

Submission to the Royal Commission into the Management of Police Informants

The Royal Commission into the Management of Police Informants is appointed to inquire into and report on amongst other things:

- Terms of Reference 1 - The number of, and extent to which, cases may have been affected by the conduct of EF as a human source;
- Terms of Reference 6 - Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1-5 [of the terms of reference].

A lawyer's legal advice is not just limited to matters before a court. This may seem trite however, it follows that a broad interpretation must be given to the word 'case' in the first term of reference. In any event, terms of reference number 6 provides a broad scope for the royal commission.

Client Legal Privilege as defined in the *Evidence Act 2008* (Vic) [enacted during the relevant period] and Legal Professional Privilege under the common law creates a privilege for confidential information, communications made, and confidential documents prepared for the dominant purpose of a lawyer providing legal advice. The proper functioning of the legal system depends on this.

Although not immediately apparent the consequences of Nicola Gobbo's breach of the legal obligations of confidentiality or privilege has resulted in members of Victoria police committing offences that include and not limited to perjury, attempting to pervert the course of justice, use and make false document.

The seriousness of this police misconduct should not be diminished by categorising it as a lack of knowledge, incompetence, or noble corruption as has been done in the past. Fitzgerald noted that 'in some respects police corruption had acquired a quaint quasi-legitimacy': Queensland, *Report of a Commission of Inquiry pursuant to orders in Council* (1989) (Fitzgerald Commission of Inquiry)¹.

The importance of legal professional privilege is understood by most police, especially those holding senior positions with law degrees. Relevantly including:

- Legal Services Department, Victoria Police, headed by Executive Director, Fin McRae;
- Assistant Commissioner Luke Cornelius currently at VEOHRC Review Response, Partnerships & Innovation;
- Simon Overland, former Chief Commissioner.

It could be argued that many criminal offences committed by members of Victoria Police are a direct consequence of concealing the fact that Ms Gobbo was the source of the information, and that the information was unlawfully obtained. Put another way in the police vernacular 'we have acquired the information by unlawful means, now we just have to find it lawfully'.

¹ [2.1]

Falsified Information/Intelligence Reports

It is not uncommon for police in specialist areas to create false or misleading information/intelligence reports ('IR').

This can be done by:

- Creating a fictitious informant, and in the past using the terminology 'a source known to officer X' in the IR²;
- Falsely attributing the information to a known source without their knowledge.³ For Example as identified in Victoria Police Operation Trencher headed by D/S/Sgt Bill Nash regarding D/S/C Gerry McHugh (both now retired);
- Providing the information anonymously to another area of Victoria Police, knowing it will return to the officer, for example an anonymous report to Crime Stoppers.⁴

Apart from the various discipline offences, such conduct may constitute the criminal offences of make or use false document.

Perjury & Contempt of Court in relation to Affidavits for Warrants

Warrants of various descriptions were issued based on information obtained from Ms Gobbo. However, the affidavits for these warrants did not disclose this or that the evidence was unlawfully obtained. In addition, some of those warrants referred to and relied upon information in false documents (IR). Warrants were also executed on Ms Gobbo and other lawyers to legitimise the evidence. Resulting in the Judiciary unknowingly participating in the facade.

Apart from the various discipline offences, such conduct may constitute the criminal offences of perjury, contempt of court and attempting to pervert the course of justice.

This also raises another important issue whereby privileged communication between a lawyer and a client are recorded by listening devices or telephone intercepts pursuant to a warrant. Often such warrants specify client lawyer communications are excluded from the warrant. However, in practice this cannot be achieved. Resulting in the police knowledge of the accused's legal advice. The same applies when a person claims documents are privileged during a search warrant, but they are still read by police. The same also applies to images taken of computer drives. There needs to be a process whereby such material is sealed and delivered to the return court.

Exclusions from Race Courses and Crown Casino

The Chief Commissioner may prohibit a person from attending a race course or casino. These exclusion orders can be made against a person under s 33(1) of the *Racing Act 1958* and s 74(1) of the *Casino Control Act 1991*. It follows that the information used in this process must be accurate and lawfully obtained.

² Other examples include police recording fictitious people as spoken to on running sheets to meet statistical requirements, or the recent fake portable breath testing numbers scandal.

³ Alternatively attributing the information to a person who is deceased.

⁴ This was also done by officers in the past providing information to solve crimes so that they could collect a payment (reward).

Many of Ms Gobbo's clients have be subjected to exclusion orders issued by the Chief Commissioner. It follows that information Ms Gobbo has provided to police in breach of privilege has tainted the decision making process. Furthermore, in some cases the police's refusal to provide reasons for decisions or withhold information from the affected persons based on public interest immunity was to hide the police's unlawful conduct.

The same tainted information may have also resulted in the rejection of persons visa applications for other countries and in particular the United States.

In conclusion, the consequences of Ms Gobbo's conduct goes beyond that of a finite number of actual criminal cases before the courts.

We have no objection to this submission being published.