

Cartwright, Tim

From: McRae, Findlay
Sent: Friday, 11 November 2011 2:12 PM
To: Cartwright, Tim
Subject: Fw: [REDACTED] Legal Advice

Advice as requested

Sent using BlackBerry

From: LeGrand, Shaun
Sent: Friday, November 11, 2011 02:08 PM
To: McRae, Findlay
Subject: [REDACTED] Legal Advice

Fin

We have been handed an extract of a transcript of a conversation between a police investigator and a human source in which the human source says that several years ago she had consensual sexual relations with a police member "C" over a period of a few months. The source described the relationship as a "personal private matter". In raising this topic, the source queried whether member C should subsequently be involved in a force steering committee concerned with the management of the human source. This information appears to have been put to member C who has denied the sexual relationship in an affidavit and who has also removed himself from the force steering committee in question.

On this background, A/DC Cartwright is interested to decide whether the provision of this information to him requires him to take particular action under s 86L of the *Police Regulation Act 1958*. In particular whether under sub-section (2A) the information might give one "reason to believe" that member C is guilty of serious misconduct.

In the High Court case of *George v Rockett* [1990] HCA 26 [14], it was said that to have a "reason to believe" something requires the existence of facts which are sufficient to induce that belief in a reasonable person.

The information provided by the source is about two issues. First, alleged personal relationship including sexual relations between the source and member C and second, a potential conflict of interest that might flow from that relationship.

Personal relationship

The information that may be gleaned from the source's remarks about the sexual relations she alleges with member C are that the relations were consensual, a few years ago over a few months and were, to her, a personal and private matter. The last statement begs the question why she would make mention of the relationship to an investigator but perhaps, whether the relationship is true or untrue, the source was interested in causing some difficulty for member C.

The information, at its highest, amounts to no more than a possibility that a relationship involving some sexual relations occurred.

However, under s 86L(2A) one must have a reason to believe that serious misconduct has been committed by a member. Serious misconduct is defined in s 86A of the Act as being conduct which constitutes an offence punishable by imprisonment, would diminish confidence in the force or is disgraceful or improper. There being no complaint or suggestion by the source that member C has behaved inappropriately, the fact that one may believe member C had a personal relationship involving sexual relations with the source is not enough to support a belief that member C is guilty of serious misconduct.

13

Potential conflict of interest issue

The fact that the source has said that sexual relations occurred does create a potential or perceived conflict of interest for member C's involvement in decision-making about the source. This is so whether or not a personal relationship existed between them and is made more acute by the disagreement between them about the nature of their relationship.

Whether or not they were involved, the fact that their personal involvement is an issue at all and the fact that there is disagreement about the matter provides obvious scope for embarrassment, conflict and resentment which can lead to a perception of a conflict of interest.

In the circumstances, we recommend that the issue of potential or possible conflict be managed. To that end, it would be sufficient if member C has no further role in the steering committee and any other decision-making involving the source - it seems that has already occurred. In addition, it also would be worth discussing the matter with member C to advise that the fact of the allegation is sufficient to justify his removal from decision-making roles concerning the source to avoid the potential for any perceived conflict of interest interfering in the proper management of the source.

Shaun

Shaun Le Grand

Assistant Victorian Government Solicitor

Police Branch

Victorian Government Solicitor's Office

Level 8, Tower 1, 637 Flinders Street, Docklands Vic 3008

t [REDACTED] f [REDACTED] m [REDACTED]

[REDACTED]

www.vgso.vic.gov.au