- (d) He was only alerted to that, by the warning given to him by Ms Rayner.



34. I do not consider that, in visiting Mr Marquet, Ms Rayner was "misusing" the information given to her by the Commissioner as to Mr Marquet's whereabouts, although it was given to her, as I have said, in her capacity as Acting Commissioner. However, to warn him, when she made the visit, of the likelihood that his telephone calls were being intercepted was, in my view, a "misuse" of the information given to her, as to his whereabouts and the fact that he was being investigated by the CCC, as without that information she would not have been in a position to warn Mr Marquet not to say anything on the telephone that might be incriminating.
35. It was therefore conduct to which s.4(d)(iv) also applies; and which could constitute a "disciplinary offence" to which sub-paragraph (vi) also applies.
36. S.195(1)(b) of the Act provides that one of the functions of the Parliamentary Inspector is "to deal with matters of misconduct on the part of officers of the Commission".
37. S.196(3)(f) specifically empowers me to recommend that consideration be given to disciplinary action or criminal prosecution of an officer. As Ms Rayner has voluntarily resigned, disciplinary action would seem inappropriate; and I do not consider her conduct to constitute a criminal offence.

MALCOLM McCUSKER Q.C.


Parliamentary Inspector

25.08.05