

A-G advice over Reid custody 'erroneous'

By CYNTHIA CHAN

THE Attorney-General was accused yesterday of giving erroneous advice to Sir David Ford leading him to allow the former Deputy Director of Public Prosecutions, Warwick Reid, to serve his eight-year jail sentence in the custody of the Independent Commission Against Corruption (ICAC).

And the ICAC's resident informant scheme, under which convicted people are kept in ICAC custody for giving assistance in investigations, was called "fundamentally unlawful".

The criticisms came from Mr Gerard McCoy, appearing with Mr Keith Oderberg for solicitor Alick Au Shui-yuen in his application for judicial review before

trial on charges connected with the escape of Reid from Hong Kong.

Au is currently being detained at the Lai Chi Kok Reception Centre, after being refused bail in the High Court for a second time on December 5.

Reid, who was not legally represented, made his appearance in open court for the first time yesterday since his sentencing in the High Court on July 6.

During yesterday's hearing he made a submission objecting to Mr McCoy's application for an amendment and, on another occasion he raised an objection to a submission by Mr McCoy.

Mr Andrew Li, QC, leading Mr Wong Yan-lung, appeared for the Commissioner of Correctional Services, while the Attorney-General and the Commissioner of the ICAC were repre-

sented by Mr Adrian Huggins. According to Mr McCoy, ever since Reid returned from Manila and was arrested at Kai Tak airport on March 30, he has been kept in ICAC custody.

But his main attack on Reid's ICAC custody concerned the time since June 20, when Reid pleaded guilty before Central Court magistrate Mr John Meredith.

Mr McCoy contended that a magistrate had a number of options in dealing with an accused before the committal proceedings but not in the course of them, especially when the accused pleaded guilty to an indictable offence.

After that plea of guilty was entered, the magistrate could only remand him in prison or release him on bail.

At the same time, Mr McCoy

said the ICAC had no power to detain a person who had pleaded guilty at committal proceedings under its custody.

Mr McCoy contended that Reid had never been lawfully held between June 20 until his sentence on July 6 because during this period he could only be held in a prison.

Under the circumstances, the Commissioner of Correctional Services, the Commissioner of the ICAC and the Attorney-General had acted *ultra vires* in this regard.

Mr McCoy contended that the section 12 (2) order was made by Sir David Ford in good faith but upon the erroneous legal advice of the Attorney-General.

Section 12 (2) provides that if the Governor after consultation with the Commissioner of

Correctional Services was satisfied that the "attendance of a prisoner at" any place is desirable in the interest of justice or for any public inquiry, the Governor may order that prisoner to be taken to that place. During this period of being absent from prison, the prisoner should be deemed to be in legal custody.

Mr McCoy argued that this section only applied to a prisoner kept in prison and that the words "attendance . . . at" meant a transient or short-term duration.

It was therefore not applicable in Reid's case because he had never been in prison nor in lawful custody.

In order to comply with the order, Reid ought to have been brought into a prison for a short while before he was transferred to the ICAC custody.

Mr McCoy also challenged the lengthy period Reid had spent in ICAC custody, which was contrary to the intention of section 12 (2).

He said: "Section 12 (2) did not authorise a wholly separate regime of detention in the ICAC for a long-term period.

"It could not have been the intention of the legislature to authorise an almost infinite detention outside prison in the cosy, comfortable detention of the prosecutor [who] feeds him, clothes him, or inculcates him with their ideas."

What was exceptional about the present case was that Reid, who was "on his own admission very guilty", was allowed to be detained against prison rules, while Au, who was presumed innocent at this stage, was held under them.

As Reid was not subject to prison rules, he did not have to do the six to 10 hours of work a day usually required of prisoners. On top of that, he was paid \$64.80 for his manual work done in the ICAC premises, the court heard.

Mr McCoy criticised the ICAC's resident informant scheme, introduced in May 1986, as having no legal basis because there was "no express primary legislation and absolutely no subsidiary legislation" which covered the matter.

A "serious question of constitutional importance" arose as to the lawfulness of a scheme under which 10 convicted persons had already been detained in ICAC custody serving their sentences, either partly or in whole, Mr McCoy said.

The hearing continues.