

## **Operation Capri**

**[Paper delivered to the Australian Public Sector Anti-Corruption Conference, Brisbane, 29 July 2009, by Russell Pearce, Acting Assistant Commissioner – Misconduct, Crime and Misconduct Commission.]**

Last Wednesday, 22 July 2009, a CMC report outlining Operation Capri was tabled in State Parliament and thus, details of the investigation became public.

The report contains revelations of relatively serious police misconduct involving about 25 officers. Not surprisingly, in the days following its release the report became front and centre in terms of media focus.

Operation Capri was an investigation undertaken within the CMC's Misconduct Investigations area over a 2½ year period, from early 2006. It examined events extending back to 2001.

The report breaks the investigation down into nine segments, or episodes of misconduct, which have as a central theme, the association between police and prisoners, or prisoner informants.

I do not propose to take you through the report in detail. It suffices to say that the segments reveal:

- how officers of the then-Armed Robbery Unit failed to properly deal with money intended to be paid to informants;
- how numerous prosecutions failed because of practices that developed in temporarily removing prisoners from jail (The prosecution being met with an argument that the removals had been used as inducements);
- how police circumvented the Corrective Services' telephone system, enabling prisoners unsecured calls; and
- how one particular prisoner informant effectively played police like a violin –conducting his own criminal enterprises, both from the inside and, with the help of police, often from the outside.

On the day of its tabling, the Queensland Police Union of Employees issued a media release saying this of the report:

‘This is nothing more than a media stunt by the CMC. ... If there was substance to all of the allegations in this report there would be 20 or 30 police facing the courts not just three.

The timing of the report today has much more to do with a conference hosted by the CMC next week where Russell Pearce ... is scheduled to do a presentation regarding Operation Capri. ...’

The Union’s line was picked up by an article in the *Gold Coast Bulletin* (Friday, 24 July 2009):

‘But police union president Ian Leavers said everyone had the right to innocence until proven guilty, especially when the report comprised “wild” allegations relying on the word of convicted criminals.

“I believe the only reason the CMC was in such a hurry to publish the allegations is so they could grandstand at an anti-corruption conference next week,” he said.

“It is for the courts to decide someone’s guilt or innocence, not the CMC, not the media and not the police commissioner.”

Again, the Conference got a plug!

Of course, if what the Union said were true, it means I have spent the last four months beavering on a report just so that I might have something to say for the next 25 minutes.

Not that it is likely to make one iota of difference to those who pan the Dangerous Liaisons report, but I can assure you this presentation was not predicated upon publication of the report.

The various narratives are laid out in the report itself, and will not be reiterated. In a sense, publication of the Report stole much of my thunder.

I do propose to say something about the stance adopted by the Police Union, however, but before I do I should introduce the man at the centre of Operation Capri.

Lee Owen Henderson has had a long and inauspicious association with law enforcement. He is serving two life-terms: for Murder, and Attempted Murder.

The Dangerous Liaisons report is littered with references to Henderson. Indeed, he is the only individual adversely mentioned, who is referred to by name. That is because Henderson's activities and associations with police officers thread their way through much of Operation Capri.

The decision to identify Henderson was an easy one. He thrives on the notoriety, and publicly 'outed' himself during the course of the investigation.

Henderson, if he were here, would regale you with stories about his life as a long-time underworld figure. However, although undoubtedly a violent man, he could safely be described as little more than a two-bit conman and rogue.

To give you some insight into Operation Capri – you are about to hear two prison telephone recordings from the afternoon of Monday, 4 August 2003

The male voice is Lee Owen Henderson. You will hear two female voices. In the first call you will hear a mother, seeking information as to her wayward son, who she thinks is up to no good. The mother is concerned that her son had been mixing in bad company, and may have come to the notice of police. Henderson undertakes to find out what police know about her son. (The second female voice, is a female friend of Henderson's – a lady to whom Henderson was conveying the information he obtained.)

The calls were initiated by Henderson, using the Arunta PIN of *another* prisoner.

The first call commenced at 1.55pm.

The second call commenced at 3.43pm.

Between the first and second calls, other calls were made to Queensland Police Service numbers. Those telephone calls – being calls to police officers – were not recorded.

Between 2.37pm and 2.44pm, a series of checks were conducted of the QPS computer data base in respect of the woman's son.

**[First call played]**

Henderson promised to have the information by 4pm. He is good to his word. The second call commenced at 3.43pm.]

**[Second call played]**

To adopt the language used in the Report: Given the nature of telephone conversations, a strong suspicion exists that the inquiries undertaken that afternoon by means of the QPS data base served no legitimate law enforcement purpose.

On 15 August 2003 – less than two weeks later – there was another telephone conversation between Henderson and the mother. Henderson thanked her for what was (evidently) a payment. He told her that some of the payment had been passed on to the person who made the checks for him. (Nothing of the payments can be established.)

Chillingly, in a telephone call from prison on 3 April 2005, Henderson boasted:

*There's never been person in this country that I can't find.*

The Dangerous Liaisons Report reveals three episodes – not including this one – where Henderson was given access to police information.

As part of Operation Capri, the CMC examined *many* instances in which information is suspected of having been passed to Henderson, including another eight in which the evidence is as compelling as the calls I have just played.

Operation Capri was able to expose this conduct because of the existence of 'Arunta' recordings. (This is the system by which calls made by prisoners are routinely recorded.)

A large proportion of the telephone calls made by Henderson from prison were placed to police stations, and those calls were exempt from routine recording.

The unrecorded calls also included many that were unlawfully diverted by complicit police officers. This means that whenever Henderson spoke to his associates by means of a telephone call diverted through a police station, no recording was made of the conversation.

Consequently, while Operation Capri identified some instances where confidential police information appears to have been improperly accessed and used by Henderson, the 'gaps' in the evidence caused by the non-recording of particular telephone conversations means that, without testimony from Henderson, no criminal prosecution would be possible.

My purpose in choosing the example I just identified for you, is to offer a snapshot of the intertwined tentacles of the investigation. The example demonstrates the underlying features of Operation Capri: Henderson's close association with, and ability to manipulate police officers; the thwarting of the prison telephone system; and the corruption of the security attaching to the police data base.

Ironically, it is also an example of an episode that would fail the Police Union's test for misconduct.

I will take a moment now to comment upon some of the misconceptions promoted by the Police Union. The most prominent of which is that Operation Capri ought to be measured by the number of criminal prosecutions.

The argument, as I understand it, goes something like this:

With only 3 officers facing criminal charges (where, according to the Union, the prospects of acquittal are good), there cannot be much of substance to the Capri Report. Accordingly, it is said, the report is one of 'wild allegations'.

Fair comment? It might be, except that it ignores what is otherwise made abundantly clear by the earliest passages of the Report.

The Report makes it plain – almost from the outset – that criminal prosecutions were seen as impractical.

Almost without exception, the criminal prosecution of a police officer would have been dependent upon evidence from individuals with lengthy criminal histories.

But further, while police officers in many respects *admitted* the conduct in question, their admissions were made in the course of CMC investigative hearings, and are unable to be used against the officers concerned.

These are not ‘wild allegations’!

Indeed, much of the evidence is common ground. The conflict is as to the officers’ intent. (eg. There is no doubt money was paid to police, nor that confidential information was given to prisoners. The question is: for what purpose?)

Recognising that criminal prosecutions would be next to impossible, the CMC took the pragmatic view that the public interest would be best served exposing the improper conduct.

The stance adopted by the Police Union also justifies another view held by the CMC: namely, that the attitude of the subject officers was unlikely to change without public exposure.

Moreover, that without a public revelation of the dirty linen, the police rumour mill would run its inevitable course. ... ‘That the poor, hard-done-by officers who had merely struggled to do their jobs have been victimised, and have had their careers destroyed – over little more than non-compliance with policy.’

If there was any doubt that would be the line run, it was dispelled by some articles in last weekend’s press.

In one article in ‘*The Weekend Australian*’ (25-26 July 2009), a former officer from the Armed Robbery Unit described the allegations in the Report as ‘fanciful’.

He said the report’s allegations were not a fair representation of the armed robbery squad.

‘I think it takes it out of context,’ he said. ‘We were given a very hard job to do and obviously there was some administrative stuff that wasn’t done properly. Most (of the allegations) are about not properly filling out registries.’

He said the allegations were not cases of gross misconduct but rather paperwork that was filled out incorrectly.

(Just as the CMC predicted, these blokes are in denial.)

If further demonstration was needed, in spews forth from an article by Mr Peter Cameron in the *Weekend Gold Coast Bulletin* (25-26 July 2009) which, it would seem, is drawn from police sources with much improved memories.

‘The one-sided Crime and Misconduct Commission report on police misconduct invites closer scrutiny ...

... It may sound murky and suspicious exchanging cash with crims. But the fact remains that when Queensland’s former Armed Robbery Squad was flourishing their clean-up rate over five years was around 86 per cent. Former squad members believe Henderson was crucial to solving at least a dozen hold-ups. ... (T)hey ridicule the CMC assertion that Henderson manipulated police officers for his own ends and “rarely, if ever, provided information of value.”

As to the issue of the clear-up rate: In light of the practices adopted by the ARU, one can only guess at the number of offences recorded as ‘solved’ that, in truth, remain unsolved. One can only speculate as to the number of actual offenders who remain at large. (Perhaps some of them are responsible for the ‘armed robberies around the Gold Coast’ that Mr Cameron otherwise argues warrants the re-establishment of the Armed Robbery Unit.)

And, as to the notion that Henderson provided anything of value: officer after officer who dealt with Henderson was unable to identify any matter in which Henderson assisted. It seems the Gold Coast journalist has succeeded where the CMC’s two-and-a-half year investigation failed.

Mr Cameron’s article also focuses upon an incident in November 2002 – outlined in the Report – where Henderson visited a hotel and participated in a meeting with a possible murder suspect. Henderson was alone, unsupervised, and observed to depart the hotel in a taxi.

Mr Cameron writes:

‘Homicide demons called in the Armed Robbery Squad on one occasion when Henderson wanted a meeting with a criminal identity in a Brisbane hotel. Henderson may not have been

surrounded by blue shirts for his meeting. But at least six plain clothes detectives kept watch. When he left the hotel by taxi, police tailed the cab as pre-arranged.’

I would be happy to hear from any one of the ‘at least six plain clothes’ officers who kept watch; because on the evidence available to the CMC – and despite thorough investigation:

- the event had nothing to do with the Homicide Squad’s investigation (and does not feature in the running sheets); and
- Henderson was completely unsupervised.

More telling, is the fact that the newspaper article makes no mention of what happened next (albeit that the episode is referred to in the report).

Following his meeting with the suspect, Henderson wrote a letter to the father of the murder victim, offering – for \$20,000 plus expenses – to organise a ‘hit’ on the suspect.

In the letter, Henderson set out his underworld connections, and boasted that ‘2 cops will feed me weekly info on police investigations which I’ll feed to you.’

It is therefore disappointing, that the Union (and their associated apologists) have now adopted this predictable stance in this matter.

There is an added disappointment. Throughout Operation Capri, while affording proper representation to its members, the Police Union – through its legal representatives – displayed an admirable maturity.

The Union assisted the CMC to facilitate investigative hearings up and down the Eastern seaboard. Arrangements were put in place for the many police officers examined in the course of the hearings process. Various private legal practitioners were engaged when – as regularly occurred – the CMC suggested the Union’s representatives might have a conflict of interest.

There was no argument, no grandstanding, and no obstruction. Instead, the Union went about its role without fanfare or fuss.

As I said earlier, the case studies are laid out in the report itself, and will not be reiterated.

The one aspect of the evidence I introduced to you, is *not* contained in the report. (In other words, some material has not made the report. The task facing the CMC was to produce a balanced report, that conveyed the intended message, but was supported by sufficient detail to meet the predicted line, ‘there’s really nothing in this.’)

As outlined in the Dangerous Liaisons report, Operation Capri exposed no absence of legislation, policy or procedure.

What there is absolutely no doubt about is the wilful failure of individual officers to comply with that legislation, policy and procedure – and the failure in that regard, of supervision.

The CMC is unable to point to any quick fix, or panacea.

Rather, what is required is the recognition by individual police officers of the need for integrity and maintenance of high standards.

Since the publication of the Report it has been said that certain police started out with the intention of solving crime, but lost their way. It has also been said (and the Report itself touches upon the issue) that there was a belief that the ‘ends justified the means’.

Those comments offer explanations – but explanations are no excuse.

A 2007 report by the Victorian Office of Police Integrity asserted ‘noble cause corruption is the nursery of entrenched and systemic corruption.’ ... ‘If a police service wants to rid itself of corruption, it must attack noble cause corruption.’

‘Noble cause’ may explain the misconduct, but as an excuse it is unacceptable.

I would dedicate Operation Capri and the Dangerous Liaisons report to the vast majority of police officers in Queensland who do the hard yards – with integrity and pride. I salute those officers, and say ‘keep up the good work’.