

CASE STUDIES OF ACTUAL CORRUPTION INVESTIGATIONS

*By John Pritchard**

CASE I: INVESTIGATION INTO THE HANDLING OF APPLICATIONS FOR PUBLIC HOUSING BY AN OFFICER OF THE DEPARTMENT OF HOUSING

A. The Investigation

On 27 June 2002, the ICAC received a report from the Department of Housing that a Client Service Officer (CSO) of the Department had solicited a bribe from an applicant for housing. It was alleged that the applicant paid \$2000 to the CSO as part payment to approve an application for priority housing. It was alleged that further payments were to take place.

The ICAC commenced its formal investigations of this matter on 1 July 2002, under the direction of ICAC Commissioner Irene Moss AO.

The investigation focused on whether any officials of the Department of Housing or anyone acting on their account had attempted to solicit a corrupt payment in relation to attempting or agreeing to place any applicant on a priority list for housing.

The ICAC made use of a range of its powers in this investigation.

ICAC investigators searched through all files that were handled by the suspect person from January 2001 to June 2002, served a number of notices to produce relevant documents, obtained a search warrant to search the premises of the suspect person and obtained warrants to listen to and record telephone conversations and private conversations between specific persons.

The ICAC also held a number of private hearings between 4 July 2002 and 19 August 2002. Public hearings were held on 18 and 19 September 2002. Ten witnesses were summonsed, examined and cross-examined during those hearings.

B. Why did the ICAC Investigate these Matters?

Housing is one of the most basic of personal and social needs in our society. For those who cannot obtain suitable accommodation in the private sector, whether through cost or other needs, public housing is a vital social support. Just over 5% of householders are in public housing in New South Wales. It is a scarce resource that needs to be allocated fairly and equitably and there is a public interest in ensuring that this occurs.

There is a long waiting list for public housing, and those in greatest need may apply for priority housing. It is damaging to community confidence in the integrity of allocating scarce public resources if the processes used to allocate public housing and priority housing are tainted by corruption or other improper means. It is in the public interest to ensure the maintenance of a fair and equitable system designed to provide for those in real need.

It is also in the public interest to expose conduct by public officials which may weaken the integrity of public institutions. It is essential to the proper functioning of our society that the public has complete confidence in our public institutions, especially when it concerns the allocation of scarce resources.

The investigation also assessed some suggestions as to how the integrity of allocating housing may be preserved and how some of the identified risks of corruption and misallocation of public resources may be minimised.

There was a high level of public interest in the ICAC's hearings, reflecting the substantial importance to the community of the fair and equitable provision of public housing.

* Deputy Commissioner, Independent Commission Against Corruption Sydney, Australia.

C. What Happened?

Steven Klimoski was employed as Client Service Officer (CSO) in the Burwood office of the Department of Housing. His responsibilities included assessing client needs, determining applicants' eligibility for public housing, including priority housing, and providing recommendations to his team leader.

Priority housing is available for those in urgent need of public housing through factors such as unstable housing circumstances, 'at risk' factors such as being a victim of domestic violence and inappropriateness of current accommodation. The median waiting time for priority housing was 1.7 months in 2001-02, while the median waiting time for all applicants for public housing was 39 months in the same period.

The ICAC investigation found that Klimoski, using his position as a CSO responsible for assessing and providing recommendations on applications for priority housing, had offered to expedite an applicant's application for priority housing in return for a cash payment of \$8000.

In early 2002, the applicant had met an acquaintance, Anthony Severino, and asked him if he knew anyone working for the Department of Housing who might be able to assist her with an application for public housing.

Severino contacted Klimoski and arranged a meeting with the applicant. At this meeting Klimoski informed the applicant that he could assist her to obtain priority public housing, but that he would require payment. Severino was to secure a portion of the total payment for his role in facilitating the arrangement.

After making an initial payment of \$2000 to Klimoski, the applicant told a friend about the payment and after determining that the payment was improper, informed the Department. The Department reported the matter to the ICAC, pursuant to Section 11 of the ICAC Act.

The ICAC lawfully recorded and videotaped a subsequent meeting between the applicant, Severino and Klimoski during which arrangements for the payment of money to Klimoski were confirmed. At this meeting the applicant gave Klimoski a further \$2000 in cash.

Following this meeting, Klimoski was made aware that the ICAC was conducting an investigation into matters including his role in processing applications for priority housing. Klimoski subsequently gave evidence to the ICAC in a private hearing on 4 July 2002.

D. What were the ICAC's Findings?

The ICAC's investigation found evidence that Steven Klimoski, an officer of the Department and Anthony Severino, a tenant of the Department, engaged in corrupt conduct.

There is no evidence that any other person employed with the Department discharged their duties corruptly.

Recommendations are made in the report that the Director of Public Prosecutions give consideration to the prosecution of Steven Klimoski for the offences of corruptly obtaining benefit [Section 249B of the *Crimes Act 1900* (NSW)] and the prosecution of Anthony Severino for the offences of aiding and abetting the receipt of corrupt benefit [Section 249F of the *Crimes Act 1900* (NSW)] and giving false and/or misleading evidence pursuant to Section 87 of the *Independent Commission Against Corruption Act 1988*.

A recommendation is made in the report that consideration be given to disciplinary action by the Department against Steven Klimoski pursuant to s.74A(2)(b) of the ICAC Act.

The report also makes a number of specific recommendations to the Department for it to review its systems and policies for priority housing, establish appropriate audit processes to review allocation decisions and verify the assets of applicants; and strengthen and promote its policy on gifts, benefits and bribes.

**CASE II: INVESTIGATION INTO CORRUPT CONDUCT ASSOCIATED WITH
DEVELOPMENT PROPOSALS AT ROCKDALE CITY COUNCIL**

A. The Investigation

This ICAC investigation examined the conduct of two Rockdale City Council (RCC) councillors, Adam McCormick, the Deputy Mayor, and Andrew Smyrnis in relation to corrupt dealings with certain property developers. The conduct of persons who acted as intermediaries between Councillor Smyrnis and these developers in soliciting bribes is also examined.

B. Why did the ICAC Investigate?

Over one third of the matters currently received by the ICAC concern local government. The one issue that is the subject of most complaints to the ICAC from the public concerns planning decisions made by councils. Over 16% of all the complaints received by the ICAC from the public concern development approvals.

Development Applications represent a significant economic investment. Councillors make decisions daily on a vast range of projects that impact on our economy, our community and our quality of life. It is vital that the public is assured that planning decisions are made on their merits and not out of self interest or financial gain for the decision makers.

In the present case there was evidence to suggest that two councillors were involved in soliciting substantial bribes from developers in return for supporting their development proposals. Such actions go to the core of the integrity of the planning process. There was a clear public interest for such allegations to be thoroughly investigated to determine if they were accurate and if so to identify those involved.

C. What Happened?

There were four areas of interest to the Commission's investigation

1. In October 2000 Manuel Limberis, at the request of Andrew Smyrnis sought money from the developer of property at 2-4 Parker Street, Rockdale, knowing that in return Smyrnis would give favourable consideration as an RCC councillor to the Development Application. The amount of money sought was \$150,000 to obtain approval for a five level development and \$90,000 for a four level development. He did not tell the developer the money was to be a bribe but was to pay him to lobby Councillor Smyrnis. The developer rejected the offer.
2. In July/August 2001, Manuel Limberis entered into an agreement with Con Chartofillis, who was proposing a development at 2-4 Frederick Street, Rockdale, for a payment of up to \$320,000 depending upon the number of floors approved by RCC. Money was sought and obtained from Chartofillis on behalf of Smyrnis with the purpose of influencing Smyrnis in relation to the Development Application and for Smyrnis to organise support from other councillors for the Development Application. Between 28 August 2001 and 14 January 2002, Chartofillis made payments to Limberis totalling \$54,500. Of this sum, \$49,500 was transferred to Smyrnis, the balance being retained by Limberis.

Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting the Chartofillis Development Application and obtaining the support of other ALP RCC councillors. Later, McCormick sought to renegotiate this agreement for the purpose of obtaining a larger sum of money.

3. Between October and December 2001 Anthony Retsos, at the request of Andrew Smyrnis, met with a developer codenamed R1 and sought payment from him of between \$240,000 and \$250,000 in return for Smyrnis giving favourable consideration as an RCC councillor to R1's Development Application for a proposed development in Rockdale.

Retsos understood that in return for dealing with R1 on behalf of Smyrnis he could expect to receive a payment of money of at least \$20,000 to \$25,000.

Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting R1's Development Application for Site 1, and obtaining the support of other ALP RCC councillors.

No monies were paid by R1 to Retsos, Smyrnis or McCormick, either directly or indirectly.

In early 2002, a developer, Terry Andriotakis, offered to provide benefits to Councillor Smyrnis by way of free advice in relation to property deals (which Andriotakis told Smyrnis was worth a lot of money), referring potential customers to a mortgage business in which Smyrnis said he was involved, and assisting Smyrnis in joint ventures, including the possibility of Smyrnis becoming a beneficiary in a development. These offers were made by Andriotakis and accepted by Smyrnis with the intention that Smyrnis would, in his capacity as a councillor of RCC, lobby other RCC councillors to ensure that a draft Development Control Plan proposed by Andriotakis for sites at Arncliffe, was approved by RCC as soon as possible.

D. What Were the ICAC's Findings?

The ICAC's report: *Report into Corrupt Conduct Associated with Development Proposals at Rockdale City Council*, published in July 2002, at the conclusion of the investigation, contains findings that Andrew Smyrnis, Adam McCormick, Manuel Limberis, Tony Retsos, Con Chartofillis and Terry Andriotakis engaged in corrupt conduct.

Recommendations are made in the report that the Director of Public Prosecutions give consideration to the prosecution of Andrew Smyrnis, Adam McCormick, Manuel Limberis, Con Chartofillis and Tony Retsos for bribery-related offences and offences of giving false and misleading evidence to the ICAC. A recommendation is made that the Director of Public Prosecutions give consideration to the prosecution of Terry Andriotakis for bribery-related offences.

Recommendations were made that consideration be given to the suspension of Councillor Adam McCormick from civic office under s.440C of the Local Government Act 1993 with a view to his dismissal for serious corrupt conduct. Councillor McCormick resigned however, the day the report was released. No such recommendation was made in respect of Smyrnis as he resigned from RCC during the course of the ICAC hearings.

The evidence before the ICAC did not indicate the level of systemic corruption within RCC to warrant a recommendation that consideration be given to the dismissal of all councillors.

There was no evidence that any staff member of RCC acted other than professionally and properly in the discharge of their duties and no suggestion that they had acted corruptly.

The report canvasses the need for reform of development control systems, and controls on political donations and influence at the local government level. Recommendations addressing these issues will be made in a subsequent report.