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CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

ACTING COMMISSIONER DUNFORD QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 24 OCTOBER 2007, AT 4.26 PM

Counsel assisting:

MR J.P. GORMLY SC

1 **COCK, ROBERT ENOS:**

2

3 **THE ACTING COMMISSIONER:** Just a moment, please. Mr Cock,
4 I have already explained to you the nature of the inquiry
5 that is being undertaken by the Commission and you have
6 already taken the oath and I have already told you of your
7 rights and obligations under the act?---That's all agreed,
8 sir.

9

10 So I won't do it again, but this examination is to be
11 conducted in private pursuant to section 139(1). Only
12 those persons authorised by me may be present or observe
13 these proceedings and I will attend to that now. Just a
14 moment. I order that Mr Gormly SC, legal practitioner
15 appointed to assist the Commission, and officers of the
16 Commission may be present during the whole or any part of
17 this examination, being an examination that is not open to
18 the public. The proceedings are being recorded
19 electronically in their entirety using audio equipment and
20 video equipment operated by employees of Spark and Cannon
21 and I give leave to those persons to be present during the
22 whole or any part of the examination, being an examination
23 that is not open to the public. Yes, I think that covers
24 it. Thank you. Yes, Mr Gormly?

25

26 **GORMLY, MR:** Mr Cock, can I take you firstly to the two
27 letters that I handed you during the break. The first one
28 or first in time is a letter from Mr Mactaggart, a senior
29 state prosecutor I think at the office of the director of
30 public prosecutions, to Mr Nick Anticich, the director of
31 operations at this Commission, dated 29 May 2006?---Yes,
32 sir, I think I've seen a draft of that letter before.

33

34 Right. Mr Cock, you will see at the end of the first
35 paragraph of that letter - do you have a copy of this,
36 Commissioner?

37

38 **THE ACTING COMMISSIONER:** No, I don't.

39

40 **GORMLY, MR:** Commissioner, can I hand up a copy of that
41 letter and also another letter that I'll show to - ask
42 Mr Cock about.

43

44 **THE ACTING COMMISSIONER:** Yes.

45

46 **GORMLY, MR:** You will see there:

47

The director agreed with my advice that the
statements uttered by Mr Quigley to the former
undercover operative are capable of amounting to a
prima facie case of making a threat with intent to
compel a person to do an act which the person is
lawfully entitled to abstain from doing, contrary to
section 338AD of the Criminal Code.

48

49 24/10/07

COCK, R.E. XN
(Closed Court)

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2

1/3/glj

1 Firstly, can you tell us, Mr Cock, is that a correct
2 statement?---Yes, sir.

3
4 Is that because there was discussion between you and
5 Mr Mactaggart about the matter?---And he in fact brought a
6 disk, if I remember rightly, of the recorded message -
7 recorded telephone call and he and I listened to it
8 together and discussed it after that.

9
10 Right. Did Mr Mactaggart produce a written opinion about
11 that matter, do you know?---I can't remember, sir.

12
13 Right?---My file is available to you if you would like it.
14 I have not refreshed my recollection of it recently.

15
16 Can I take you to the - sorry, is that still a view that
17 you would hold?---Yes.

18
19 Yes, all right. Can I take you to the next paragraph:

20
 As discussed in my meeting with yourself and
 Mr Warwick -

21 and I want you to assume that that's a member of the staff
22 of this Commission -

23
 of 19 May 2006, the director is of the view, and I
 agree with that, this is in an instance an
 alternative to prosecution which would provide an
 appropriate recourse for the Commission, namely a
 complaint to the Legal Practice Board -

24 and then there's, in effect, a form of reason provided in
25 the sentences that follow or in the sentence that follows.
26 It then says:

27
 The director took the view that consistent with
 advice he had given in other instances of people
 making threats to enforce a demand, that it was more
 appropriate that the matter be referred to another
 tribunal for the person to be dealt with than tried
 before a jury -

28 and I think you have had an opportunity to read the rest of
29 that letter?---I have, sir.

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41 24/10/07

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(Closed Court)

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2/4/sjr

1 Five lines from the bottom there is a sentence that starts:
2

Mr Cock was of the view that the sanctions open to the Legal Practice Board would include a fine of greater proportions than that which would be imposed by a District Court judge or being struck off the roll of practitioners, particularly when complaints had been made against Mr Quigley before and found to have been established.

3 Mr Cock, is that portion of the letter, that is the second
4 paragraph, also in accordance with your recollection?---I
5 don't take responsibility for the grammatical errors, but
6 it reflects my view.
7

8 Right. Does it still reflect your view?---Yes.
9

10 All right. Mr Cock, whether or not that is ultimately to
11 be an issue I think I will leave for the time being, if I
12 may, but I think I should say to you, given that you have
13 been retained for this private hearing, that that may be an
14 issue?---Certainly.
15

16 Right. A second matter is the letter of 10 October 2007
17 from Mr Mactaggart to myself. Mr Cock, I handed this
18 letter to you during the break I think. Have you had an
19 opportunity to read it?---I have.
20

21 Yes. I understood from the comment you made when I handed
22 you the letter that this is not a letter you had previously
23 seen?---That's correct.
24

25 May we take it that it's the errant actions of an officer
26 that doesn't reflect the views of your commission?---Yes.
27

28 **THE ACTING COMMISSIONER:** His office?
29

30 **GORMLY, MR:** His office.
31

32 **THE ACTING COMMISSIONER:** You said his commission.
33

34 **GORMLY, MR:** I'm sorry, the - of course, of your office,
35 and doesn't reflect your views either?---No, it does not.
36

37 All right?---It's diametrically opposed to my view.
38

39 All right. I won't trouble you any further with it?
40 ---Thank you. It was never discussed with me, authorised
41 by me or written on my behalf and I'm embarrassed to see
42 it.
43

44 Yes. Mr Cock, I won't trouble you further with the matter.
45 It's an assumption that I had made that it needed to be
46 raised with you?---Thank you.
47

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COCK, R.E. XN

4

50 4.31

(Closed Court)

2/5/sjr

1 The last matter concerns a question of any approach made to
2 you in your capacity as director of the office, director of
3 public prosecutions, by Mr John Quigley concerning the
4 grant of immunity to the undercover officer that was used
5 by the West Australian Police during the course of the
6 Mallard investigation and in particular during the days
7 from 14 to 16 June 1994 inclusive. Firstly, can you tell
8 us, did Mr Quigley approach you about that issue?---Yes, he
9 did.

10
11 Secondly, can you tell me do you know the name of the
12 undercover officer involved, just a yes or no?---I don't
13 think I do. I think I may know the Christian name, but it
14 may not even be his real name.

15
16 All right, then I will use his name. His name for these
17 purposes has already been suppressed by the Commissioner on
18 a prior occasion so I use it for the purposes of
19 identification on the basis that the Commissioner's prior
20 direction would apply. Do you recognise the name 'Gary'?--
21 -I do.

22
23 Is that the person that Mr Quigley approached you about?
24 ---Yes it is.

25
26 Yes. Do you recall roughly when Mr Quigley approached
27 you?---I accept it was some time in 2004, but I must say I
28 - it would have been the lead up to the appeal, which was
29 started I think in June, so April or May of 2004.

30
31 Right. On how many occasions were there discussions
32 between you and he about that matter?---I think he may have
33 even come to my office about it actually. There may have
34 been a telephone call. There may have been a couple of
35 occasions.

36
37 All right, so possibly one face to face and others by
38 telephone?---I think so.

39
40 Did he outline the circumstances?---Yes, he did.

41
42 Did he make it clear that - I withdraw that. Are you able
43 to tell us what it was that Mr Quigley was seeking from you
44 exactly?---He felt that on the basis of information he
45 gleaned, presumably from his client, that this undercover
46 officer had been involved in criminal conduct and supplying
47 his client with cannabis and he felt that the officer would
48 not be prepared to admit that without an indemnity.

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57 24/10/07

COCK, R.E. XN
(Closed Court)

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1 Right, and Mr Quigley was seeking that indemnity, was he?
2 ---He was.

3
4 Can you tell us what you said to Mr Quigley in response to
5 that request?---I must confess I have no clear recollection
6 of progressing it, and I don't think it was progressed.
7 I'm afraid I haven't got a clear recollection. I have a -
8 I think I would have done something, which is my normal
9 approach in these areas, albeit to say that my normal
10 process would be for the officer to submit - under an
11 undertaking not to be prosecuted - to give evidence, that I
12 would evaluate what he says and if I feel that what he says
13 has weight I would then give him an indemnity; but I would
14 not give an indemnity without first having some information
15 as to what he would say.

16
17 All right. I take it that process did not occur - - -?
18 ---No, it didn't occur.

19
20 - - - judging from what you're saying?---No.

21
22 All right. Did you refuse an indemnity when you spoke to
23 Mr Quigley?---I would - I certainly would have done. I
24 would never - yeah, I can say with certainty I would never
25 have offered an indemnity without having a process by which
26 pursuant to an undertaking not to use the evidence the
27 witness actually says what they're involvement is.
28 Otherwise, you give an indemnity with not knowing what
29 precisely you're indemnifying and that can cause problems,
30 and I've never done it ever.

31
32 Right, but when you spoke to Mr Quigley and he was seeking
33 it, did you at any stage give an indication for example
34 that no matter what, this was not a situation where you
35 would grant an indemnity?---I think it would be very
36 unlikely.

37
38 That you would have done that?---Mm.

39
40 All right. So that you were open to it but you needed the
41 material?---Absolutely.

42
43 Right?---And I think his response was he - the fellow
44 wouldn't talk to him or wouldn't give him the information
45 he was wanting. He saw it as a catch 22, I think.

46
47 Is that where it came to an end or was there some other
48 event after that?---That's - that's - that's the end of it
49 so far as I recall. I don't recall it - having any further
50 discussion with Mr Quigley about it ever again.

51
52 Right?---And I certainly don't recall anyone else raising
53 it with me.

3/7/glj

1 Did Mr Quigley seek an indemnity in relation to any other
2 person from you?---No, not - - -

3
4 Or raise it with you?---I don't remember. I certainly
5 don't think so.

6
7 Did Mr Quigley make any reference to the father of the
8 undercover officer?---I got the impression that he was
9 using the father as a leverage to get the undercover
10 officer - the father was also a policeman or a retired
11 policeman apparently and I think Mr Quigley was using the
12 father as - as a conduit to get to the son, but I don't
13 recall any more than that.

14
15 Do you recall what Mr Quigley said about the father?---I
16 think he was saying that the father was a man of
17 considerable respect, who would be disappointed if his son
18 had been involved in something dishonest and that that
19 would - that would be a dynamic in - in the family that
20 might be preventing the son from making a confession about
21 supplying Mr Mallard with cannabis.

22
23 Commissioner, I have no further questions for Mr Cock.

24
25 **THE ACTING COMMISSIONER:** Yes, thank you. Just one thing.
26 In the first letter that you were referred to, the 2006
27 letter about referring the complaint about Mr Quigley to
28 the Legal Practice Board or whatever it's called, on page 2
29 you say:

30
The complaint in this instance would be made by the
former undercover operative himself.

31 Do you see at page 2 - - -?---Yes, I did notice that; yes.

32
33 That would create a bit of a problem, wouldn't it?---I
34 imagine so.

35
36 One of the - this is all about disclosure of the identity
37 of the undercover officer?---Would very much defeat the
38 whole purpose of the exercise.

39
40 No doubt you might consider that further, if occasion
41 arises?---Mm.

42
43 All right, does that conclude the examination?

44
45 **GORMLY, MR:** Commissioner, I'm just wondering if it might
46 not be better to just take the extra few minutes to ask
47 Mr Cock to elucidate his reasons for adopting the view that
48 the matter could be referred to the Legal Practice Board.

49
50 **THE ACTING COMMISSIONER:** He has done that in the letter,
51 hasn't he?

52

53

54 24/10/07

COCK, R.E. XN
(Closed Court)

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3/8/glj

1 **GORMLY, MR:** Mr Mactaggart has done it. Perhaps I should
2 ask the question whether they reflect his views.

3

4 **THE ACTING COMMISSIONER:** It says Mr Cock agrees with it.

5

6 **GORMLY, MR:** Yes.

7

8 **THE ACTING COMMISSIONER:** Does that letter set out your
9 reasons for agreeing with Mr Mactaggart's suggestion for
10 referring it to the Legal Practice Board rather than the
11 District Court?---It doesn't fully reflect my view.

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57 24/10/07

COCK, R.E. XN
(Closed Court)

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4/9/sjr

1 All right, well would you like to add to it?---I would.

2
3 Yes?---I felt that there would be considerable community
4 concern if my office was involved in prosecuting John
5 Quigley for a criminal offence that arose out of what
6 appeared to me to be a bona fide attempt, although perhaps
7 illegal, to get information to assist his client Andrew
8 Mallard. I felt that that would be a difficult matter for
9 us to manage. I also felt that associated with that there
10 was a public interest consideration aside from the
11 difficulty my office would have of prosecuting a lawyer for
12 conduct arising out of an overzealous attempt by him to act
13 in the interests of his client. It was that latter thought
14 that compelled me to the view that because it arose out of
15 his legal conduct and but for his role as a practitioner he
16 would not have engaged in it, I felt that the appropriate
17 body was the Legal Practice Board. Those are the slightly
18 wider considerations upon which I reflected before I agreed
19 that the appropriate response was to give it to the Legal
20 Practice Board and have them assess it and give it what
21 weight they felt appropriate.

22
23 Thank you. Yes.

24
25 **GORMLY, MR:** I have nothing further, Commissioner.

26
27 **THE ACTING COMMISSIONER:** All right. Thank you.

28
29 Mr Cock, that concludes this private examination. I
30 understand that you may be required further in relation to
31 the Mr Quigley matter at a public hearing?---Certainly,
32 sir.

33
34 You will be notified. If you are, it will be next week,
35 probably Tuesday or Wednesday, but in the meantime I want
36 to say something about nondisclosure of matters arising at
37 a private hearing. This examination is a restricted matter
38 subject to the disclosure and nondisclosure provisions of
39 the Corruption and Crime Commission Act. Subject to any
40 further direction pursuant to section 151(4) of the act
41 that the Commission might give I direct that the evidence
42 given by Mr Cock at this examination, the contents of any
43 statement or information, document, or a description of
44 anything produced to the Commission at this examination,
45 the contents of any document or a description of anything
46 seized under the Corruption and Crime Commission Act 2003
47 and/or any information that might enable - no, sorry, that
48 any of those matters must not be disclosed. "Disclosed"
49 means publish in any way or divulge or communicate to any
50 person in any way. A disclosure of restricted matter is an
51 offence punishable under the provisions of the act and this
52 direction does not preclude the witness speaking with any
53 legal representative he may have or subsequently obtain
54 about these matters for the purposes of instruction and
55 advice. The effect of that, as you will appreciate, is

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COCK, R.E. XN
(Closed Court)

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58 4.41

4/10/sjr

1 that you mustn't discuss with anyone or divulge to anyone
2 either the fact that you have been here for this private
3 examination or what you have been asked - or the answers
4 that you have then given. I draw your attention to the
5 fact that it also means in the context of your evidence
6 that you can't discuss either of these letters or the
7 contents thereof or the subject matter of them with
8 Mr Mactaggart?---Certainly, sir.

9
10 Even though you might want to first thing in the morning,
11 but there probably will come a time when I will authorise
12 the release of that information. If I don't, you remind
13 me?---I will, sir. Thank you very much.

14
15 All right, I will adjourn now until - what did I say,
16 2 o'clock next Monday.

17
18 AT 4.46 PM THE MATTER WAS ADJOURNED ACCORDINGLY
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