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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

THURSDAY, 23 APRIL 2015 at 2:27pm

Witness:

VANSETTEN, PAUL, member of the public

THE COMMISSIONER:

Mr. Vansetten, would you just mind providing us with your full name. I don't want your address, just your name for the record, please.

MR. VANSETTEN:

Sure. Paul Evan Vansetten.

THE COMMISSIONER:

Thank you. And Mr. Vansetten you have provided me with a submission in relation to the review that I'm carrying out?

MR. VANSETTEN:

Yes, I did, sir.

THE COMMISSIONER:

Yes. And you asked to be able to speak to that?

MR. VANSETTEN:

Yes, I did.

THE COMMISSIONER:

Go ahead.

MR. VANSETTEN:

Go ahead?

THE COMMISSIONER:

Yes.

MR. VANSETTEN:

Yep. Thank you for this opportunity to raise my concerns and experiences when confiding with the Office of the Police Ombudsman. We are by default representative of the general public without the luxury of affording support for this inquiry. I am not familiar with legislation or components within, but we will attempt to raise our concerns nevertheless.

My wife and I have had the unfortunate experience of becoming involved with the justice system and in doing so discovered some anomalies within our Police Force that we thought would require the attention of some form of watchdog, and in this case the Police Ombudsman. The result of that has led us to pursuing the unachieved opportunities of a fair hearing, natural justice and/or subsequent appeal processes that demonstrate procedural fairness, good faith, honesty and rationality. The most prominent causation of this issue is that of the relationship between SAPOL and mentally ill offenders.

Our hope is that this hearing will effect change in the culture of the role of the Police Ombudsman and also reinstate some faith in the South Australian Police Force. Without a transparent, non-biased, fully autonomous watchdog the process of change, particularly a legislative aspect which, in turn, has the possibility to affect the culture of an agency it might oversee and the ability to have a fair hearing, has little chance of occurring. I have always had a concern, without risking the integrity of most police officers, of the issue of police investigating police. This has always – this always has potential to create an essence of bias and, in this instance, a lack of transparency and accountability. We are still of the mindset and hope that these issues could still have the propensity to be explored further in some form, in particular in realising – in the realisation of natural justice and the relationship between SAPOL and mentally ill prisoners in their custody and control and the culture related to that group in the community. And I realise this is not the forum for that.

As it currently stands, one could come to the conclusion that mentally ill people have control of their illnesses and should be denied fair and natural justice if they breach laws in the midst of

that illness. Our experience with the Police Ombudsman's service was confusing, frustrating and nothing but very disappointing and it has done nothing to give us any confidence in high-level matters that have potential to conceal, to cause significant concern and/or legislative change to SAPOL's investigative procedures and processes.

We had a situation where information was collected by police and was buried within the confines of SAPOL and not available for any legal issues that ensued. It was by mere persistence that I discovered this information, from which some police officers were disciplined and more investigated. And we still have this information and we believe that this information denied us the process of obtaining legal and natural justice. The investigation from the Police Ombudsman lasted for almost two years. And that was after the previously mentioned delay period of 18 months after an incident where the issue concerning mental health and duty of care was discovered.

THE COMMISSIONER:

Mr. Vansetten –

MR. VANSETTEN:

Yes, sire.

THE COMMISSIONER:

– it's up to you, but do you want to put in context how it was that you came into contact with SAPOL and the Police Ombudsman, the circumstances giving rise to that? You may not want to mention it.

MR. VANSETTEN:

Yeah. This information I discovered after 18 months was through a freedom of information application.

THE COMMISSIONER:

But, I was just – I was wondering whether you wanted to go back so that your contact with SAPOL could be understood. Are you – are you prepared to tell us how it is that you came into contact with SAPOL?

MR. VANSETTEN:

Sorry –

THE COMMISSIONER:

And then how it is you come into contact with the Police Ombudsman?

MR. VANSETTEN:

Yeah. Without going into too much detail, briefly, it was a family member involved who was suffering a mental illness at the time and had breached the law. And it was a major event. And we just were not happy with the treatment from SAPOL in regard to that mental illness situation.

THE COMMISSIONER:

And that family member was arrested?

MR. VANSETTEN:

Yes, sir.

THE COMMISSIONER:

And after his arrest, did you make a complaint about the way in which the police had conducted themselves?

MR. VANSETTEN:

Not after the arrest. I wasn't aware of – I had no factual evidence to back up my theory until I

obtained the FOI application, 18 months later.

THE COMMISSIONER:

So was your first contact with the Police Ombudsman 18 months after the family member was arrested?

MR. VANSETTEN:

Yes, sir.

THE COMMISSIONER:

And that was when you obtained information on an FOI application?

MR. VANSETTEN:

Yes.

THE COMMISSIONER:

And were you dissatisfied with the level of attention that you obtained from the Police Ombudsman after you made your complaint?

MR. VANSETTEN:

Initially, I went with the process. Getting further down the track I became concerned that allegations I had raised and evidence I had supplied was not either addressed at all or satisfactorily.

THE COMMISSIONER:

Thank you.

MR. VANSETTEN:

Various organisations – related organisations were involved, and including Internal Affairs or

the IIS. There was no – I had no understanding of their involvement, how they would complement the Police Ombudsman. I had no advice on procedure, what was to happen. And making contact with the Police Ombudsman's office was either by phone or email, and quite often lengthy delays in getting correspondence returned with asking for updates on where the case was up to. We had concerns with the legal process, that the outcome of our enquiries would have a bearing on legal matters which didn't happen because we didn't have the information available during the court process.

THE COMMISSIONER:

Yes. Yes, go ahead.

MR. VANSETTEN:

So – so my basic research led me to a piece of information in regard to the bias rule of natural justice. I am no legal expert, but I see the following as a point of interest for further discussion, raising the issue of a conflict of interest in the Police Commissioner's role in investigating fellow and subordinate police officers or the ability to override the decision of the Police Ombudsman's decision of guilt or innocence or subsequent disciplinary measures.

As lay members of the public, our observations and perception of this has occurred in this instance specifically to heed several unresolved issues I have raised with the Police Ombudsman. The bias rule that I have [inaudible] partially here demands that a decision maker should be disinterested or unbiased in the matter to be decided. Justice should not only be done, but seen to be done. If fair-minded people would reasonably apprehend or suspect the decision maker has prejudiced the matter, the rule is breached – often referred to as the reasonable apprehension of bias. So there seems to be some dissatisfaction with the Police Ombudsman's office. And it seems clear my concerns are related to that dissatisfaction. As I mentioned previously, four police officers were disciplined for their actions which go to identify and determine the seriousness and validity of the complaints I raised with the Police Ombudsman. One point in relation to that was a lengthy time frame of

investigations and several – investigations of several, and including senior, police officers in relation to evidence that we still have in our possession that showed lawful and factual references toward their illegal – alleged misconduct. Sorry, not illegal.

With this experience we sensed the feeling of not being valued or well informed, with many delays in the two separate investigations conducted by the Police Ombudsman. In our matter, without going into specifics of our personal situation, the delays experienced had the effect of both delaying and denying results that could be construed as very relevant for the legal process we experienced, and the denial of procedural fairness, natural justice, and that still exists today, those feelings. These delays also contributed to extremely high levels of anxiety for myself and my family members concerned. Many of the pertinent complaints were not addressed adequately, if at all. And through my own research, these matters were matters that pertained to Code of Conduct, the adherence to general orders, the noncompliance of procedures agreed to in the memorandum of understanding between emergency services, recommendations made by the Coroner in relation to deaths in custody and the subsequent and related parliamentary responses from the Police Commissioner. This includes the mental health and wellbeing of police prisoners, management custody orders and the transfer of relevant health information to the next agency.

I believe the police now have a programme, acronymed IMOST, of training which is a two-year programme that all police officers must do, and contains an element of looking after mentally ill prisoners. For example, the Adelaide Remand Centre requires that this prisoner information – requires this prisoner information to identify the health and wellbeing requirements of prisoners being transferred to that facility. In one report, the manager of the Remand Centre states that the Coroner – to the Coroner that unless this information regarding a prisoner is passed on by the transferring agency, in this case SAPOL, they will assume the prisoner has no issues.

I might add that the Police Ombudsman cited that the same police station concerned had been

before the Coroner's Court previously on similar matters. In this case the person who went to the Remand Centre had no medical history. Within 24 hours he was detained under the Mental Health Act for 8 days. And that should have been clearly avoided.

This did not occur in our situation, as I've just said, with very serious consequences. And that was the same issue identified as an influence in two deaths in custody in the Coroner's reports that I have read.

The issue of hidden evidence, denied to us by SAPOL and the undue hardship, financial burden in discovering and securing that evidence, we believe was critical to being present in a court of law to assist in being fairly and impartially tested for the benefit of both the defendant and the Prosecution and our right to pursue natural justice.

In the third paragraph of page 4 of the discussion paper it states that it is critical that there be in place an integrity system that is accessible, efficient, effective and simple. Our experience was anything but. I had to initiate communication with the Police Ombudsman's office due to lengthy periods of no contact for updates et cetera, and included no or lengthy delays in response time to some status update enquiries, as we previously discussed. I felt that I was becoming a pest in attempting to obtain relevant information for the matter at hand. In our view, the Police Ombudsman's integrity was tainted when evidence was dismissed as out of date and diminished when the evidence consisted of original audio, video, photographic and written documentation from SAPOL themselves. We are still in possession of that material. We sensed intimidation as we had to supply all of the evidence which I understand was my burden but it seemed that the Police Ombudsman's officers did not investigate the matter any further than they had to in relation to that material. Basically, we felt that if we didn't present it, it didn't exist.

I would like to add that recently, in relation to that, that I was part of a successful prosecution and conviction in regards to a separate matter whereby the incident was 30 years prior to any

police complaint being made and subsequent court action. In this case there was no physical evidence brought before the Courts. On that basis, I find it incomprehensible that factual video, audio and documentation – documented evidence, created by SAPOL which seemed to indicate blatant breaches of law, protocol and legislation was, I believe, to be disregarded or not fully examined to produce a satisfactory explanation as to why no further action was or could be administered. This also highlights the lack of procedural fairness and the denial of natural justice.

We believe that so many people involved in such a complex matter the investigational process of the matter was the only thing that was diminished, not the integrity of our evidence. There was nothing in our view that was accessible, efficient, effective and simple in our experiences. One issue that came to hand was the total lack of relationship or communication with the Police Ombudsman's office and relied purely on hard copy, email and limited phone communications. This we sensed created some distance in the relationship.

For instance, as the new or other relevant information came to hand it was a lengthy and cumbersome process to deliver that information to the investigator involved, if we knew which one from which department. And it was made seemingly clear that any correspondence is to be kept to an absolute minimum, even when information was sought by the complainant. Unfortunately, with all of the people involved in this enquiry not once was a face-to-face interview offered or done. This has the potential again to seem like we were not taken as seriously as expected given the nature of the complaints registered. This has the capacity to exclude extra and relevant information needed for the particular inquiry. Decisions were made with any – without any consult with us, including from the Commissioner, under what appears to be legislative privilege. I would imagine from these experiences that if this had of been a criminal matter or allegations presented by the police or prosecutor, not only would the evidence have been obtained fully and examined expediently and thoroughly, I am confident that I would not have conducted my business with the solicitors or the courts by phone or email alone. Attendance would have been of the utmost importance to discuss and evaluate many

details missed in written form only.

The involvement of various officers from Internal Affairs Branch during the investigation also made the process more confusing, with no explanation of their role and their association with my matter and how it was to complement the Office of the Police Ombudsman. In one telephone contact, for instance, the internal affairs officer conceded that the concerned police officers had the opportunity to collude their stories as they were all interviewed and able to discuss the process of questioning prior to the next interviewed police officer. This could raise a question of secure process of obtaining unsolicited evidence in – and investigating practices. We heard nothing more about that comment or any follow-up of that accusatory statement. Police statements supplied in relation to that matter seemed to confirm the theory of collusion even from a layperson's interpretation. But this seemed to be accepted without question by the Police Ombudsman's office.

It brings me to a point not raised in my submission but I think it's pertinent to the hearing, is why police officers are able to remove or cease all video recording during an incident. The incident was – they were engaged in – was a very high level and dangerous situation particularly for the officers concerned. I believe that it was mandatory to record all interaction between police and a potential offender, as stated by a police officer in one of the videos I have. This was also raised with the Police Ombudsman's office and yet is another issue which was not satisfactorily resolved. In that situation the video recorder operator was instructed, just seconds before the arrest, to move elsewhere. And within seconds of that instruction – sorry, move elsewhere just seconds prior to having an unknown and high-risk offender placed in custody. Within seconds of that instruction there were very suspicious and serious consequences to the offender's physical wellbeing. We have all seen the recent occurrences overseas and the consequences of video tapes of police in action. We are of the mind that if the video recorder operator was not ordered to relocate at that critical time of events, certain outcomes would have been very different even to the point of the necessity of attending this hearing. For the Police Ombudsman's office to maintain a high level of public

and professional integrity, particularly in the eyes of the public, these instances should have been further explored and followed by ethical and reasonable communication to the complainant, including avenues of legislative process. I would have been more comfortable if only one agency with one contact person was responsible for the entire process. I note the comment of a one-stop-shop and agree this would be much simpler to attempt to all communicate with rather than various agencies discussing various points of concern and duplicating written documents, receiving various interpretations from them – that of the other agency or from the agency that had not been attended to or discussed. My concerns were a multi-agency issue, so it made it all the more demanding.

I would think that any person making a complaint against police officers must be taken with the utmost seriousness and should include face-to-face service. It should not be relying on the ability of people being able to communicate well by written or oral skills they may or may not have or incur the expense of legal representation when formalising a complaint in such situations of extremely high anxiety, double-mindedness and the consequential impact of those involved, including more than one incident of police harassment. These reports also were not attended to by the Police Ombudsman.

In my case, I was an individual making a complaint against a very large organisation with almost unlimited legal and legislative resources and this point was very obvious on occasions. With these points mentioned above it seems clear that the Police Ombudsman's office is possibly unable to manage its workload or related complexity and for whatever reasons whether it be a lack of funding, personnel, or shortfalls in other resources, it needs fixing to address the complaints in the accessible, efficient, effective and simple manner. I say this without personal criticism for the agency mandate or for the individual officers within. The fact that many of the points raised with this office did not receive the attention required if any, and seemed not to be fully investigated given the serious nature of the alleged misconduct reported with the factual evidence and in our instance has affected and continues to affect the course of legal and natural justice and confidence.

My experience of this interaction – I now firmly believe there are too many departments, sections, personnel involved. In other words, too much duplication of the same service. Some of my concerns were raised with the other agencies based on varying allegations which created more than one investigation over the same issue. I would like to see a form of integration of these investigative sectors of these agencies to avoid relying on one outcome to support another enquiry -- in essence, a greater one-stop-shop for all related complaints. I also believe access to information relating to procedural methodology needs to be established by the investigating body for those who wish to lodge a complaint, including avenues of appeal and intervention of the Commissioner and Police Minister in the very early stages of the process not after legislative decision has been made and without any consultation to the complainant. Since applying the process would reduce the anxiety and confusion of consumers and assist in restoring more faith in the agency concerned and the overseeing body of that agency, including any risk of bias, lack of transparency, agency accountability and reducing the need to seek further avenues of resolution.

In our efforts to lodge some form of appeal we were directed to various authorities by the Police Ombudsman's office to no avail. And then felt we were sent on a wild goose chase with conflicting information or advice in our efforts to secure that accountability and natural justice which demonstrated a high level of unprofessionalism in our opinion. This includes being informed that criminal charges were to be laid, which was not followed through, and without sufficient explanation or consultation as to why this all did not occur, to attempting to identify any avenue of redress or appeal. I have been directed to the Attorney General's office, the District Court, the Supreme Court and finally and most recently I have been advised that the complainant has no avenue of redress whatsoever under the decision of the Police Ombudsman. I'm unsure of the fairness of this issue as I am still unclear which direction I should move to as all of the options were given in writing all this has achieved is a further delay in my determination and persistence in obtaining an outcome that represents unbiased accountability and fair justice. I note that an officer being investigated and possibly

disciplined does have an avenue for redress and I agree with that principle. I would also expect that the complainant should also have an avenue of redress when decisions are overridden without consult or reason.

As we are only one voice in this arena we feel like David in a David and Goliath system. That should not be the case when making complaints of such a serious nature with the possibility of equally serious consequences. I found it impossible, and not through a lack of trying, to find any assistance of some form of advocate for support or direction. I am left with the feeling that if we make it hard enough and drag it out long enough they'll just give up and go away. I would add that the reply from the Attorney General's office, where I was directed in relation to the advice from the Police Ombudsman's office, as an avenue of appeal was not correct and with no reply or response from the Attorney General's office, for a total of 12 months. Again, another very lengthy and unjust delay toward resolving this matter. Given the current issues we feel that this is not a fair process for any person identifying misconduct et cetera of our highly professional Police Force and in particular where it involves matters that have the propensity to change policy, agency cultures or legal outcomes. The delay factor is very concerning insofar as not knowing where one stands. Outcomes of one inquiry could have major implications for another issue, particularly where the issue at hand involves matters before the criminal law courts and subsequently causing very high levels of anxiety for those concerned.

I note on a recent news story a dolphin found dead in the Port River had an autopsy done in three months and found misadventure in the cause of death. If a dolphin can have such urgency in establishing the facts why does SAPOL have the luxury of two-year inquiries that are not fully investigated or appropriately addressed in a timely manner and subsequently not available for any court processes? Further, on page 8 of the discussion paper, under the heading "legislative scheme" I notice that SAPOL have a legislative obligation to report complaints re the misconduct of another member to the Police Ombudsman. I can confirm we have video evidence of such an issue that involved very serious allegations of more than

one officer to an officer, to a police officer Inspector in rank, with nothing developing from that. This was evident in the transcript of that part of the recording included in the official transcript used for the Court process by Prosecution. And it was signed as true and correct. Again, there was no communication that indicated that the matter was investigated by the Police Ombudsman's office. This was raised with the Police Ombudsman's office but was never and is still not addressed as with several other serious situations. I am not aware if this particular complaint was made known to the Commissioner, or if the Commissioner indeed disagreed with the complaint or any other inquiry and ordered the Police Ombudsman's office to discontinue or create a second assessment or raise the matter with the Minister and I see this all in the defendant's favour.

I note on page 8 it states if the Police Ombudsman recommends certain action and the Commissioner of Police disagrees with the recommendation the Police Ombudsman must confirm, vary or substitute the assessment or recommendation after conferral with the Commissioner of Police. The Commissioner of Police must give – must either give effect to the recommendation or refer the matter to the Minister for determination. In light of that statement one could assume that the Commissioner can overrule a decision by the Police Ombudsman and all of its relevant resources without any consultation or communication to all parties including the complainant. This, again, leads to the issue of transparency and accountability from the public's point of view particularly when the Commissioner of Police can disagree with the recommendations of his own workforce and setting an attitude of nepotism. It is another cause for an unwarranted and further anxiety in as much as had this legislation process been made aware of in the initial stages of lodging a complaint against police it would have had the effect of reducing uncertainty and raising confidence of an unbiased investigation, subsequent – and subsequent outcome. All subject to the Commissioner's ability and choice to agree or disagree, without consultation or explanation, this entire process could well be for nothing, as it seems in our case. We should have been informed in the initial stages of this process of the legislative risks, procedural processes and the system of seeking a satisfactory outcome for the concerns of the public.

I was informed by the Police Ombudsman's office that criminal charges would be laid against some police officers. This was after 18 months of investigation. Not five months later we were informed that only internal disciplinary action will be placed against those officers concerned and only one of the concerned in only one of the two complaints, after an apparent second assessment was ordered. A second and varied assessment was ordered. I was not informed of which authority ordered the second assessment, only that one was to be done. The same absence of information applied to inform me of any form of process that was used to change this proposed outcome. I also find it difficult to accept that the Commissioner would have personally studied all of the evidence presented by the complainant, such as we provided in full detail including the issues raised that were not investigated.

I can see no just process for a single person in authority, as I see it from the layperson's perspective, to be able to make these types of decisions fairly, justly, rationally and without bias and in particular without any and full consultation to all parties concerned. As I understand it, now I have no administrative process available to me to raise the issues through any current system. And, again, I feel disempowered to having no avenue of appeal or redress to bring these matters to the attention or resolution thus avoiding any possible change in this current format. I note on page 10 of the discussion paper it states where agreement cannot be reached the matter must be referred to the Minister for determination. At no time have we had contact with the Commissioner of Police, any other member of SAPOL, including the Police Minister's office, and that may be due to protocol. But as we have disagreements with the outcomes and with no explanation as to the reasons or processes involved we are forced to seek further information – intervention from other sources. We had no communication relating to this matter, we were not aware of this ruling until we received a copy of the current discussion paper for this meeting. Even after lodging formal dissatisfaction with the outcome from the Police Ombudsman's office with this investigation and after receiving information from the Police Ombudsman's office that we could go to the District Court or the Attorney General prior to that lodgement. I am curious as to know if this also applies for the

defendant. If the Police Commissioner – and as a layperson, I say – if the Police Commissioner is able to overturn the decisions of the Ombudsman with what appears to be a self-serving legislation what real purpose then does the Ombudsman serve? And I am sure the general public could easily create an attitude of professional bias and nepotism and the clear lack of integrity, transparency and accountability. The situation has the potential for one to come to the belief that police officers are protected more by legislation rather than the course of natural justice more so than those of other persons within the community facing similar allegations. This is more to the point where police – more to the point where if the police were the complainants, the subsequent need to answer in a court of law, I am certain that answering the charges in the court of law could not be overturned because the legal representative for the defendant disagrees. I am also under the impression that in a court of law both parties involved have a right to appeal any decision made by the judge. Why should that be any different in this matter?

I thank you for your time today and we hope this information goes some way to causing some further discussion into the effects and the laws surrounding procedural fairness including the rules of bias and making the Office of the Public [sic] Ombudsman a better-resourced entity to enable a very thorough and fair assessment of all complaints received in a timely and sincere manner, including face-to-face meetings as required. I believe that the Police Ombudsman's office needs the confidence of the Government and the community to be independent without the risk of perpetuating bias, lack of transparency, accountability, denial of natural justice as the current system seems to portray.

I believe that the right of appeal should extend to all parties in a matter involving the Police Ombudsman's office to ensure procedural fairness creating public confidence in the processes and I hope that legislation would be changed to include more comprehensive consultation on progression of matters raised in the process for those who commit to making complaints against a police officer, an action not taken lightly, and sense they are valued and well informed of the procedural fairness and legislative applications involved to achieve this justice. That is

all I have to say, sir.

THE COMMISSIONER:

Thank you, Mr. Vansetten. Perhaps I can just confirm that you subsequently made a complaint to the Office for Public Integrity about the conduct of SAPOL and the Police Ombudsman.

MR. VANSETTEN:

Yes, I did.

THE COMMISSIONER:

And subsequently you met with me, I think, and we discussed your complaint.

MR. VANSETTEN:

Yes, sir.

THE COMMISSIONER:

I can tell you that since I met with you, the Acting Police Ombudsman, Mr. Grant – who of course was appointed well after all of these circumstances arose – enquired of me as to how the policies and processes of his office could be improved as a result of my consideration of your matter. I have written to Mr. Grant and he has responded and I think that will go some way to improving the level of service that someone like yourself might receive in the future.

MR. VANSETTEN:

Thank you, sir.

THE COMMISSIONER:

Although you have not received, as I understand it, you have not received a level of service that was appropriate having regard to the gravity of your allegations, I think your complaints about

SAPOL and the Police Ombudsman have assisted to improve the system in the short future and will assist, I think, to improve the system in the long future.

MR. VANSETTEN:

That's good.

THE COMMISSIONER:

Thank you for your help Mr. Vansetten.

MR. VANSETTEN:

Thank you, sir.

THE COMMISSIONER:

And now, Mr. Riches, I think the Police Commissioner will be giving – will be speaking to his submission at 10 o'clock in the morning.

MR. RICHES:

10 am, yes.

THE COMMISSIONER:

So I will adjourn until that time. I think also there is a member of the public who is to speak at noon.

MR. RICHES:

12 o'clock, yes, Commissioner.

THE COMMISSIONER:

Yes, thank you. Well I'll adjourn until 10 o'clock in the morning.

MR. RICHES:

Thank you.

ADJOURNED 13:33pm