

A crisis of confidentiality

LAST month, I wrote to the ICAC asking whether allegations of corruption in the private sector reported to them were referred to the company concerned naming the informant, and whether people reporting suspected corruption would be charged with malicious intent if their suspicions proved to be groundless.

The ICAC in its reply stated in essence that the suspected company was not baldly informed, but might in certain circumstances guess who had informed on it.

On the second question, the reply said that a person would not be charged for reporting his suspicions unless he deliberately made false and malicious statements.

Elsewhere ICAC has said: "Documents and statements relating to ICAC investigations are strictly confidential and are not disclosed to other persons unless court proceedings are instituted."

This all sounds very right and fair — if it were carried out. Apparently sometimes it is not.

In the case of Mr Yaqub Khan these principles appear to have been totally ignored. Perhaps someone can explain why.

I have no opinion as to whether Mr Khan's suspicions against one person in the Kowloon Cricket Club are correct. I do know that no court proceedings were finally taken against Mr Khan by the ICAC and therefore the investigations should have been kept confidential and not eventually disclosed to the whole committee, leading to the expulsion of Mr Khan from membership of the club.

ICAC propaganda advises people to do their duty and report any suspicion of corruption. No doubt Mr Khan considered he was doing his public duty. Perhaps he was over-zealous. Some people are, and that is, in my opinion, better than total indifference.

It can be accepted that in order to inquire into

the allegations, if ICAC thought them worthwhile, it might have been necessary to approach the president of the club for information.

In the event, although the ICAC considered the allegations unsubstantiated, it was scarcely necessary even to do that, and certainly it was totally unnecessary and contrary to regulations to inform both the president and another committee member, and either to allow them to listen to or to give them a copy of the tape from which they were then able to identify the voice of Mr Khan and set in motion action that would lead to his being expelled from the club. This action undermines the very basis of ICAC claims of confidentiality.

It is difficult to see how Mr Khan could be expelled for action injurious to the club, when the injury was caused first by ICAC betraying Mr Khan's confidence and, second, by conducting searches into the banking accounts of members not named by Mr Khan, as revealed in the KCC "trial" of Mr Khan.

The greatest injury of all has been caused by the expulsion of the "anonymous" complainant.

Surely the president could have checked the complaint against the one person named, instead of rooting out the name of the complainant to sack him.

This method of working reminds one of the antics of the old Anti-Corruption Branch which usually exempted the criminal and persecuted the complainant. Is ICAC going the same way?

Originally I had little interest in this case and considered the matters involved to be trivia, but after reading the documents, I became most alarmed at the treatment of Mr Khan.

The alarming features of the case are:

- Members of ICAC apparently did not take signed statements from Mr Khan substantiating his charges, even after they discovered his identity.

- Nevertheless, the ICAC informed the KCC on or before October 2 that Khan's charges were without foundation.

- When ICAC officers approached Mr Khan on August 26, they allegedly tried to take a statement from him without forewarning him that their intention was to make charges against him concerning malicious intent (though eventually no charges were made).

- The hearing of the case by KCC reads more like the trial of a criminal than the hearing of a complaint against a fellow club-member, who at worst made the error of reporting to the ICAC instead of trying the committee first. The vice-president on the occasion seemed to think he was in court trying a criminal, except that the procedure lacked any legal rights for Mr Khan. First he was proved guilty, and afterwards, in a most patronising manner, he was given less than a chance to prove his innocence.

Would it be unfair to say that the whole procedure of ICAC and KCC savoured the camaraderie of the old school tie?

Would the new head of ICAC assure us members of the public that this case is not typical of normal procedure?

Members of the public often feel something is wrong and voice their feelings to the ICAC. Sometimes the evidence is insufficient. But no one would co-operate if he felt he will end up by being thrown out of the company because he expressed his suspicions.

The case resembles that of the Precious Blood School and we don't want to see that repeated.

Perhaps the ICAC could explain why the KCC case was dealt with in this manner, and give some assurances that it will not occur again.

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