

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
TUESDAY, 12 DECEMBER 2006**

OPEN SESSION

Members

**Mr John Hyde (Chairman)
Hon Ray Halligan (Deputy Chairman)
Mrs Judy Hughes
Hon Margaret Rowe**

Closed hearing commenced at 11.10 am

[The committee took evidence in closed session]

Open hearing recommenced at 12.02 pm

McCUSKER, MR MALCOLM JAMES
Parliamentary Inspector of the Corruption and Crime Commission,
45 St Georges Tce,
Perth 6000, examined:

The CHAIRMAN: Thank you very much, parliamentary inspector. We appreciate that for nearly an hour you have briefed us on some sensitive operational issues. It was important that that be conducted in closed hearing. We would like to address a couple of issues. We may need to go back into closed session at the end. The major issue we can discuss in a public hearing is the intention for you to appoint an assistant position to your role.

Mr McCusker: That is certainly my intention. I have received the information that I have previously mentioned, which will enable me to advertise a position at the appropriate public service level. I have been in touch with the Queensland operative to whom you recommended I should speak to get information about the way in which he conducts his audit, which he has sent me. The prime function of the person I would seek to appoint would be an ongoing audit role. I have yet to decide whether that will be a full-time or part-time appointment. It may be desirable to have a full-time appointment. The Queenslander I spoke to was surprised when I said that it might be a part-time appointment. He said that he thought I would find that it would be full time, but that would depend, of course, on the size of the task that is set.

The CHAIRMAN: Clearly, one of the impetuses for the committee meeting in Queensland was to see the thoroughness of how this person looks at warrants, particularly for TIs, and that that is being recorded and oversights in a transparent way.

Mrs J. HUGHES: It also freed up the parliamentary inspector to do the more important work that he is set, rather than his time being taken up on the other bits and pieces.

Mr McCusker: On a kind of routine audit basis.

Mrs J. HUGHES: It worked very well for the parliamentary inspector.

Hon RAY HALLIGAN: People know when it is important. Sometimes there are conditions associated with a warrant, and at least there is someone to follow it through and ensure that those conditions are fulfilled, whereas here we understand that there is no check.

Mr McCusker: No, there is no check. It depends on the integrity of the commission officer.

The CHAIRMAN: I appreciate that in commenting on staff matters at the CCC, there may be a need to go into closed session at the end of the hearing. However, on page 7 of the annual report, you state that the CCC had given you three notifications of allegations concerning its officers. I am also conscious that there has been a recent finding in the issue with Moira Rayner. Can you advise the committee of any information on the three notifications that are referred to in your annual report?

Mr McCusker: They were notifications in the sense that a third party had made a complaint about the manner in which that person's complaint had been dealt with by the CCC. Accordingly, because the complaint was made to the CCC, the commission notified me of that complaint so that I could take it up. That is what I mean by a notification. Sometimes a third party member of the public will make a complaint to the CCC, will be dissatisfied and then will be told that if he or she is dissatisfied, he or she should go to the inspector. That is the normal run. However, in other cases, a complaint will be made to the commission about the handling of the matter and, in that case, the commission runs to me with a notification that a member of the public has expressed dissatisfaction.

Hon RAY HALLIGAN: Are you in a position to advise us about those allegations? What conclusions have you drawn?

Mr McCusker: In one case I have not yet got to the conclusion, and in the other two there is no substance.

The CHAIRMAN: On page 10 of your report, you mention that 32 referrals about the CCC had been undertaken. I wonder whether some statistical breakdown of those referrals might be possible in future reports; for example, there might have been no case to answer in 30 or two might still be in operation. Do you have a breakdown of whether any of those are live at the moment?

Mr McCusker: I do, but I do not have it to hand. Certainly I can provide that the next time I report.

The CHAIRMAN: At page 12, in the performance indicators, which is something that we asked for last time -

Mr McCusker: The KPIs.

The CHAIRMAN: We have had an improvement in the KPIs, or certainly in the amount of information that is going to the public. You state that of the 32 referrals received in 2005-06, you have finalised 19. Of the 13 that are ongoing -

Mr McCusker: They have been whittled down since then.

The CHAIRMAN: You referred in closed hearing to a small number and we appreciate that information. However, of the 13, do you know at this point, which is six months after the annual report, how many would be -

Mr McCusker: I would be giving an informed guess at the moment, but probably about half of them are still extant.

The CHAIRMAN: Do you feel inclined to make any comment on the finalisation of the Moira Rayner case

[12.20 pm]

Mr McCusker: In open hearing?

The CHAIRMAN: Yes, we are in an open hearing.

Mr McCusker: It was dealt with correctly by the commissioner. The matter was then taken up by the DPP and the police, who handled it perfectly correctly, and she was acquitted and she was entitled clearly to be acquitted, as was her right. But the fact of acquittal does not mean that the charges were laid without any substance or foundation or that there was any impropriety on the part of the CCC or the police or the DPP. There was, I think, a clear factual foundation for the laying of the charges, but ultimately there is the question of whether the jury was satisfied beyond reasonable doubt that there was a case.

The CHAIRMAN: I mean in terms of oversight, given that you, the committee and Commissioner Hammond - the three of us - are still in place, and whether we need to debrief if in the future there

is an allegation; I say allegation, but an incident involving someone at a high level - for example, the commissioner or assistant commissioner. Is there something perhaps we would do differently in terms of the process?

Mr McCusker: I do not want to sound complacent, but I think we did it correctly in every way. First, the commissioner, as soon as the matter came to his notice, called me in because that was the proper thing to do, being an officer of the commission that was involved. I then notified Moira Rayner of the fact that I had been asked to investigate this matter; told her in advance what it was relating to; told her of the right to have a lawyer present; and conducted a hearing, which was videotaped with an officer of the commission seconded to assist me who was present. That was all strictly in accordance with the requirements of the act. Then, having done that and made a report, following that, the police became involved. They came to me and asked me for information, which I was entitled to give, and I did, and it really went from there. Looking back, I cannot see that there was anything that was untoward. There might be a question, I suppose, as to whether a report should be made public. There is that issue.

The CHAIRMAN: Yes; and, I guess, from that we note in hindsight that the trial was not aborted and there was not a serious attempt to imply that the huge amount of public comment and, in effect, the one tenth of information which was all that the committee and you did reveal, that that prejudiced the ability to get a fair trial.

Mr McCusker: I do not think it did. But to come back to the same point we made earlier, there is always a question as to how much information should be released, particularly if there is to be a trial.

The CHAIRMAN: Yes; and, I guess, in the end, if we had not made anything public and suddenly it comes out six months later that the resignation of an assistant commissioner who was associated with something else -

Mr McCusker: Yes.

The CHAIRMAN: As I think you said at the time in closed hearing - of course we have not revealed any of that - we are damned if we do and we are damned if we do not.

Mrs J. HUGHES: If, for instance, there is just some advice, a TI can be issued only in light of the fact that they would assume that there would be some form of trial or some form of charges laid, as that is part of the requirement, I believe, to get a warrant.

Mr McCusker: Reasonable grounds.

Mrs J. HUGHES: Reasonable grounds?

Mr McCusker: Yes.

Mrs J. HUGHES: In light of the fact that hearings such as for Moira Rayner and so forth, and in view of the fact that there were TIs involved, surely then public hearings would be of an even greater danger in light of the fact the TI was actually signalling a charge.

Mr McCusker: Yes.

Mrs J. HUGHES: So I think that is something that needs to be looked at fairly closely as to how this process is actually occurring, because one signals the other.

Mr McCusker: The basis on which a TI is authorised is that there are reasonable grounds for suspecting that a crime has been committed.

Mrs J. HUGHES: A serious offence?

Mr McCusker: Same thing, yes, a serious offence.

Mrs J. HUGHES: Because there is a threshold, is there not, as to when a TI can actually be authorised?

Mr McCusker: There is.

Mrs J. HUGHES: So, whatever offence it is that we are actually looking for, as to what charges have to be laid, it must be of a serious nature, I would have thought.

Mr McCusker: That is right.

Mrs J. HUGHES: So that itself would signal care in how they dealt with these issues.

Mr McCusker: Definitely. When I say “crime”, that is a serious offence, as distinct from a misdemeanour.

The CHAIRMAN: And if the TI was on Laurie Marquet, it is interesting to note that the only conversation that has been made public is with Moira Rayner. So, I guess - if I speak in general terms of what we have discussed in closed hearing - some sort of oversight of TIs would have to be an investigation or questions asked as to other information that may have been garnered.

Mr McCusker: Yes.

The CHAIRMAN: I know that the CCC has done a great job in getting the money back from the estate. Marquet was never charged but you would also expect at some stage -

Hon RAY HALLIGAN: He was not charged?

The CHAIRMAN: I am sorry; he did not come to trial.

Mr McCusker: He did not go to trial.

The CHAIRMAN: I am sorry; my terminology is wrong, but we would expect a statement that that issue has been closed, or are there other charges that might arise?

Mr McCusker: In relation to what?

Hon RAY HALLIGAN: I have to ask: do we have need to ask that question? We leave that to the appropriate authorities.

Mr McCusker: I think so; that is not really for us. That has gone out of our ambit really.

Hon RAY HALLIGAN: I would suggest to you, and I have to make assumptions here, that the only reason the TI information, that is the telephone conversation with Laurie, as the chairman said, the TI was on Laurie, not on Moira -

Mr McCusker: Right.

Hon RAY HALLIGAN: She just happened to be picked up in it.

Mr McCusker: True.

Hon RAY HALLIGAN: It was identified because of the conversation and it became a criminal matter; but other conversations we have yet to know of may very well at some future time become criminal matters as well. So the only reason this has become public with Moira Rayner is the fact of the conversation, and because of that conversation it was identified that misconduct had taken place.

Mr McCusker: That is true.

The CHAIRMAN: The other associated issue from this in our joint discussions about you getting an assistant is the requirement under the TI act for the source material to be destroyed at a certain time afterwards.

Mr McCusker: Yes.

The CHAIRMAN: So, I guess that is clearly an oversight issue - that we need to have some transparency that this is occurring.

Mr McCusker: Yes.

Hon RAY HALLIGAN: Just on that issue, the parliamentary inspector, when he was speaking about this a while ago, mentioned the word “audit” - that wonderful word that has come up on a number of occasions.

Mr McCusker: Yes.

Hon RAY HALLIGAN: Have you tried, in your own mind at least, to define what is meant by “audit” in the circumstances in which you presented it to the committee?

Mr McCusker: There are several approaches. One is to check every time a TI is authorised. That is one. It is fairly extreme but it is a possibility. The other is to do a spot check. I do not think the intention behind the word “audit” in the act is to look at every individual case and, as it were, look over the commissioner’s shoulders all the time.

Hon RAY HALLIGAN: But as we know, we do not know what the act in fact expects.

Mr McCusker: No.

Hon RAY HALLIGAN: Because there is no definition.

Mr McCusker: There is no definition at all.

Hon RAY HALLIGAN: The commissioner also explained to me that he does not understand exactly what it means either.

Mr McCusker: No.

Hon RAY HALLIGAN: No-one has stood in our chamber and asked the government and the minister responsible for the act to look at that anomaly.

Mr McCusker: Yes. It is all very well to say “audit”, but audit in accounting parlance is to go through a specified percentage and just check off, rather than look at every one.

Hon RAY HALLIGAN: I think in principle it would be somewhat similar, in that it would mean spot checks, as you have already mentioned.

Mr McCusker: Yes.

Hon RAY HALLIGAN: Also, it is looking for what appeared to be anomalies or something out of the ordinary or something that does not fit comfortably with the picture that you are looking at or hearing others that might express an opinion that is somewhat different from the one that you would have expected to be expressed.

Mr McCusker: Yes, I agree with that.

The CHAIRMAN: Members, are there any final questions in this open hearing? Parliamentary Inspector, do you have any?

Mr McCusker: No further comments, no.

The CHAIRMAN: I declare the public hearing closed and we will briefly go into closed hearing.

[Committee took further evidence in closed session.]

Hearing concluded at 12.25 pm
