

## OPENING STATEMENT BY EXAMINER

OPI HEARING 7 NOVEMBER 2007

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### **Introduction**

The men and women entrusted with crime prevention and policing play one of the most important and critical roles in our society. We rely upon them, and trust them, to carry out their functions with honesty and integrity.

Conversely, the most insidious act of public office is the act of corruption. At its worst, those in public office ally themselves with criminals or organised crime. Equally as treacherous however is where law enforcement is compromised and confidential information is passed from those in policing roles to the very targets of criminal investigation.

Sir, before I commence to say a little more of the specific nature of this examination, it is necessary to make an important observation. This public hearing should **not** lead anyone to the erroneous view that all police are corrupt. Such a generalisation is simply not true. The overwhelming majority of police at all levels carry out their duty with the honesty and integrity of which I spoke earlier. This hearing focuses on a very few. This hearing should not cast a shadow over the majority, who in reality are also betrayed by such misconduct.

Corruption in the form of the unauthorised disclosure of confidential information is very difficult, and at times, almost impossible to detect. Part of the difficulty stems from the disbelief that public trust in a person can be broken. Often, the higher the level of responsibility held by the person, the more difficult it is to believe that the trust may be abused. But beyond that (and more significantly) where the allegation is levelled at police, they have the training, skills and experience to best know how to avoid detection.

Traditionally, the term 'corruption' conjures up images of bribery; of brown paper bags full of money being handed over to corrupt officials for favours extended. Yet the concept has never been so narrowly defined or confined. Similarly, the offence of misconduct or misfeasance in public office is not primarily concerned with the abuse of position for financial gain. The principal object of the offence is hundreds of years old. It is stated to be:

[t]o ensure that an official does not, by any wilful act or omission, act contrary to the duties of his office; does not abuse intentionally the trust reposed in him.

In its modern application, the Courts have recognised the duty of police officers not to improperly pass on confidential information. Recently, it was stated that the offence of misconduct in public office was made out where a policeman improperly accessed the police data base. It was stated

Upon his appointment as a constable, the respondent accepted an office of trust under the Crown. In passing on information ...[he] intentionally abused that trust. As a police officer, he had trusted access to the [police] data base for use for police business and, as an experienced police officer, he knew it was his duty to maintain the confidentiality of that information, and therefore not to pass it on to persons not authorised to receive it. In breach of the trust reposed in him, and in breach of his duty as a police officer, he chose to pass on information concerning the arrest of a man suspected of drug offences to someone whom the respondent knew to be a drug trafficker; and plainly for that the respondent was properly to be indicted.

A key focus of the examination to be conducted in this matter will inquire into that very same type of conduct.

Operation "Briars" is a highly confidential murder investigation which was also examining police links to the murder. The focus of these investigative hearings is the unauthorised passing of critical information, through police members and police employees for private purposes, perhaps to feed factions, perhaps to

destabilise, perhaps even to create a platform for their own further career ambitions.

Yet some of the information sought and some of the information that was passed was neither factional nor political. It was purely operational information. Its only value in the hands of those to whom it was leaked was to defeat the effectiveness of Operation Briars and to defeat the effectiveness of the OPI investigation into the improper disclosures. The end result was that some of that critical operational information passed into the hands of the very target of the investigation. These were not inadvertent acts. The use of the term 'leaks' is inappropriate, for it suggests an inadvertence, a slip or an innocence about what occurred. There was no inadvertence here. Highly confidential information was deliberately sought, and deliberately given.

### **This Examination**

The Director, Police Integrity, determined on his own motion to conduct an investigation into, amongst other things, alleged unauthorised communication of confidential information by Victoria Police members.

### **Purpose of a Public Hearing**

Certain witnesses have been summoned to attend hearings over the next several days. As the Director's Delegate you have now determined it is appropriate for these hearings to be conducted in public.

The statutory office of the Director, Police Integrity, is an entirely independent statutory office which has very significant coercive powers. For obvious reasons, investigations cannot always be conducted in public.

Yet we must not encourage the unnecessary use of private hearings. A High Court jurist once stated that private hearings shrouded with a cloak of secrecy, both undermine the value of the hearing itself and the public acceptance of its outcome.

It has been said many times that sunlight is a great disinfectant. The transparency and public accountability of this hearing is the very antithesis of the alleged conduct which falls to be examined.

This investigation has now reached a stage where it will not be prejudiced by a public hearing. The Director considers it important in these circumstances that investigations such as this should be conducted in public for reasons including that –

- This and other investigations are likely to be advanced by conducting public hearings, by encouraging people to provide information to the Director;
- Public ventilation of evidence may have a deterrent effect on police corruption and misconduct by making those responsible publicly accountable and by demonstrating that such conduct will be detected, investigated and prevented;
- Public hearings will expose police corruption and misconduct, educate the public in the nature, extent and causes of such corruption and misconduct and highlight the need for reforms to address the problem; and
- Public hearings will enhance public confidence in the Director, the OPI and the Victoria Police.

Pursuant to s.102F, Police Regulation Act, the Director, Police Integrity, has delegated the power to you, Sir, to conduct this hearing. I have been briefed by

the Director, pursuant to s.102E of the Act, to examine the witnesses who have been summoned to attend.

The examination draws on information gathered during the course of the investigation to date. This information has been gathered from a variety of sources. One of the purposes of this hearing is to give those summoned the opportunity to respond to the matters that will be put to them.

### **Broader Aspects of this Examination**

The allegations for examination are all the more serious in light of the very senior levels of responsibility held by the people summoned to give evidence. These people represent, in their respective fields, senior echelons of police management and of the Union representing police members. It goes without saying that unity, discipline and leadership should be the hallmarks of senior management in any organisation. The work undertaken by the Victoria Police makes these requirements paramount.

Although the leaks in relation to Operation Briars are at the heart of this inquiry, the examination will range over a much broader spread of issues. This spread is necessary in order to demonstrate that the leaking conduct:

- was deliberate and frequent;
- that it travelled a well worn path;
- that it was used to further ambitions and to destabilise and factionalise police management; and
- that it was used to pre-emptively criticise senior decisions of government.

### **Deflecting the OPI Investigation**

The functions, powers and objects of the Director, Police Integrity, are set out in s.102BA of the Act. They include the objects:

- (a) to ensure that the highest ethical and professional standards are maintained in the Force; and
- (b) to ensure that police corruption and misconduct is detected, investigated and prevented.

No police member or employee should consider themselves above the law, nor should they treat the process of investigation of potential corruption or misconduct by the OPI with contempt.

This examination will also therefore inquire into the steps that were taken to compromise this investigation.

Dr Gregory Lyon SC  
7 November 2007