

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

**PROCEEDINGS OF ALLEGATIONS AND NOTIFICATIONS
OF POLICE MISCONDUCT BY THE CCC**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 12 SEPTEMBER 2012**

SESSION TWO

Members

**Hon Nick Goiran (Chairman)
Mr John Hyde (Deputy Chairman)
Mr Frank Alban
Hon Matt Benson-Lidholm**

Hearing commenced at 11.20 am**DAVIES, MR RON****Private Barrister, examined:**

The CHAIRMAN: Mr Davies, you have my apologies for the very tardy and unprofessional start to the hearing. The purpose of this hearing is for us to speak with you to aid the committee's inquiry into how the CCC handles notifications of police misconduct. Mr Davies has some considerable experience regarding how the CCC investigates allegations of police misconduct and he has acted on behalf of various police officers during past examinations and most recently represented WA Police Commissioner Karl O'Callaghan in respect of matters that were the subject of a CCC inquiry. I advise, however, that as some aspects of this particular inquiry are now subject of a particular complaint that may be made to the Parliamentary Inspector of the Corruption and Crime Commission, the committee will not be seeking to discuss this specific matter with Mr Davies in this public hearing. However, should discussion be required on this topic at a later stage, it is possible for the committee to move into closed session. I would like to take this opportunity to introduce myself as the Chair of the committee. To my left is John Hyde, member for Perth; to his left Matt Benson-Lidholm, MLC; and to my right is Mr Frank Alban, member for Swan Hills. The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect as the houses themselves. Even though the committee is not asking you to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of the Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings. If you refer to any document during the evidence, it would assist Hansard if you would provide the full title for the record. Before we proceed, I need to ask you a series of preliminary questions. Firstly, have you completed the "Details of Witness" form?

Mr Davies: Yes.

The CHAIRMAN: Secondly, did you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Mr Davies: Yes, sir.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet in advance of today's hearing?

Mr Davies: I did.

The CHAIRMAN: Do you have any questions?

Mr Davies: No.

The CHAIRMAN: Would you state your full name, occupation and capacity in which you appear before us?

Mr Davies: Ron Davies, private barrister, and I am here because I was dropped in it by Chris Steytler! He would, I think, talk to you if requested.

The CHAIRMAN: We have a series of questions for you today. Regrettably, we are time poor after the poor start. I invite you to make any opening remarks you have in relation to the inquiry.

Mr Davies: I was Chief Crown Prosecutor to the end of 1995, the equivalent of the now DPP. For many years after that, on contract, I prosecuted major criminal matters for the DPP, once it came into operation. I am a private barrister and I became a QC in 1984, I think. My chambers are not in Perth; they are at my property 30 miles east. Recently, I have done appearances for individuals before the CCC, administrative work for the Legal Practice Board and racing people before the Racing Penalties Appeals Tribunal, and occasionally on prerogative writs before the Supreme Court. When I cannot get out of it, I have appeared for individuals before the CCC. I vow every time that I will never go back, but what do you do when commissioner Dawson rings in relation to the Spratt matter and says, “Can we see you”, or the Commissioner of Police rings up and says, “Something is brewing, we need to talk; where can we go from here?”

The CHAIRMAN: Why is it that you vowed never to return?

Mr Davies: Because the procedures are oppressive. They are not conducive to a fair go for individuals down there, particularly if those individuals are not represented by someone who knows which way it is likely to head before it is too late. If you go there, you go without any confidence. You are not being given the full picture of what is being said by others and in particular anything favourable that may have been said in relation to your client, because you are entirely in the hands of what they give you.

The CHAIRMAN: Is that an inquisitorial system as compared to an adversarial one?

Mr Davies: No, it is not. My view—this is only an opinion—is that there is a certain cultural attitude of the staff who see it as us versus them and who, when things start to go badly, do not want to hear from you. Without going into any detail in relation to the most recent case, it rapidly becomes an exercise in self-justification when it goes nowhere.

The CHAIRMAN: So, is what you are suggesting then, Mr Davies, that it is a cultural issue within the organisation?

Mr Davies: It is a staff cultural issue that comes through loud and clear every time. It is very hard to go into details without dealing with the most recent matter that brought the whole thing to a head in the most dramatic way, but it has always been there, and it does not have to be. I headed a team which represented five police officers in the Mallard inquiry before the CCC. It started off going the same way as they usually do, but the commissioner was Mr John Dunford, who is a retired New South Wales Supreme Court judge. Very soon after it was underway, I asked him would he be prepared to receive a detailed written submission from me as to the necessary procedural fairness and he said, “Certainly, Mr Davies”. He received it and all the archaic, oppressive methods in the hearings disappeared and the officers were given a fair hearing. They were given access to materials and none of it affected the ability of the CCC to inquire into and come up with the results that it wanted to. I am sorry to be as pointed as that, but that showed that it can be done with a different disposition and a different person at the helm controlling the staff.

The CHAIRMAN: So, Mr Davies, you mentioned earlier, and you were making it as a general comment, that the procedures are oppressive. You have identified the Mallard matter—if I can refer to it loosely like that—as an example where I take it the proceedings were not oppressive; they were appropriate.

Mr Davies: Yes.

The CHAIRMAN: Are we able to articulate what those procedures are, or is that a lengthy thing that might need to be in a written form at later stage?

Mr Davies: The difficulty is that they use a number of ways of gaining information in relation to a particular case. I am talking now in particular—the most dangerous situation is a non-public hearing. They will call other persons before them to give evidence at a private hearing and you will never get access to that in full. What you get is counsel assisting and/or the staff’s distillation out of that of the parts they want to put into a section 86 draft. They also go out and have investigators

speak to witnesses privately and, I assume, record it and produce a transcript. All you will get will be the selected parts that they want to use potentially against you. You have no way of knowing whether that witness—and in the case of the Dr O’Callaghan one, it was two former ministers of the Crown—you have no way of knowing how they were questioned and you have no way of knowing the context of the answers that they gave. All you get is some selected parts.

The CHAIRMAN: Do I take it that in the Mallard matter, then, there was not a selected portion of transcripts but the whole transcript was provided?

Mr Davies: The commissioner gave us access to the transcripts of all of the private hearings that had been conducted that had impinged upon us.

The CHAIRMAN: In full?

Mr Davies: In full, with the exception of the transcript of the private hearing of Mallard, which for reasons that are not hard to contemplate, he was not prepared to release but he declared categorically that he would not be relying on any of the contents against us. We were given access to statements that had been made before private hearings in relation to the witnesses. Many of the them—and you do not often get them; we got a few in the police royal commission, which was the same staff and was conducted in the same way—you get them in confidence, of course, and when you look at how some of the material from an interview by an officer got into the form that it ended up before the commission, quite frankly, it is alarming. I will give you an illustration. One of the questions in the royal commission was whether armed robbery squad officers had got away with the take from an armed robbery in a supermarket in Swan View. The interview of an officer of the commission went something like, “Well, they arrived there?” The officers, “Yes.” “They went into another room?” “Yes.” “What do you think they were doing there, counting the take?” There was absolutely no evidence from that witness that he or she ever saw any money or anything yet, at the end of the day—so the standard of their investigators, if you want to let them loose to investigate individual police officers, leaves a great deal to be desired.

They never admit a single thing was wrong or inappropriate when you tackle them on it. They seem to resent it and that is, regrettably, usually everyone from the commissioner down. This is fairly stark and this has been coming for years, Chairman and members, but you should not, with respect, and it is not for me to be letting it—that is, the CCC the way it functions—loose on individual police officers whose conduct is marginal and in relation to whom with the way they go about it, if they are exonerated in the sense of no finding of misconduct, but with reports that say all sorts of other things that they say they did wrong and so on, their reputation is in tatters regardless of the result.

[11.30 am]

The CHAIRMAN: You mentioned that there is the provision of some material that is provided in confidence. I missed what the —

Mr Davies: That was in the course of those two inquiries that I was speaking about. It was provided for use in cross-examination of the witnesses when subsequently they were called.

The CHAIRMAN: They were statements?

Mr Davies: Statements and transcripts of their private hearing when they were later called to public hearings.

The CHAIRMAN: Was there then an issue with that being provided in confidence in the event that someone is not represented by legal counsel?

Mr Davies: There are two issues. One assumes that the commission has confidence in legal practitioners to maintain their confidence. The temptation to a client to race off and talk to someone about it would no doubt be enormous. I proceed on the assumption that anyone who has a

substantial allegation against him would at least be represented—I do not say this in any pejorative sense—by a young practitioner provided by the police union.

Mr J.N. HYDE: With your experience, having been a crown prosecutor as well as through the CCC, could you offer an opinion on the amount of time it seems to take for the CCC to undertake an investigation that may culminate in a public hearing? Mr Lampard before you made the observation that back in the time when he was assistant commissioner if some similar investigations were being undertaken by the police and taking such extraordinary time that they do, that those officers would be moved somewhere else because they were not doing their job correctly.

Mr Davies: Mr Hyde, I note that you asked a question of the commissioner himself along these lines. I was provided with the transcript. The time taken, for example, with the Spratt matter where I represented the Commissioner of Police, although what they wanted to tackle him on was relatively minor, was extraordinary. The time taken on the Dr O’Callaghan one recently was extra extraordinary. You cannot help sitting there and thinking a couple of good detective sergeants would have wrapped this up in a couple of weeks or a month at the outside if there was some unavailability of witnesses. This is back to the competence and standard of their investigators and what goes on behind closed doors where staff have a go at writing a draft report, which is all you get, normally. Without going into details, even with the one for Dr O’Callaghan after they were persuaded to make an announcement that there would be no findings of misconduct, getting to the next stage just dragged on and on.

Mr J.N. HYDE: Given your experience as a crown prosecutor and obviously the current system with the DPP, clearly somebody at some level has to take responsibility for triaging a matter and, if it becomes obvious that despite all the expenses, all the time that you are putting in, you are not going to secure, I guess, in terms of the DPP a conviction or a likely conviction or obvious outcome, to use a colloquial term, you would cut your losses, if you are using taxpayers’ money, and move on to something else that would be more productive. What would your view be? Is there a culture within the CCC that perhaps does not triage incidents in the same way?

Mr Davies: Mr Hyde, obviously it is only an opinion, but it fits in with what I said about it becoming an exercise in self-justification. It seems to me that the staff there—many of them have been there for a long time—have got to the stage where they have such a terrible track record that when they are on to something, they just do not want to give it away and they see it as another loss or black mark if they do turn their back on something, saying, “There’s no justification for us going further.” It happened with the Dr O’Callaghan matter. It went on and on. So there has to be some snippets of criticism in the final report, even though the decision of no misconduct had been made ages before. You wonder whether there had to be a report at all. I know, with respect, you asked that question as well.

The CHAIRMAN: Mr Davies, I am wondering whether you are familiar with the report that this committee tabled in recent times with respect to the use of public examinations by the CCC and whether you have got any comments on that, specifically around how the CCC handles police matters?

Mr Davies: Chairman, I read with interest in the newspaper that this committee had some fairly strong things to say about lack of procedural fairness and lack of appropriate informing of what it was about. I am not certain of the timing of that in relation to when the most recent matter commenced, but most of what you said ought to happen, did not. That is in very general terms. You never knew what was actually being asked about and what it was supposed to be heading towards as regards possible misconduct on behalf of your client. You have a very general statement of why the investigation is there. It might have three heads in it; one is not even approached and you do not have anything put directly to you in relation to the others. You are just asked a series of questions and you have to ask the key ones on behalf of your client, yourself.

The CHAIRMAN: In that report the committee made some recommendations to say that there are some important principles that are so important that they should be enshrined in the legislation to force the commission to use them. Are you saying similar things here in terms of the Mallard versus normal course of events?

Mr Davies: Legislation is now the only thing that will change the culture of the current CCC. My illustration of the Mallard matter was to indicate that those types of procedures are exactly what Hon John Dunford agreed to adopt and they did not one scrap stand in the way of a proper inquiry. Indeed, there were serious consequences for two of the five officers and it did not stand in the way of them doing their job, but it did allow the other three, who had not done anything wrong, to properly put their case and examine the evidence against them and be exonerated.

The CHAIRMAN: If the committee was to obtain from the commission a copy of the letter that you sent to Mr Dunford, that would contain the summary of those principles?

Mr Davies: If it were that simple, Mr Chairman. You would need to follow how he applied them through the whole of a very, very long hearing. But there must be people who could give you a summary of that. But if you are going to get poor old John King to wade through it all, there is a massive amount of transcript, both public and private of course.

Hon MATT BENSON-LIDHOLM: Mr Davies, on that point about legislation changing culture, can I just seek your views as to the possible—because at this stage they are only possible—widening of powers in relation to organised crime and what you see as the likely impact in relation to that on the capacity to oversight police. Obviously, what this committee is very much focused on is the need to maintain that principal, if not sole objective. Can you give us some insight about what you think —

Mr Davies: Mr Benson-Lidholm, of course it is only an opinion and I know others share this opinion, but having worked closely with the police for 45 years, and having had the experiences I have had with the CCC, having been involved at firsthand with the high level and even further down discussed at the CCC by police officers, in my opinion, any attempt—I know it is, with respect, the honourable Premier's hobby horse, and I do not use that word in any pejorative sense, but in my opinion trying to put the two together would be a disaster. It cannot work.

Mr F.A. ALBAN: Mr Davies, how would you say the CCC is perceived by the legal community of Western Australia?

Mr Davies: I am trying to avoid pejorative terminology. Not highly. Would that help?

Mr F.A. ALBAN: It is a start.

The CHAIRMAN: Mr Davies, that concludes the questions we have for you today. Is there anything further you want to add in relation to the inquiry the committee is handling?

Mr Davies: I am conscious of your opening remarks about the matter of Dr O'Callaghan. I suggest, with respect, that when the parliamentary inspector—who is now not the previous acting one, a different acting person, but I am advised he is on the track—has run his course, so to speak, that this committee may find itself motivated to, and may be assisted by, going into a full hearing as to the way that was conducted because it is an eye-opener; it really is.

The CHAIRMAN: That is noted, Mr Davies, and we shall cross that bridge in the fullness of time.

At this point, I thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days of the date on the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. However, should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Mr Davies: I understand that, Chairman. I will correct the transcript. I am not here voluntarily to put across a particular cause. I will respond to any further questions from the committee as an adjunct, but I will not be proffering any at this stage.

Hearing concluded at 11.42 am
