

**ICAC**

**OPEN HEARING**

BEFORE THE HON. BRUCE LANDER QC  
INDEPENDENT COMMISSIONER AGAINST CORRUPTION

MR. M. RICHES Counsel Assisting

Courtroom 3  
Level 7, Riverside Centre Building  
North Terrace, Adelaide

**MONDAY, 28 APRIL 2015 at 11:39am**

**Witness:**

GRANT, MICHAEL, Acting Police Ombudsman SA

**THE COMMISSIONER:**

Good morning, Mr. Grant.

**MR. GRANT:**

Good morning, sir.

**THE COMMISSIONER:**

Thank you very much for coming today. I've had the opportunity of reading your submission but I'll be glad to hear of anything you wish to say.

**MR. GRANT:**

Thank you. Thank you, Commissioner. I intend, sir, to make my oral submissions in the same order as the written ones under the same headings.

**THE COMMISSIONER:**

Thank you.

**MR. GRANT:**

And the first one that was placed on the website as the subject of your inquiry was, are there too many agencies.

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

As I say in my written submissions there should be only one agency, that being the Office for Public Integrity. But, I – I have of course heard what the Commissioner of Police had to say and I do support the notion which came out of the discussion you had, Commissioner, with the Commissioner of Police that a matter which is managerial in essence, should be sent without

any assessment from the OPI to the Commissioner of Police for action or directly to the Commissioner of Police. I'd include minor complaints as well, but I will – perhaps I could enlarge on that at a later time, sir, when you –

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

– and discuss that in more detail. The second point to be addressed was, what role should each agency play with respect to the oversight and management of the police.

I propose that the Commissioner of Police would have the oversight of the investigation, not only of managerial complaints but also of minor complaints. This oversight would be subject to audit from the overseeing agency whichever – whatever that form it does take, which of itself would leave no footprint if the – if an audit is done. And that – this leads on – on to the way in which certain conduct is categorised and to the definition of what is managerial and what is minor. And on to the next topic which is, should there be a reconsideration of the manner in which alleged inappropriate conduct is categorised; should the role of the oversight agency depend on that categorisation.

As I set out in my written submissions, sir, if the conduct is such as to require managerial intervention only, and not formal disciplinary proceedings it should be treated differently from other types of conduct. This is the type of conduct that should be sent direct from the OPI to the Commissioner or direct to the Commissioner for him or her to assess and deal with. The benefit of this would be as the Commissioner of Police adverted to in his appearance here last week, timely action on his part to provide managerial correction and guidance which – which was a source of frustration for the Commissioner from the evidence he gave.

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

A second type of conduct and – and separate from managerial is alleged conduct that potentially does require more formal disciplinary proceedings. In the United Kingdom such conduct is sent for local resolution by a police authority and in deciding whether it can be resolved locally, two questions – two basic questions are posed: First, would the conduct, even if it could be proved, justify criminal proceedings? If no, then would the conduct, even if it could be proved, be likely to warrant dismissal, requirement to retire or resign, demotion in rank or the imposition of a fine? If the answer is no to those questions, then the conduct may be classified as minor and – and be sent to the Commissioner of Police for early resolution. In a similar way to conduct requiring only managerial action and without the oversight of the overseeing agency, that is other than the random audit to keep tabs on what's happening. The difference between managerial and minor is that I would envisage that a member of the public, if dissatisfied with the outcome of a minor complaint, would be afforded the right of review by the overseeing agency. If the member of the public was dissatisfied with the agency's response there would be no further review. Apart, of course, from the normal remedy of the judicial review of administrative action.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

That leaves the third category of conduct, not managerial and not minor. I envisage that the investigation of this type of alleged conduct would be overseen from the beginning by the overseeing agency, along with a subsequent assessment and – and recommendation of any action to be taken.

**THE COMMISSIONER:**

That – in an audit fashion?

**MR. GRANT:**

I would – I would have it – I would see it as being more specific and more targeted than the audit, that if it's other than minor, that a track is kept of it from the very beginning and the agency later became involved in the assessment along – following the investigation.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

The next topic, sir, was, how can the police complaint system be made more efficient. The existing Act really invites delay and confusion. Because of the Act the Police Ombudsman is not truly independent, his or her assessment and recommendations can be resisted by the Commissioner of Police. A Minister may intervene in the case of disagreement cannot be resolved. The proceedings whereby disciplinary sanctions can be applied are unwieldy and unsatisfactory and they don't permit the Commissioner of Police the flexibility that the Commissioner needs to – to manage the Police Force. In my submission, sir, the solution is to repeal the Act in its entirety, start again and I add that this of course would mean the abolition of the Office of the Police Ombudsman. I would suggest however, that there still should be an office that has a – has an oversight body, if not – not the same as the Police Ombudsman but at least similar to it, if not in name, then at least in function.

**THE COMMISSIONER:**

And dedicated to police complaints?

**MR. GRANT:**

And dedicated to police complaints.

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

As I – in my written submissions I envisaged that the equivalent of the Police Ombudsman by whatever name thought appropriate would fit under the general umbrella of the ICAC and ultimately be subject to the oversight and direction of the ICAC where necessary. Similar to the Office for Public Integrity, would have a separate function to the ICAC but still be subject to oversight and direction when deemed necessary by the ICAC.

**THE COMMISSIONER:**

Mm.

**MR. GRANT:**

I note the comments of the Commissioner of Police, sir, when he appeared here last week that the Office of the Police Ombudsman is vitally important, that the Police Ombudsman is familiar with the Police Force and its operations. In my view, the point made by the Commissioner of Police is an important one. It's highly desirable that the office which will assess and recommend action with regard to alleged police misconduct, falling short of corruption, that is, has a sound professional and respectful working relationship with the police and a thorough knowledge of the conditions – conditions under which police operate. At the same time that office must walk the sometimes very fine line between a working mutually respectful and professional relationship and one that's too close and too familiar. The current system, in my view, doesn't tend to enhance that professional and mutually respectful distance between the police and the Police Ombudsman.

The next item, sir, is the question posed: What role should an oversight agency have in the making of findings about police conduct and the imposition of penalty? The replacement Act should not provide for the current level of police involvement in the findings and

recommendations stage or the disciplinary proceedings stage. That is for conduct other than managerial or minor.

There is a – a lack of independence of the Police Ombudsman under the current system. I don't doubt that the South Australian Police deserve the good reputation that they have. But it's in their best interests and the best interests of the public that the system is seen to be as independent from them as it reasonably can be. This is not to say that the police should not investigate. I wholeheartedly support the comments of the Commissioner of Police in that regard for two principal reasons. The South Australian Police has a reputation second to none in Australia, and I have absolute confidence in the investigators of the Internal Investigation Section. In my experience, they are skilled, highly professional investigators of undoubted integrity and in my experience over many years, if anything, police investigators, when investigating their own for serious misconduct or crime are tougher on the police than they are on the general public. And SAPOL has demonstrated over many years its commitment to detecting corrupt officers and arresting and charging them. The second point is that good investigators are very hard to find. Perhaps you can be called an investigator after doing a five-week course somewhere. But that doesn't make you an investigator. In my experience, the best investigators are to be found in the ranks of the Police Force. And the cost of recruiting expert investigators, who would inevitably be drawn from the ranks of police forces and then maintain their training and salaries and conditions would be prohibitive.

Now to return to the features of the present Act which I see as negatives, the police are – I use the word encouraged, by the present Act to disagree with findings and recommendations of the oversight agency. This does lead to really what is a partisan debate and a type of horse trading which is not desirable. The total control of the disciplinary functions is, is – belongs to the Commissioner of Police. The Commissioner of Police may choose to ignore recommendations from the Police Disciplinary Tribunal and there's no appeal from the sanction that is imposed, except by the police officer concerned. Some sanctions imposed, in my view, don't adequately reflect the conduct proven or admitted.

How can the existing system be made more simple? I want to address now the prosecution of disciplinary proceedings and the body that hears those proceedings which certainly engaged the Police Association and they have very strong views on that. Under the current system, the Commissioner of Police cannot even issue a reprimand to a police officer unless that police officer has been formally charged with a breach of discipline and appears before the Police Disciplinary Tribunal. This doesn't encourage the timely resolution of complaints or allow the Commissioner to take timely managerial action and I note a comment from Mr. Scheffler in that regard. And I thought it was a – one that was worth noting. When – when he made comments about the current system he said, well, managerial advice – that has no impact on the member. And that seems to me to be one of the problems with this minor misconduct system and the way one can, certainly can avoid the Tribunal if you admit the facts or ask for the police to – the Police Commissioner to deal with it. But the sanctions, or disciplinary sanctions, are – are quite, are very, very mild. And as I said, don't even allow the Commissioner of Police to reprimand someone for misbehaviour. Now when someone does go before the Police Disciplinary Tribunal, proceedings in the nature of a criminal trial must follow if they are going to contest the charge, no matter how trivial it might be. Barristers are briefed by the Police Association, for the benefit of their members, and I don't criticise that. The rules of evidence apply. The procedure adopted must mirror those – as required by the Act – but the procedures must mirror those of a criminal trial in the Magistrate's Court. In my view this should change. Adversarial proceedings for managerial and minor matters should be abolished by a new Act. The Commissioner or his delegate should be given the power in informal proceedings to hear and determine managerial and minor matters where the only sanctions that can be imposed fall short of sanctions such as dismissal, reduction in rank and so forth. But warrant a reprimand or counselling or training courses and so on.

If an appeal is provided it should be made clear that it is not an appeal de novo but – but by way of review to the SACAT in its review jurisdiction. In that regard, sir, I note that the Commissioner of Police in his appearance before you last week agreed with your suggestion

that there should be a delineation between a disciplinary tribunal and a more informal forum. The Commissioner said that there was a need to reduce what he termed legality and the black and white and to take out the adversarial. Similarly Commissioner you posed the question to the Commissioner of Police if it could never rise above the managerial would you support a system where neither side appears before a formal hearing? And the Commissioner responded that that proposal had merit. He agreed with you that it would take a considerable number of matters away from formal disciplinary proceedings.

I address now further, more serious matters – I've been really addressing minor misconduct and managerial issues – of how they should be heard and determined and – and who should – who should be the one to apply a sanction. Now, I've made it clear what my view is of the integrity of the South Australian Police Force and its good standing and its reputation, but the police aren't a special case when it comes disciplinary proceedings. In my opinion, there is no good reason why disciplinary proceedings against the police should be conducted as if they were a criminal trial. The police are unique in this regard, in my experience of disciplinary proceedings. Similarly, there is no good reason why the rules of evidence should apply in police disciplinary matters. Instead, and in my view the Tribunal should inform itself as it sees fit and be governed only by the requirement that it act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. Now, Commissioner, you would certainly recognise that recital. It's a – it's standard for disciplinary proceedings in the state –

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

– and in the country as a whole.

Now, I've given as an example a tribunal set up to hear disciplinary proceedings against health

practitioners. And “health practitioner” is defined in the – in the relevant Act; it’s the Health Practitioner Regulation National Law (South Australia) Act 2010. “Health practitioner” includes chiropractic, dental, dental therapist, dental hygienist, medical, that is surgeons, general practitioners, all forms of doctors, medical radiation practice, nursing and midwifery, occupational therapy, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology. Very very broad range of professionals.

That – the Tribunal set under – set up under that Act is not bound by the rules of evidence and can inform itself as it sees fit and acts according to equity and good conscience and so forth and the substantial merits of the case. That Tribunal, not being bound by the rules of evidence and acting according to equity and good conscience, can impose significant and severe sanctions for offending behaviour, which is classified in ascending seriousness. Unsatisfactory professional performance, unprofessional conduct, professional misconduct. Now in making a finding the Tribunal may, in ascending order of seriousness, caution or reprimand, impose a condition on practise, impose a fine not exceeding \$30,000, suspend the right to practise for a period of time, or cancel the practitioner’s registration, in other words, strike off the practitioner.

Now that last amounts to professional death. And that sanction may be imposed after facts are found proved on the balance of probabilities, without following the procedures of a criminal trial and without being governed by the rules of evidence. In my submission, sir, if surgeons of all kinds, medical specialists, general practitioners, nurses, midwives, dentists and psychologists, to name a few health practitioners, can be seen as rightly being subjected by the Parliament to disciplinary proceedings in that form then, in my view, so can the police.

The Tribunal under that – the Health Practitioner Regulation National Law, is constituted by a president who must be an experienced legal practitioner or – of at least seven years standing – or a Magistrate appointed by the Governor. He or she will sit with panel members appointed by the Governor. At least two panel members must be a member of the same profession as

the respondent to the proceedings and one other, who will not be a health practitioner, and that – a lay member, in other words. I suggest a similar type of tribunal would be appropriate to hear and determine police disciplinary matters. Set up under the South Australian Civil – the SACAT system. In its original jurisdiction it would consist of a senior member of SACAT along with a member of the Police Force appointed to SACAT as an assessor under the Act and a lay member assessor. The Tribunal would impose the disciplinary sanction, not the Commissioner of Police. An application for a review of any decision would be brought to the SACAT in its review jurisdiction and that reviewing tribunal would be chaired by the president, who would be a Supreme Court judge or by a deputy president who would be a District Court judge.

Now I move on to the issue of the prosecution of proceedings in disciplinary matters. Under the system I envisage the police would not be permitted to appear to prosecute proceedings in the original jurisdiction or in the review jurisdiction. By definition – by definition of course the proceedings before the Tribunal would be neither managerial nor minor; they would be relatively serious. The perception – and I am referring only to a perception – that police may not be prosecuting with the vigour they should be, should be avoided. The perception also of a conflict should be avoided. Those who appear should be independent of the police, for example, the DPP or the Crown Solicitor. Apart from anything else it must be an unpleasant task for a police officer to appear to prosecute another. That's one issue. But the important matter is that of public perception. In a recent case, and I won't – I don't intend to go in any detail, I recommended that police not appear to prosecute what I viewed as an instance of alleged serious misconduct. It has been conveyed to me that this will be resisted primarily but not only on the basis of the perceived cost. The Crown Solicitor for example would bill for its services. In reality that's a situation of bookkeeping entries with no real money exchanging hands between two crown agencies. I remain convinced that police should under any new system not be permitted to appear before a disciplinary tribunal as prosecutors.

I turn finally now, sir, to the purpose of disciplinary proceedings. The purpose of disciplinary

proceedings is not to punish. The purpose of disciplinary proceedings are twofold: One is the protection of the public; two, is the protection of the relevant profession or calling, that is, the Police Force itself. Now, I note in that regard comments made by Mr. Carroll, and I say with respect that the comment is misconceived. When talking about disciplinary proceedings he portrayed it as a – a matter of – an industrial matter, a matter between an employer and employee and it's really no such thing. It's a matter of the proceedings being brought for the protection of the public and for the protection of the relevant profession. In my view the system set up for the health practitioners reflects that principle. The current setup for police disciplinary proceedings does not reflect that principle. As an example, sir, the current Act refers to a police officer being guilty of a breach. And it refers to the Commissioner imposing punishment for a breach. In my opinion, this encourages the wrong focus. The focus should not be on the punishment of an individual but primarily on the protection of the public and the profession of policing itself. The question therefore is not what punishment fits the crime. It is rather, what steps should be taken to best protect the public and to protect the integrity of the policing profession. So it's not – the purpose is not – well, the focus is not what it should be. It's not an employer/employee relationship. It's not industrial.

Another comment made by the – by Mr. Carroll which I thought was worthy of comment: he commented that before the Police Disciplinary Tribunal, you don't get proceedings that are duplicitous, that is, he said, arising out of the same set of circumstances. Now that, in my view, is undoubtedly the language of criminal proceedings. It's not unusual, and I think this is one of the difficulties with the prosecution, the laying of charges and indeed the hearing of charges in the Police Disciplinary Tribunal, the proceedings have got this criminal influence – criminal proceedings influence. So if, for example, one was dealing with police conduct – I will just take that as a hypothetical – where the police officer is said to do one, two, three or four things that are said to be improper. The police officer abducts someone in the police car, the police officer throws their phone away, throws their wallet away, the police officer strikes someone. Now in criminal proceedings you have to break those down into four separate charges and prove them beyond reasonable doubt unless you could say they were all part of

the one course of conduct. In disciplinary proceedings there is no reason why – and it occurs commonly, indeed there's a – a recent full court judgment which illustrates the point – that you can allege one complaint about a course of conduct and particularise it, nail your colours to the mast and particularise it, and then the fact finder will decide, of that course of conduct alleged, which is made out and which is not. There's no need to break down – break them down into separate charges and I suspect – I suspect that if that point was taken before the Police Disciplinary Tribunal, it would probably succeed, that you can't lead conduct that's not charged. And my, my – my response would be, yes you can, particularly if it's part of the same course of conduct.

The focus on, on punishment, in my view is accompanied by a further focus – and this was very clear from the Police Association's submissions, and again I do not criticise them for it – but it's accompanied by a further focus on the rights and wellbeing of individual police officers who might be charged with a breach of regulations. Hence the requirement for the rules of evidence. Hence the requirement that criminal trial procedures be followed. Indeed, I didn't research this, sir, but it's my memory that until around 1998, the requirement was that those disciplinary matters be proved to the criminal standard of beyond reasonable doubt. But that – that was amended from my recollection. In my view, that is proof of the focus of that part of the Act, which is on the rights of individual police officers, as if he or she was a defendant in the criminal justice system.

Now, Mrs. Wilson's evidence – Julie Wilson's evidence last week, as regards her experience of being excluded from the Tribunal's proceedings, in my view, was illustrative of an incorrect focus. The Tribunal had a discretion to permit Mrs. Wilson to remain. Instead, following objections from those representing the police officers concerned, the Tribunal decided to exclude her from the hearing. In her evidence she described the hostility to her that she detected. In my opinion, this regrettable event illustrates a misguided focus on the perceived rights and needs of persons before the Tribunal and a failure to appreciate the true nature of the proceedings. It's time now in my view to focus on the purpose of disciplinary proceedings

against police officers, the protection of the public and the protection of the policing profession.

Now as regards the Police Association submissions, by its very nature, the Association will be concerned with the rights and privileges of its members. Now that's not a criticism on my part. That's its job. But this means it has a blind spot. There is a danger that they will not see very far past that role of protecting its members. In my view, PASA should appreciate that the Commissioner is to a large extent hamstrung when it comes to dealing quickly and efficiently with managerial and minor issues. Such issues can be the subject of protracted litigation before the Police Disciplinary Tribunal or proceedings with all of the trappings of a criminal trial. This is not of benefit to police officers or to the Police Force. The system in many ways is an anachronism. The Police Force, while it's a disciplined body, no longer operates in the 1950s. It's highly professional, it's well organised. Its management is highly qualified to manage. Its members should be accountable for their conduct in the same way, sir, that other callings and professions are, in the same way as nurses, doctors, psychologists, chiropractors who work under their own unique pressures and stresses just as members of the Police Force do. So to sum up, we are generally well served in this state by a Police Force with a reputation second to none. But the system of investigating police complaints and then dealing with the resulting disciplinary action is flawed. It takes too long, and it invites the public perception that it's not independent. A highly professional Police Force will welcome scrutiny, as the Commissioner of Police does. It will work on the impartial assessment of complaints and the impartial imposing of disciplinary sanctions. In my view the price of a good Police Force, as ours is, is vigilance and rigour to make sure that it stays that way. Commissioner, those are my oral submissions.

**THE COMMISSIONER:**

Thank you very much. At the present time you would agree I think that the process takes far too long.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Is that caused in part by the obligations of reporting to your office and your office reporting to the police and backwards and forwards?

**MR. GRANT:**

Yes, it's – it's – one of the main delays seems to be the need to go into fine detail on relatively minor matters, the – then the number of complaints that deal with basically minor matters, the workload that the Internal Investigation Section had to get through them all, the need to, you know, follow the process set out in the Act is the main contributor to the delays. I don't want to sound to be whinging about the – the resources of the office but the Ombudsman's office is undermanned in that regard. And that – I suspect it's because – partly because its future isn't certain and there's not a willingness to put resources into it for that reason.

**THE COMMISSIONER:**

I think you were present – well, you were present when the Police Commissioner gave his evidence and when PASA presented today and you would have heard me put to Commissioner Burns and PASA that the oversight agency should have a direct access to the police computer system relating to police complaints. Would you see that as being of benefit to the oversight agency?

**MR. GRANT:**

Yes, I would.

**THE COMMISSIONER:**

Would that obviate the need for a lot of correspondence between SAPOL and the – and the Omb – and your office, if you had that right?

**MR. GRANT:**

Yes, it would.

**THE COMMISSIONER:**

Yeah. Which would speed up the process?

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Yes. And I also put to the Commissioner and PASA that perhaps the oversight agency would have the responsibility of auditing matters rather than the responsibility of dealing with each of them. Do you see any benefit in that?

**MR. GRANT:**

Of a, just a – yes – a general, just a, just an overview at random?

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

That would be of benefit, certainly.

**THE COMMISSIONER:**

Yeah. With a capacity to have access to the police systems without leaving a footprint.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Yeah. The next thing I suppose that needs to be explored, is where are those matters that are serious enough for investigation to take place where are those matters that are less serious that can be dealt with at a management level. Where is that level?

**MR. GRANT:**

That's –

**THE COMMISSIONER:**

Or demarcation, I suppose.

**MR. GRANT:**

That requires a lot of thought. I suppose the – that reference I made to the United Kingdom –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– Act where you pose the hypothetical: look, if the conduct could be proved, what would the sanction – what would the appropriate sanction be?

**THE COMMISSIONER:**

So you look at it in hindsight. If –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– if this couldn't lead to demotion or any –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– significant penalty, it's dealt with at – at a management level.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

Or a minor – or as a minor matter.

**THE COMMISSIONER:**

Yeah. That would mean you have to identify a particular type of conduct that could give rise to demotion, et cetera?

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

And would that be reserved, in your opinion, to serious misconduct?

**MR. GRANT:**

For – the sanction of demotion and so forth?

**THE COMMISSIONER:**

Yes. Yeah, yeah.

**MR. GRANT:**

Yes. Yes.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

Because if not, then – if there were really severe sanctions then it should go before a tribunal.

**THE COMMISSIONER:**

Yeah. Since you've been the Acting Ombudsman, and tell me if you don't think this is an appropriate question for you to answer, what has been the most significant frustration in your office, for you?

**MR. GRANT:**

One of the most significant frustration is the delay and the following the – the steps set out in the Act. On two occasions I've decided to use the power to conduct my own investigation, as a way of cutting through the time taken. And that's – I think that's going to work very well. There's probably a limited – limited instances in which you can do that. Sometimes you can cut through by getting someone to come in and asking them questions. And it's also proved very handy to get documents from agencies that previously refused them when asked to do so.

**THE COMMISSIONER:**

Okay.

**MR. GRANT:**

Making a formal inquiry gives certain powers for production of documents and that's been useful.

**THE COMMISSIONER:**

Historically, your office didn't investigate anything, I think.

**MR. GRANT:**

No.

**THE COMMISSIONER:**

Yeah. So, that would be a significant change in culture for your office?

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Yes. But do you think there are serious advantages in you being able to investigate matters?

**MR. GRANT:**

I think there are.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

In certain well-chosen instances where you can cut through and do things far more quickly than sending it out, you know, to go through the – the other type of system.

**THE COMMISSIONER:**

And if you had an audit role or if the oversight agency had an audit role I suppose it could do that for itself, it could decide which matters –

**MR. GRANT:**

Yes, you could.

**THE COMMISSIONER:**

– could be dealt with in that way.

**MR. GRANT:**

You could. Particularly, even more so if you had the – the resources such as investigators.

**THE COMMISSIONER:**

Yes. Is there a risk of the oversight agency becoming a captive of SAPOL?

**MR. GRANT:**

There's always that – there is always that risk. And there's another risk, sir, and that is that the – there are two risks. The oversight agency could become the captive of SAPOL over a period of time, but also the oversight agency can be – occasionally become the captive of the complainant –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– as well and become incapable of looking at a – a matter in a purely impartial way.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

But that's – that's human nature.

**THE COMMISSIONER:**

Yeah. I don't know if you've had sufficient time in the office to answer this, but in your experience so far, have you – have you determined whether complainants in the main want the matter to go to the sort of formal hearing that exists under the present system?

**MR. GRANT:**

I – the, the complainants, they don't necessarily want severe sanctions, in my – in my experience thus far. Usually it's an acknowledgement that something untoward has occurred. And that there's – there's some sort of resolution of it. One of the difficulties and the – well, one of the most unsatisfying – unsatisfactory thing for complainants – you may have an allegation made that something occurred, and yet the evidence won't bear it out or it's denied by the police who are said to be involved. And it might be one person's word against two or three other people. That's usually going to result in it being unresolved. That's something – that's a – a source of great dissatisfaction for complainants of course. That something ends up not being resolved at all and they feel they've been [inaudible].

**THE COMMISSIONER:**

That's almost impossible to address, isn't it?

**MR. GRANT:**

It is.

**THE COMMISSIONER:**

Yeah, yeah. The – if the complainant considers that the evidence that has been adduced in

defence of the allegation is false, there's very little that you can do to make the complainant happy about it.

**MR. GRANT:**

Yes, that's right. They're never going to be happy in that, yeah.

**THE COMMISSIONER:**

No. And that's not obviated by having a tribunal hearing because the same result will arise.

**MR. GRANT:**

Yes. If it gets to – though, you know, there are cases of course where even though there's a denial, even from three police officers, that the circumstances might – there might be other circumstances which would point to the – to where the truth lies, that the complainant's version is the more probable one. My view would be that the Tribunal is better – a tribunal that is familiar with conducting disciplinary tribunals – is a better tribunal to get to deal with matters like that.

**THE COMMISSIONER:**

Yeah, yeah. In the last four years there have been only three matters that have gone to a final hearing, apparently, in the Tribunal. Do you know if your office has played any part in those matters?

**MR. GRANT:**

I don't know, sir. I'm not sure of the –

**THE COMMISSIONER:**

No.

**MR. GRANT:**

– not clear on the statistics.

**THE COMMISSIONER:**

No.

**MR. GRANT:**

Some – I'm just wondering whether some of those may have been ones, or how many of those might have been ones generated within the Police Force itself. By a complaint of one police officer against another police officer, such as sexual harassment or bullying and it's gone before the Tribunal which we would know very little about.

**THE COMMISSIONER:**

Yeah, yeah. Now you've suggested that the office which you are acting in at the moment ought to be dissolved and do you see that the Office for Public Integrity ought to assume that role?

**MR. GRANT:**

Well, not – whatever it – I say there should be an oversight agency –

**THE COMMISSIONER:**

Of course.

**MR. GRANT:**

– which deals directly with police complaints.

**THE COMMISSIONER:**

And dedicated to police.

**MR. GRANT:**

And dedicated to police.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

What, where, how that fits in, I – I would have seen it as separate from the OPI but under the same umbrella as the – as the ICAC.

**THE COMMISSIONER:**

Okay. At the moment a complainant can go to three different places to make a complaint about police.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

I – I put to the Commissioner and to PASA that perhaps all of the triaging should be done by police rather than the other two agencies, who could still receive reports. What do you think of that as a proposition?

**MR. GRANT:**

Well, the first thing about it, it would be highly efficient.

**THE COMMISSIONER:**

Mm.

**MR. GRANT:**

And if you're looking for efficiency only it would be the – the better way to go. The difficulty

may be public perception. The difficulty may be the reluctance on the part of the members of the public to go to the police in the first place. And it's hard to avoid the thought that you would need to have another agency that would take reports or complaints against the police. You would end up with at least two agencies, that being the Police Force itself, and the option of someone who doesn't want to go to the police, to go to the OPI.

**THE COMMISSIONER:**

Yeah. I think – I think there's a way around that. I think the public do need to be able to complain to an agency apart from SAPOL, because for the reasons you just mentioned, some people would not feel comfortable about going directly to SAPOL, but I wonder whether those complaints ought to be managed in a slightly different way, with less assessment done at the OPI level, but the initial assessment done by SAPOL –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– after reference back from OPI.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Do you think that would work?

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Yeah. That would be more efficient I think.

**MR. GRANT:**

That's – that's what I would envisage –

**THE COMMISSIONER:**

Yep.

**MR. GRANT:**

– that OPI would, while they'd receive the complaint, wouldn't have very much involvement –

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

– apart from – it should take, it should not involve a great deal of time to make an assessment as to the type of conduct –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– and where it would fit –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– and what sanction should be applied.

**THE COMMISSIONER:**

Yeah. Unless it – unless it was self-evidently corruption –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– send it to – send it to SAPOL.

**MR. GRANT:**

Or seri – yes, or seri – you know, a serious matter.

**THE COMMISSIONER:**

Yeah, yeah. Yeah. What percentage of your office's time is taken up in correspondence with agencies in relation to matters rather than considering complaints and investigations and the like? Are you able to tell me that? You may not know the answer.

**MR. GRANT:**

It would be hard to quantify, sir –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– but it – as I say it's a significant impact on time just to, you know, deal with other – just deal with correspondence from say OPI and from – from the ICAC. But that's something that in time will – in time will correct itself. There's a bit of a – there's a backlog at the moment but as an ongoing thing –

**THE COMMISSIONER:**

Is that reducing?

**MR. GRANT:**

I beg your pardon, sir?

**THE COMMISSIONER:**

Is that reducing, the backlog?

**MR. GRANT:**

It is, slowly.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

It's slowly.

**THE COMMISSIONER:**

Yeah. The present system rather assumes that SAPOL will carry out the investigation but that your office will make the assessment and recommendations.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Based upon assess – based upon the investigation. Do you see that as inefficient?

**MR. GRANT:**

I – it, it certainly would be more – more efficient if the police did the investigation and the assessment.

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

Whether that would be acceptable from the point of view of the public is another – is another question in my view because the police might make an assessment, I mean, I've seen assessments made by the police that I don't agree with –

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

– based on their assessment what weight can be attributed to certain matters and what weight can't.

**THE COMMISSIONER:**

But if the oversight agency had the – the power to overrule that assessment –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– that might satisfy –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– the public perception of –

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

– of independence.

**MR. GRANT:**

Provided there was a, you know –

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

– an examination, a proper consideration given to it and a weighing – weighing up process –

**THE COMMISSIONER:**

Yes.

**MR. GRANT:**

– rather than just a quick – quick look.

**THE COMMISSIONER:**

Yeah. Do you see some advantage in the Police Commissioner being able to deal with behavioural matters more quickly than presently?

**MR. GRANT:**

Yes, I do.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

Yes.

**THE COMMISSIONER:**

Do they – do those sort of matters take up a lot of your office's time?

**MR. GRANT:**

Yes, they do.

**THE COMMISSIONER:**

And they inevitably lead to a managerial outcome?

**MR. GRANT:**

A managerial outcome. And that's, you know – the way the system works, it might be, and it's fairly common for there to be a disagreement between the recommendations made by the Ombudsman and the Police Commissioner – or, mainly the Police Commissioner's delegates are involved, down to sergeant level – but one might quibble and say, well look, no, this doesn't warrant managerial guidance. This is something that should be a matter of formal discipline and so there should be a charge laid. At the end of the day you might spend 18 months doing that and by the time it gets through the Police Disciplinary Tribunal and a recommendation made, you might end up with the equivalent of managerial guidance.

**THE COMMISSIONER:**

Yeah.

**MR. GRANT:**

You know, an unrecorded reprimand or counselling or something like that so in the end you wonder under that system what's achieved.

**THE COMMISSIONER:**

Yes, yeah. I will if you permit me to speak to you again before I conclude this review to obtain further information from you and further advice from you, if you wouldn't mind.

**MR. GRANT:**

Certainly, Commissioner.

**THE COMMISSIONER:**

Thank you. Mr. Riches, do you have any questions of –

**MR. RICHES:**

No, thank you, Commissioner.

**THE COMMISSIONER:**

Mr. Grant, I'm very grateful for the submission you made and for you coming today. It has been very helpful.

**MR. GRANT:**

Thank you sir.

**THE COMMISSIONER:**

Mr. Riches, I think that concludes the public hearings?

**MR. RICHES:**

Yes, Commissioner.

**THE COMMISSIONER:**

As I mentioned to PASA this morning, and Mr. Grant, and to the Commissioner, I will continue to speak to people who are interested in the outcome of this review and obtain further information from them and further advice from those who are interested so that I'm in a position to conclude on a system which is best served for the regulation of, or the oversight of complaints to – of police misconduct.

Thank you very much for your help, Mr. Riches.

Thank you.

**ADJOURNED 12:27pm**