



Royal Commission
into the Management of Police Informants

Counsel Assisting Submissions with respect to Terms of Reference 1 and 2

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Pseudonyms have been applied:

- where court orders require it
- where the Commission has determined it is appropriate based upon requests for reputational, privacy or safety reasons
- where the Commission has determined it appropriate in relation to case studies it was unable to serve on individuals.

CASE STUDY: MR ADAMS (A PSEUDONYM); MR SUMMERS (A PSEUDONYM)

The Relevant Cases of Mr Adams and Mr Summers

1. The relevant cases of Mr Adams and Mr Summers concern their convictions before the County Court in December 2006.¹
2. In January 2006, Mr Adams agreed to allow the storage of trailers at a factory site linked to a company for which he was the director.² Mr Summers was the business development manager of the company.³
3. On 17 January 2006, police attended the factory site and Mr Adams and Mr Summers were arrested and charged with handling stolen goods.⁴
4. The Crown case was that Mr Adams and Mr Summers formed the view that the trailers were stolen and, together with another person (Mr Siciliano), decided to move the trailers to a nearby street.⁵
5. [REDACTED]
6. On 1 December 2006, plea hearings were conducted for Mr Adams and Mr Summers, each pleading guilty to one count of dishonestly handling stolen goods.⁷
7. On 6 December 2006, without conviction, both Mr Adams and Mr Summers were released on adjournment to 5 December 2008.⁸

¹ Un-tendered Victoria Police Criminal History Report, Mr Adams, 12 December 2019, VPL.0099.0193.0035; Un-tendered Victoria Police Criminal History Report, Mr Summers, 15 December 2019, VPL.0099.0193.0339; Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 9 [31]–[36], 6 December 2006, OPP.0048.0001.0001 @.0042.

² Un-tendered Summary of Charges, *R v Mr Adams and Mr Summers*, undated, 17-18, OPP.0048.0001.0001 @.0017-.0018.

³ Un-tendered Summary of Charges, *R v Mr Adams and Mr Summers*, undated, 17, OPP.0048.0001.0001 @.0017.

⁴ Un-tendered Summary of Charges, *R v Mr Adams and Mr Summers*, undated, 27, 30, OPP.0048.0001.0001 @.0027, .0030.

⁵ Un-tendered Summary of Charges, *R v Mr Adams and Mr Summers*, undated, 26-27, OPP.0048.0001.0001 @.0026-27; Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 1 [3], 5 [16]–[17], OPP.0048.0001.0001 @.0034, .0038.

⁶ Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 2 [6]–[7], 6 [18], OPP.0048.0001.0001 @.0035, .0039.

⁷ Un-tendered Presentment No: C0604939, 2006, OPP.0048.0001.0001 @.0003; Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 1 [1], OPP.0048.0001.0001 @.0033.

⁸ Un-tendered Victoria Police Criminal History Report, Mr Adams, 12 December 2019, VPL.0099.0193.0035; Un-tendered Victoria Police Criminal History Report, Mr Summers, 15 December 2019, VPL.0099.0193.0339; Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 9[31]–[36], 6 December 2006, OPP.0048.0001.0001 @.0042.

MR ADAMS (A PSEUDONYM)

Ms Gobbo's Legal Representation of Mr Adams

8. Ms Gobbo appeared in court on behalf of Mr Adams on at least the following three occasions:
 - 8.1. on 7 June 2006, at the Melbourne Magistrates' Court for a committal mention;⁹
 - 8.2. on 1 December 2006, at the County Court for a plea hearing;¹⁰ and
 - 8.3. on 6 December 2006, at the County Court for a sentencing hearing.¹¹
9. In addition, Ms Gobbo charged fees for conferences, advice, drafting of a Form 8A, negotiations and preparation.¹²
10. There is nothing to suggest that she continued to provide legal representation to Mr Adams following the sentencing hearing on 6 December 2006.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Adams

11. Ms Gobbo provided information concerning Mr Adams during her representation of him on at least one occasion. On 26 October 2006, Ms Gobbo advised her handler that she was representing Mr Adams and Mr Summers and provided information as to the nature of the offending.¹³ She stated that [REDACTED], and that she would be communicating with the Armed Offenders Squad in relation to same.¹⁴
12. In addition, Ms Gobbo provided information to police concerning a co-accused, Mr Summers, on one occasion during her representation of Mr Adams. On 30 October 2006, during a meeting with her handlers Mr Anderson & Mr Peter Smith, Ms Gobbo appeared to receive a phone call from [REDACTED]

⁹ Exhibit RC1841 Magistrates' Court of Victoria record of persons represented by Ms Gobbo, 7 June 2006, 19, MCV.0001.0001.0001 @.00017; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 7 June 2006, 62, OPP.0001.0004.0025 at .0086.

¹⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 62, OPP.0001.0004.0025 @.0086.

¹¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 6 December 2006, 62, OPP.0001.0004.0025 a@.0086.

¹² Exhibit RC1568 Ms Nicola Gobbo Fee Book 01, 23 June 2006, 97, MIN.5000.7000.0001 @.0097; Exhibit RC1568 Ms Nicola Gobbo Fee Book 01, 20 December 2006, 102, MIN.5000.7000.0001 @.0102; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 23 June 2006, 11, GMH.0001.0001.0009 @.0011; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 20 December 2006, 4, GMH.0001.0001.0008 @.0004; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Gobbo Statement of Account, 23 June 2006, 45, GMH.0001.0001.0002 @.0045; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 7 March 2019, 37, GMH.0001.0001.0002 @.0037.

¹³ Exhibit RC0281 ICR3838 (051), 26 October 2006, 524, VPL.2000.0003.2110.

¹⁴ Exhibit RC0281 ICR3838 (051), 26 October 2006, 524, VPL.2000.0003.2110.

[REDACTED]

Submissions under Terms of Reference 1 and 2 in relation to Mr Adams

13. It is submitted that it is open to the Commissioner to find that the case of Mr Adams may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. The extent to which the case of Mr Adams may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

15. First, Category 1A¹⁸ applies in that, between June 2006 and December 2006,¹⁹ Ms Gobbo acted for Mr Adams while she was a human source,²⁰ and did not disclose same to him.²¹
16. Secondly, Category 1B²² applies in that, in October 2006, which was during the period that Ms Gobbo acted for Mr Adams in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²³
17. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁴ Further, in certain instances identified above,²⁵ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁶
18. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at

¹⁵ Exhibit RC0282 Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Peter Smith, 30 October 2006, 162, VPL.0005.0115.0407 @.0568; Exhibit RC0281 ICR3838 (051), 31 October 2006, 533 VPL.2000.0003.2110.

¹⁶ Exhibit RC0282 Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Peter Smith, 30 October 2006, 162, VPL.0005.0115.0407 @.0568.

¹⁷ Exhibit RC0282 Audio Recording #31, Meeting between Ms Nicola Gobbo, Mr Anderson and Mr Peter Smith, 30 October 2006, 4:02:52, VPL.2000.0002.4240; See also Exhibit RC0282 Transcript of meeting between Ms Nicola Gobbo, Mr Anderson and Mr Peter Smith, 30 October 2006, 171, VPL.0005.0115.0407 @.0577 (NB: not fully transcribed).

¹⁸ See Legal Principles Submissions at [249].

¹⁹ See above analysis at [8]–[9].

²⁰ See Legal Principles Submissions at [20].

²¹ See Legal Principles Submissions at [239].

²² See Legal Principles Submissions at [249].

²³ See above analysis at [11].

²⁴ See Legal Principles Submissions at [320]–[329] and [307]–[309].

²⁵ See above analysis at [11].

²⁶ See Legal Principles Submissions at [310]–[319] and [301]–[306].

preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁷
 - 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Adams;
 - 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Adams, appropriate disclosure was made; or alternatively
 - 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Adams to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Adams and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁸
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁹

²⁷ See Legal Principles Submissions at [384] and [452]-[457].

²⁸ See Legal Principles Submissions at [380]-[385].

²⁹ See Legal Principles Submissions at [351], [362]-[373].

24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁰
25. Category 3A³¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. Category 3B³² applies in that, during the period Ms Gobbo acted for Mr Adams, she provided information in relation to him to members of Victoria Police,³³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁰ See Legal Principles Submissions at [351], [374].

³¹ See Legal Principles Submissions at [465].

³² See Legal Principles Submissions at [465].

³³ See above analysis at [11].

MR SUMMERS (A PSEUDONYM)

Ms Gobbo's Legal Representation of Mr Summers

28. Ms Gobbo appeared in court on behalf of Mr Summers on at least the following four occasions:
 - 28.1. on 7 June 2006, at the Melbourne Magistrates' Court for a committal mention;³⁴
 - 28.2. on 28 June 2006, for a committal mention;³⁵
 - 28.3. on 1 December 2006, at the County Court for a plea hearing;³⁶ and
 - 28.4. on 6 December 2006, at the County Court for a sentencing hearing.³⁷
29. In addition, Ms Gobbo charged fees for conferences, advice, drafting of a Form 8A, negotiations and preparation.³⁸
30. There is nothing to suggest that she continued to provide legal representation to Mr Summers following the sentencing hearing on 6 December 2006.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Summers

31. Ms Gobbo provided information concerning Mr Summers during her representation of him, on at least the two occasions outlined at [11] and [12] above.

³⁴ Exhibit RC1841 Magistrates' Court of Victoria Record of persons represented by Ms Gobbo, 7 June 2006, 19, MCV.0001.0001.0001 @00017; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo 7 June 2006, 61, OPP.0001.0004.0025 @.0085; Exhibit RC1568 Ms Nicola Gobbo Fee Book 1, 23 June 2006, 97, MIN.5000.7000.0001 @.0097; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 23 June 2006, 11, GMH.0001.0001.0009 @.0011; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 7 March 2019, 45, GMH.0001.0001.0002 @.0045.

³⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 61, OPP.0001.0004.0025 @.0085; Exhibit RC1841 Magistrates' Court of Victoria Record persons represented by Ms Gobbo, 28 June 2006, 19, MCV.0001.0001.0001_00017.

³⁶ Exhibit RC1568 Ms Nicola Gobbo Fee Book 01, 20 December 2006, 102, MIN.5000.7000.0001 @.0102; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 20 December 2006, 4, GMH.0001.0001.0008 @.0004; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 20 December 2006, 37, GMH.0001.0001.0002 @.0037; Un-tendered Reasons for Sentence, *R v Mr Adams & Mr Summers* [2006] VCC 1637, 6 December 2006, 7 [23]–[25] OPP.0048.0001.0001 @.0040.

³⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 6 December 2006, 61, OPP.0001.0004.0025 @0085; Exhibit RC1568 Ms Nicola Gobbo Fee Book 1, 20 December 2006, 102, MIN.5000.7000.0001 @.0102.

³⁸ Exhibit RC1568 Ms Nicola Gobbo Fee Book 01, 23 June 2006, 97, MIN.5000.7000.0001 @.0097; Exhibit RC1568 Ms Nicola Gobbo Fee Book 01, 20 December 2006, 102, MIN.5000.7000.0001 @.0102; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 23 June 2006, 11, GMH.0001.0001.0009 @.0011; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 20 December 2006, 4, GMH.0001.0001.0008 @.0004; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 23 June 2006, 45, GMH.0001.0001.0002 @.0045; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 20 December 2006, 37, GMH.0001.0001.0002 @.0037.

Submissions under Terms of Reference 1 and 2 in relation to Mr Summers

32. It is submitted that it is open to the Commissioner to find that the case of Mr Summers may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
33. The extent to which the case of Mr Summers may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

34. First, Category 1A³⁹ applies in that, between June 2006 and December 2006,⁴⁰ Ms Gobbo acted for Mr Summers while she was a human source,⁴¹ and did not disclose same to him.⁴²
35. Secondly, Category 1B⁴³ applies in that, in October 2006, which was during the period that Ms Gobbo acted for Mr Summers in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴⁴
36. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁵ Further, in certain instances identified above,⁴⁶ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁴⁷
37. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁹ See Legal Principles Submissions at [249].

⁴⁰ See above analysis at [28]-[29].

⁴¹ See Legal Principles Submissions at [20].

⁴² See Legal Principles Submissions at [239].

⁴³ See Legal Principles Submissions at [249].

⁴⁴ See above analysis at [11]-[12].

⁴⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁴⁶ See above analysis at [11]-[12].

⁴⁷ See Legal Principles Submissions at [310]-[319] and [301]-[306].

Conduct of Victoria Police

38. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁸
 - 38.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Summers;
 - 38.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Summers, appropriate disclosure was made; or alternatively
 - 38.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
39. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [38.1] were taken, and accordingly there was the potential for the right of Mr Summers to a fair trial to have been interfered with.
40. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Summers and/or his legal representatives.
41. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁹
42. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁰
43. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁵¹
44. Category 3A⁵² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
45. Category 3B⁵³ applies in that, during the period Ms Gobbo acted for Mr Summers, she provided information in relation to him to members of Victoria

⁴⁸ See Legal Principles Submissions at [384] and [452]-[457].

⁴⁹ See Legal Principles Submissions at [380]-[385].

⁵⁰ See Legal Principles Submissions at [351], [362]-[373].

⁵¹ See Legal Principles Submissions at [351], [374].

⁵² See Legal Principles Submissions at [465].

⁵³ See Legal Principles Submissions at [465].

Police,⁵⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

46. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁴ See above analysis at [11]-[12].

CASE STUDY: MR AGRUM (A PSEUDONYM)

The Relevant Case of Mr Agrum

1. The one relevant case concerning Mr Agrum arose from Operation Posse,¹ and comprised two charges of trafficking in not less than a commercial quantity of methylamphetamine.²
2. The prosecution case was that Mr Cooper approached Mr Agrum to assist in the manufacturing of methylamphetamine at a laboratory in Preston. It was alleged that Mr Agrum was involved in the manufacturing process at those premises between December 2005 and March 2006,³ upon which Mr Agrum assisted in moving from the laboratory from Preston to a shop front in Strathmore.⁴ On 21 April 2006, the manufacturing process commenced at the Strathmore premises.⁵
3. As outlined at Chapter 11 of the Narrative Submissions (concerning Mr Cooper), on [REDACTED], Mr Agrum and Mr Cooper were arrested leaving the Strathmore premises and were subsequently charged with drug trafficking offences.⁶
4. The prosecution case relied upon the evidence of Mr Cooper,⁷ [REDACTED] [REDACTED].⁹ The informant in the case was Mr Paul Rowe.¹⁰
5. On 24 May 2007, Mr Agrum was arraigned and entered a plea of guilty to:
 - 5.1. one count of trafficking in not less than a commercial quantity of methylamphetamine between 29 December 2005 and 31 March 2006 at Preston; and

¹ See Chapters 10 and 11 of the Narrative Submissions.

² Un-tendered Presentment No. U00918482, *R v Mr Agrum*, 2007, 1, RCMP1.0042.0002.0002 @.0001; Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 1-2 [11], RCMP1.0042.0002.0003 @.0002-.0003. [Restricted/non-publication].

³ Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 1-2 [11], RCMP1.0042.0002.0003 @.0002-.0003. [Restricted/non-publication].

⁴ Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 4 [17], RCMP1.0042.0002.0003 @.0005. [Restricted/non-publication].

⁵ Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 4 [18], RCMP1.0042.0002.0003 @.0005. [Restricted/non-publication].

⁶ Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 4 [18], RCMP1.0042.0002.0003 @.0005. [Restricted/non-publication].

⁷ Un-tendered Presentment No. U00918482, *R v Mr Agrum*, 2007, 1, RCMP1.0042.0002.0002 @.0001; Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

⁸ Un-tendered Presentment No. U00918482, *R v Mr Agrum*, 2007, 1, RCMP1.0042.0002.0002 @.0001.

⁹ Un-tendered Presentment No. U00918482, *R v Mr Agrum*, 2007, 4, RCMP1.0042.0002.0002 @.0004.

¹⁰ Un-tendered Transcript of Proceedings, *R v Mr Agrum* (County Court of Victoria, Judge Howie, 24 May 2007), 5, RCMP1.0042.0002.0006 @.0006. [Restricted/non-publication].

- 5.2. one count of trafficking in not less than a commercial quantity of methylamphetamine between 17 April 2006 and [REDACTED] at Strathmore.¹¹
6. Plea hearings were conducted on 24 May 2007 and 28 May 2007.¹²
7. On the 4 June 2007, Mr Agrum was sentenced to a total effective sentence of four years' imprisonment, with a non-parole period of two years and six months.¹³

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Agrum

8. Whilst material before the Commission suggests that Ms Gobbo was previously acquainted with Mr Agrum,¹⁴ based on the following circumstances, it appears that she provided legal representation to him from his arrest on [REDACTED] until his sentencing in June 2007.
9. As outlined at Chapter 11 of the Narrative Submissions, at approximately 4:10pm on [REDACTED], Ms Gobbo contacted her handler, Mr Peter Smith, and told him that she had been "contacted by investigators, [and] advised that Cooper and Mr Agrum in custody, both asking for [her]".¹⁵ Ms Gobbo informed Mr Peter Smith that she was en route to the St Kilda Road police station, and would arrive within 10 minutes.¹⁶ Mr Peter Smith observed that Ms Gobbo "seems happy re arrests, and asked the question 'Who's next?'"¹⁷
10. Ms Gobbo attended the St Kilda Rd police station that night.¹⁸ Based on the material reviewed, it appears that Ms Gobbo conferred with Mr Agrum both separately and with Mr Cooper together at the same time.¹⁹
11. At 2:25am on [REDACTED], Mr Peter Smith was advised by Mr O'Brien that Mr Agrum [REDACTED] did not need any further advice from Ms

¹¹ Un-tendered Presentment No. U00918482, *R v Mr Agrum*, 2007, 7, RCMP1.0042.0002.0002 @.0007; Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 1-2 [11], RCMP1.0042.0002.0003 @.0002-.0003. [Restricted/non-publication].

¹² See transcript date and "adjourned until Monday 28 May 2007" at Un-tendered Transcript of Proceedings, *R v Mr Agrum* (County Court of Victoria, Judge Howie, 24 May 2007), 5, RCMP1.0042.0002.0006; Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

¹³ Un-tendered Reasons for Sentence, *R v Mr Agrum* [2009] VCC, 8 [25], RCMP1.0042.0002.0003 @.0009 [Restricted/non-publication]; Un-tendered Record of Order and Sentence, Mr Agrum, 4 June 2007, RCMP1.0042.0002.0004; Un-tendered Victoria Police Criminal History Report, Mr Agrum, 13 December 2019, VPL.0099.0193.0038.

¹⁴ Exhibit RC0281 ICR3838 (021), 4 March 2006, 175, VPL.2000.0003.1761; Exhibit RC0281 ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817.

¹⁵ Exhibit RC0281 ICR3838 (028), 22 April 2006, 259, VPL.2000.0003.1845.

¹⁶ Exhibit RC0281 ICR3838 (028), 22 April 2006, 259, VPL.2000.0003.1845.

¹⁷ Exhibit RC0281 ICR3838 (028), 22 April 2006, 259, VPL.2000.0003.1845. Cf. Transcript of Ms Nicola Gobbo, 6 February 2020, 13341-2.

¹⁸ Chapter 11 of the Narrative Submissions; Exhibit RC0539 Statement of Inspector Dale Flynn, 17 June 2019, 9 [50], VPL.0014.0042.0001 @.0009; See Transcript of Inspector Dale Flynn, 30 September 2019, 6800.

¹⁹ [REDACTED]; See also Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Green, 26, VPL.0005.0104.0001 @.0026; [REDACTED]

Gobbo at that stage. Ms Gobbo was subsequently advised of this by Mr Peter Smith.²⁰

12. Ms Gobbo appeared at court on behalf of Mr Agrum on the following occasions:
 - 12.1. on 26 April 2006, at the Melbourne Magistrates' Court for a filing hearing;²¹
 - 12.2. on 17 January 2007, at the Melbourne Magistrates' Court for a mention;²²
 - 12.3. on 23 February 2007, at the Melbourne Magistrates' Court for a committal mention;²³
 - 12.4. on 24 May 2007, in the County Court for a plea hearing;²⁴
 - 12.5. on 28 May 2007, in the County Court for a further plea hearing;²⁵ and
 - 12.6. on 4 June 2007, in the County Court for sentencing.²⁶
13. Ms Gobbo charged fees for the appearances on 24 May 2007, 28 May 2007 and 4 June 2007.²⁷ In addition, on 26 June 2007, she charged fees for a 'brief to advise, confer at M.R.C and appear at committal mention hearings to settle plea.'²⁸
14. Ms Gobbo visited Mr Agrum in custody on five occasions between May 2006 and May 2007.²⁹

²⁰ Exhibit RC0486 Mr Peter Smith diary, 22 April 2006, 198, RCMP1.0053.0001.0008 @.0198; Exhibit RC0281 ICR3838 (028), 22 April 2006, 260, VPL.2000.003.1846.

²¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 26 April 2006, 63, OPP.0001.0004.0025 @.0087; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 26 April 2006, 16, 18, MCV.0001.0001.0001 @.0016.

²² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 17 January 2007, 63, OPP.0001.0004.0025 @.0087.

²³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 February 2007, 63, OPP.0001.0004.0025 @.0087.

²⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo 24 May 2007, 63, OPP.0001.0004.0025 @.0087.

²⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 May 2007, 63, OPP.0001.0004.0025 @.0087.

²⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 4 June 2007, 63, OPP.0001.0004.0025 @.0087

²⁷ Exhibit RC1568 Nicola Gobbo Fee Book 02, 27 June 2007, 6 (MIN.5000.7000.0103), MIN.5000.7000.0108; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 28 June 2007, 30, GMH.0001.0001.0002 @.0030.

²⁸ Exhibit RC1568 Nicola Gobbo Fee Book 02, 27 June 2007, 6 (MIN.5000.7000.0103), MIN.5000.7000.0108; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 28 June 2007, 30, GMH.0001.0001.0002 @.0030; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 28 June 2007, 2, GMH.0001.0001.0007 @.0002.

²⁹ Ms Gobbo is listed as having visited Mr Agrum in custody on various dates. See Exhibit RC1359 Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 7 May 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit 1359 Prisoners visited by Ms Nicola Gobbo archive report ,12 June 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit1359 Prisoners visited by Ms Nicola Gobbo archive report, 12 July 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 17 November 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 17 May 2007, 26, CNS.0001.0003.0037 @.0060.

15. In addition, there is material before the Commission suggesting that in January and February 2007 Ms Gobbo was involved in discussions with the Office of Public Prosecutions concerning Mr Agrum's plea offer.³⁰

The Conduct of Ms Gobbo as a Human Source in relation to Mr Agrum

16. Ms Gobbo provided information to Victoria Police concerning Mr Agrum prior to and during her representation of him, between at least February 2006 and June 2007. The information provided during that period included:
 - 16.1. Mr Agrum's phone number (on at least three occasions);³¹
 - 16.2. information concerning the registration and make of the vehicle driven by Mr Agrum;³²
 - 16.3. that Mr Agrum had been living with Mr Cooper;³³
 - 16.4. identification of Mr Agrum from a photograph taken at a party hosted by Mr Cooper;³⁴
 - 16.5. information concerning the relationship between Mr Agrum and Mr Cooper, including:
 - 16.5.1. that Mr Agrum had previously been in custody with Mr Cooper;³⁵
 - 16.5.2. that Mr Agrum had assisted Mr Cooper in manufacturing drugs³⁶ and was Mr Cooper's 'helper';³⁷
 - 16.5.3. that Mr Agrum was assisting Mr Cooper in converting a chemical to a usable precursor for the manufacturing process;³⁸

³⁰ *AB & EF v CD* [2017] VSC 350, [319]; Un-tendered Affidavit of John Ross Champion SC, 2 August 2016, 16 [96], COR.1000.0001.0116 @.0016; Un-tendered Affidavit of John Ross Champion SC, 14 December 2016, 6 [23], COR.1000.0001.0201 @.0006; Un-tendered Affidavit of John Ross Champion, 14 December 2016, Exhibit JRC-53, COR.1000.0001.0169; Un-tendered Affidavit of John Ross Champion, 14 December 2016, Exhibit JRC-54, COR.1000.0001.0170.

³¹ Exhibit RC0281 ICR3838 (017), 9 February 2006, 147, VPL.2000.0003.1733; Exhibit RC0281 ICR3838 (019), 23 February 2006, 164, VPL.2000.0003.1750; Exhibit RC0281 ICR3838 (024), 29 March 2006, 215, VPL.2000.0003.1801; Exhibit RC0282 Information Report SID373, 17 February 2006, VPL.0016.0029.0858.

³² Exhibit RC0281 ICR3838 (020), 25 February 2006, 168, VPL.2000.0003.1754; Exhibit RC0281 ICR3838 (020), 26 February 2006, 169, VPL.2000.0003.1755.

³³ Exhibit RC0281 ICR3838 (020), 26 February 2006, 169, VPL.2000.0003.1755.

³⁴ Exhibit RC0281 ICR3838 (023), 20 March 2006, 199, VPL.2000.0003.1785.

³⁵ Exhibit RC0281 ICR3838 (017), 9 February 2006, 147, VPL.2000.0003.1733; Exhibit RC0282 Information Report SID373, 17 February 2006, VPL.0016.0029.0858.

³⁶ See "helped Mr Cooper with the recent cook over New Year" at Exhibit RC0281 ICR3838 (018), 10 February 2006, 149, VPL.2000.0003.1735.

³⁷ Exhibit RC0281 ICR3838 (019), 20 February 2006, 160, VPL.2000.0003.1746. NB: the ICR states "Op Purana JOB updated - Frank identity not known at this stage". See also Exhibit RC0281 ICR3838 (021), 6 March 2006, 178, VPL.2000.0003.1764; Exhibit RC0281 ICR3838 (020), 26 February 2006, 169, VPL.2000.0003.1755.

³⁸ Exhibit RC0281 ICR3838 (021), 4 March 2006, 177, VPL.2000.0003.1763.

- 16.5.4. Ms Gobbo's opinion as to whether Mr Agrum would remain loyal to Mr Cooper if Mr Cooper were arrested;³⁹
- 16.5.5. information concerning whether Mr Cooper and Mr Agrum should be allowed to communicate to each other whilst in custody;⁴⁰
- 16.5.6. Mr Cooper's concern that Mr Agrum was not being treated well in custody, which apparently went against a deal Mr Cooper had made with the police;⁴¹
- 16.5.7. that Mr Agrum was moving cells to be near Mr Cooper;⁴²
- 16.5.8. That Mr Cooper had reinforced to Mr Agrum 'not to say anything';⁴³ and
- 16.5.9. that Ms Gobbo was asked to pass messages between Mr Agrum and Mr Cooper;⁴⁴
- 16.6. information concerning Mr Agrum's brief of evidence;⁴⁵ and
- 16.7. information concerning Mr Agrum's plea hearing.⁴⁶

The Passing of Messages between Mr Agrum and Mr Cooper

- 17. During a meeting with her handlers (Messrs Peter Smith and Anderson) on 12 July 2006, Ms Gobbo stated that Mr Agrum had written a letter to Mr Cooper which, according to Mr Cooper, was threatening and said he needed money.⁴⁷ Ms Gobbo advised her handlers that Mr Cooper wanted her to pass a message to Mr Agrum, telling him that Mr Cooper had thus far looked after him but was upset with Mr Agrum's threats and would make another statement.⁴⁸ Ms Gobbo said that she had visited Mr Agrum and conveyed Mr Cooper's message, and suggested to him he should request another meeting with Mr Cooper.⁴⁹

Information concerning the Brief of Evidence

- 18. On 30 October 2006 Ms Gobbo met with her handlers and reviewed five volumes of the briefs of evidence against Mr Agrum and other co-accused in relation to Operation Posse.⁵⁰ She perused the brief and made comments in

³⁹ Exhibit RC0281 ICR3838 (028), 18 April 2006, 250, VPL.2000.0003.1836; Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Green, 22 April 2006, 24, VPL.0005.0104.0001 @.0024.

⁴⁰ Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Green, 22 April 2006, 24, VPL.0005.0104.0001 @.0024.

⁴¹ The ICR entry records that "D/Sgt O'Brien" was advised, see Exhibit RC0281 ICR3838 (034), 6 June 2006, 319, VPL.2000.0003.1905.

⁴² Exhibit RC0281 ICR3838 (035), 14 June 2006, 329, VPL.2000.0003.1915.

⁴³ See "DDI O'Brien adv" at Exhibit RC0281 ICR3838 (040), 11 August 2006, 389, VPL.2000.0003.1975.

⁴⁴ See para [17].

⁴⁵ See paras [18].

⁴⁶ See paras [19] – [22].

⁴⁷ Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 204, VPL.0005.0111.0386.

⁴⁸ Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 205, VPL.0005.0111.0387.

⁴⁹ Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 208, VPL.0005.0111.0390.

⁵⁰ Exhibit RC0281 ICR3838 (051), 30 October 2006, 528, VPL.2000.0003.2114. See also Transcript of Mr Sandy White, 6 August 2019, 4023-4, TRN.2019.08.06.01.C; Transcript of Inspector Dale Flynn, 2 October 2019, 7089-7090, TRN.2019.10.02.01.C.

relation to its contents.⁵¹ According to Ms Gobbo, she reviewed the brief to ensure that her status as an informer was not disclosed in the evidence.⁵² This matter is referred to in Chapter 10 of the Narrative Submissions.

Information concerning Mr Agrum's Plea Hearing

19. On 30 October 2006, she advised her handler that she was going to represent Mr Agrum at his plea hearing and was considering bringing forward the plea date to avoid having a situation where Mr Agrum was in the dock in court at the same time as Milad Mokbel.⁵³
20. On 17 November 2006, Ms Gobbo told her handler that Mr Agrum was 'aware more charges are coming and is keen to plea to charges'.⁵⁴
21. On 21 February 2007, she told her handler that Mr Agrum had 'settled his plea with Purana' and [REDACTED].⁵⁵ Despite this indication, based on the material reviewed by Counsel Assisting, it does not appear that [REDACTED].⁵⁶
22. During a meeting with her handlers on 5 June 2007 (the day after Mr Agrum was sentenced), Ms Gobbo discussed the circumstances in which Mr Agrum entered his plea and his failure to receive any sentencing discount as follows:

'Cause the judge is saying, you know, "You don't have the same factors Cooper has, you don't have any mitigating factors, you weren't assisting the police," [REDACTED]

[REDACTED] to him... I couldn't - I couldn't say any of it... for him, fuckin' hell, did you hear his sentence? ...We - this is a plea guilty plea before even the hand-up brief comes. No-one in the court room's [REDACTED]

⁵⁷

Relevant Conduct in relation to Mr Cooper

23. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Agrum's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have

⁵¹ Exhibit RC1927 Nicola Gobbo comments on Cooper brief of evidence, 30 October 2006, VPL.2000.0002.0680; See also brief comments at Exhibit RC1298 Operation Bendigo Document Management Working Group, 29 April 2014, 3, VGSO.2000.1501.0167 @.0169.

⁵² Un-tendered Facts admitted by EF, AB & EF v CD [2017] VSC 350, 3 [12], COR.1000.0001.0227 @.0003.

⁵³ Exhibit RC0281 ICR3838 (051) 30 October 2006, 531, VPL.2000.0003.2117.

⁵⁴ Exhibit RC0281 ICR3838 (053), 17 November 2006, 559, VPL.2000.0003.2145.

⁵⁵ Exhibit RC0281 ICR3838 (067), 21 February 2007, 649, VPL.2000.0003.2235.

⁵⁶ [REDACTED] the reasons for sentence handed down on 4 June 2007, and there is no mention of [REDACTED] to the court during the plea hearings on 24 May 2007 or 28 May 2007. See His Honour stating "as I understand, Mr Agrum's position he doesn't have an entitlement to the discount they [Mr Cooper [REDACTED]] were entitled to..." and Mr Tinney's reply for the Crown "that's right your honour" at Un-tendered Transcript of Proceedings, R v Mr Agrum (County Court of Victoria, Judge Howie, 28 May 2007), 21, OPP.0038.0001.0004 @.0021.

⁵⁷ Exhibit RC0283 Transcript of meeting between Nicola Gobbo, Fox and Anderson, 5 June 2007, 267, VPL.0005.0137.0351 @.0617.

been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:

- 23.1. the discovery of the offending the subject of Operation Posse;
 - 23.2. Mr Cooper being arrested in Operation Posse;
 - 23.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 23.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Agrum (among others).
24. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Agrum, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Agrum may have been deprived of any opportunity to object to the admissibility of this evidence.
25. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic) is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁵⁸ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁵⁹

Submissions under Terms of Reference 1 and 2 in relation to Mr Agrum

26. It is submitted that it is open to the Commissioner to find that the case of Mr Agrum may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
27. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, Chapters 11 (concerning Mr Cooper).
28. These submissions should be read in conjunction with Chapters 10 and 11 of the Narrative Submissions which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Agrum.
29. The extent to which the case of Mr Agrum may have been affected can be measured by virtue of the following matters.

⁵⁸ See Legal Principles Submissions at [210].

⁵⁹ See Legal Principles Submissions at [212]-[213].

Conduct of Ms Gobbo

30. First, Category 1A⁶⁰ applies in that, between April 2006 and June 2007,⁶¹ Ms Gobbo acted for Mr Agrum while she was a human source,⁶² and did not disclose same to him.⁶³
31. Secondly, Category 1B⁶⁴ applies in that, between February 2006 and June 2007, which was before and during the period that Ms Gobbo acted for Mr Agrum in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁶⁵
32. Thirdly, Category 2A⁶⁶ applies in that evidence relied upon by the prosecution in the case against Mr Agrum, namely the evidence of Mr Cooper,⁶⁷ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁸
33. Fourthly, Category 2B⁶⁹ applies in that Ms Gobbo had knowledge of the circumstances founding the above [32] and failed to disclose same to her client, Mr Agrum, thereby depriving him of the ability to object to the admission of that evidence.
34. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷⁰ Further, in certain instances identified above,⁷¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁷²
35. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶⁰ See Legal Principles Submissions at [249].

⁶¹ See above analysis at [9]-[15].

⁶² See Legal Principles Submissions at [20].

⁶³ See Legal Principles Submissions at [239].

⁶⁴ See Legal Principles Submissions at [249].

⁶⁵ See above analysis at [9], [16]-[22].

⁶⁶ See Legal Principles Submissions at [249].

⁶⁷ See above analysis at [4] and [2387]-[25].

⁶⁸ See Legal Principles Submissions at [196]-[222].

⁶⁹ See Legal Principles Submissions at [249].

⁷⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁷¹ See above analysis at [9], [16.5.5] – [16.5.9], [16.6], [16.7], [17] – [22].

⁷² See Legal Principles Submissions at [310]-[319] and [301]-[306].

Conduct of Victoria Police

36. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷³
- 36.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Agrum;
 - 36.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Agrum, appropriate disclosure was made; or alternatively
 - 36.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
37. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [36.1] were taken, and accordingly there was the potential for the right of Mr Agrum to a fair trial to have been interfered with.
38. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Agrum and/or his legal representatives.
39. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁴
40. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷⁵
41. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after guilty plea.⁷⁶
42. Category 3A⁷⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
43. Category 3B⁷⁸ applies in that, between February 2006 and June 2007, which was before and during the period that Ms Gobbo acted for Mr Agrum in relation to the case, Ms Gobbo provided information in relation to him to members of

⁷³ See Legal Principles Submissions at [384] and [452]-[457].

⁷⁴ See Legal Principles Submissions at [380]-[385].

⁷⁵ See Legal Principles Submissions at [351], [362]-[373].

⁷⁶ See Legal Principles Submissions at [351] and [374].

⁷⁷ See Legal Principles Submissions at [465].

⁷⁸ See Legal Principles Submissions at [465].

Victoria Police.⁷⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

44. Category 4A⁸⁰ applies in that, as noted above at [32], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
45. Category 4B⁸¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
46. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁹ See above analysis at [9], [16]-[22].

⁸⁰ See Legal Principles Submissions at [465].

⁸¹ See Legal Principles Submissions at [465].

CASE STUDY: FADY AHMAD

The Relevant Case of Mr Ahmad

1. The one relevant case of Mr Fady Ahmad concerns his conviction before the County Court in December 2006, which arose from Operation Gruel.¹
2. Operation Gruel was an investigation conducted by the Major Drug Investigation Division into the trafficking of ecstasy by Mr Ahmad, and commenced in May 2004.²
3. On 26 May 2005, following the execution of a search warrant at Mr Ahmad's address, he was arrested and charged with drug trafficking offences.³
4. The prosecution case relied on evidence gathered by a covert police operative, to whom Mr Ahmad sold a quantity of ecstasy tablets, as well as police surveillance and telephone intercepts.⁴
5. On 22 November 2006, following an earlier arraignment, Mr Ahmad pleaded guilty to one count of trafficking in not less than a commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA) between 18 August 2004 and 2 December 2004.⁵
6. On 7 December 2006, Mr Ahmad was sentenced to two years and six months' imprisonment, with a non-parole period of 18 months' imprisonment.⁶

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Ahmad

7. On 1 October 2005, Ms Gobbo told her handlers that she had been briefed to appear at Mr Ahmad's upcoming bail application.⁷

¹ Un-tendered Reasons for Sentence, *R v Ahmad* [2007] VCC, 7 [31], OPP.0050.00001.0001 @ .0046 [Restricted]; LEAP criminal history report, "Fady Ahmad", VPL.0099.0193.1704.

² Un-tendered Summary for plea hearing, *R v Bassem Chakelli, Fady Ahmad & Daniel Rizk*, 22 November 2006, 1 [1], OPP.0050.00001.0001 @ .0021.

³ Un-tendered Fady Ahmad Remand/Bail Application, undated, OPP.0050.00001.0001 @ .0020; Un-tendered Summary for plea hearing, *R v Bassem Chakelli, Fady Ahmad & Daniel Rizk*, 22 November 2006, 15 [77], OPP.0050.00001.0001 @ .0035.

⁴ Un-tendered Summary for plea hearing, *R v Bassem Chakelli, Fady Ahmad & Daniel Rizk*, 22 November 2006, 1 [1], OPP.0050.00001.0001 @ .0021; Un-tendered Reasons for Sentence, *R v Ahmad* [2007] VCC, 1-2 [2]-[7], OPP.0050.00001.0001 @ .0040-41 [Restricted].

⁵ Un-tendered Presentment No: T01236884, *The Queen v Fady Ahmad*, 2006, 1, OPP.0050.00001.0001 @ .0003; Un-tendered Reasons for Sentence, *R v Ahmad* [2007] VCC, 1 [1], OPP.0050.00001.0001 @ .0040 [Restricted].

⁶ Un-tendered Reasons for Sentence, *R v Ahmad* [2007] VCC, 7 [31], OPP.0050.00001.0001 @ .0046 [Restricted]; LEAP criminal history report, "Fady Ahmad", VPL.0099.0193.1704.

⁷ Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 256, VPL.0005.0087.0068 @ .0323; Exhibit RC0281 ICR3838 (004), 01 October 2005, 23, RCMP.0050.0001.0001 @ .1609.

8. Ms Gobbo appeared in court on behalf of Mr Ahmad in relation to two separate bail applications, on 3 October 2005 and 12 October 2005.⁸ She charged fees for her appearance on 12 October 2005.⁹
9. Based on the material reviewed, there is nothing to suggest that she continued to provide legal representation to Mr Ahmad following the hearing on 12 October 2005.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Ahmad

10. Ms Gobbo provided information to Victoria Police concerning Mr Ahmad during her representation of him, on at least one occasion. On 1 October 2005, during a meeting with her handlers Mr Sandy White and Mr Peter Smith, Ms Gobbo provided the following information:
 - 10.1. that she had been briefed to appear at Mr Ahmad's upcoming bail application and the date of the application (3 October 2005);¹⁰
 - 10.2. that Mr Ahmad could not apply for bail earlier because he was serving a sentence for a driving matter;¹¹
 - 10.3. information concerning the charges against Mr Ahmad, including his association with a co-accused (Abraham Haddad) and the fact his involvement was limited to a particular period of time;¹²
 - 10.4. information concerning Mr Ahmad's family, particularly in relation to his two brothers, and the fact that he would be looking after his mother upon release from custody;¹³ and
 - 10.5. that Mr Ahmad was a drug user.¹⁴

Submissions under Terms of Reference 1 and 2 in relation to Mr Ahmad

11. It is submitted that it is open to the Commissioner to find that the case of Mr Ahmad may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their

⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 3 October 2005, 58, OPP.0001.0004.0025 @ .0082; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 12 October 2005, 59, OPP.0001.0004.0025 @ .0083.

⁹ Exhibit RC1568 Ms Gobbo fee book 01, 13 October 2005, 91, MIN.5000.7000.0001 @ .0091; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk invoice for fees due to Ms Gobbo, 17 October 2005, 33, GMH.0001.0001.0010 @ .0033; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Gobbo Statement of Account, 7 March 2019, 54, GMH.0001.0001.0002 @ .0054.

¹⁰ Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 256, VPL.0005.0087.0068 @ .0323; Exhibit RC0281 ICR3838 (004), 01 October 2005, 23, RCMP1.0050.0001.0001 @ .1609.

¹¹ Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 256, VPL.0005.0087.0068 @ .0323; Exhibit RC0281 ICR3838 (004), 01 October 2005, 23, RCMP1.0050.0001.0001 @ .1609.

¹² Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 278, VPL.0005.0087.0068 @ .0345

¹³ Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 278, 297 VPL.0005.0087.0068 @ .0345, .0364.

¹⁴ Exhibit RC0489 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 1 October 2005, 297 VPL.0005.0087.0068 @ .0364.

disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

12. The extent to which the case of Mr Ahmad may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

13. First, Category 1A¹⁵ applies in that, in October 2005,¹⁶ Ms Gobbo acted for Mr Ahmad while she was a human source,¹⁷ and did not disclose same to him.¹⁸
14. Secondly, Category 1B¹⁹ applies in that, in October 2005, which was during the period that Ms Gobbo acted for Mr Ahmad in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²⁰
15. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²¹ Further, in certain instances identified above,²² Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²³
16. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

17. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁴

¹⁵ See Legal Principles Submissions at [249].

¹⁶ See above analysis at [7] – [8].

¹⁷ See Legal Principles Submissions at [20].

¹⁸ See Legal Principles Submissions at [239].

¹⁹ See Legal Principles Submissions at [249].

²⁰ See above analysis at [10].

²¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²² See above analysis at [10].

²³ See Legal Principles Submissions at [310]-[319] and [301]-[306].

²⁴ See Legal Principles Submissions at [384] and [452]-[457].

- 17.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Ahmad;
- 17.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Ahmad, appropriate disclosure was made; or alternatively
- 17.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
18. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [17.1] were taken, and accordingly there was the potential for the right of Mr Ahmad to a fair trial to have been interfered with.
19. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Ahmad and/or his legal representatives.
20. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁵
21. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁶
22. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁷
23. Category 3A²⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
24. Category 3B²⁹ applies in that, during the period Ms Gobbo acted for Mr Ahmad, she provided information in relation to him to members of Victoria Police,³⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
25. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

²⁵ See Legal Principles Submissions at [380]-[385].

²⁶ See Legal Principles Submissions at [351], [362]-[373].

²⁷ See Legal Principles Submissions at [351], [374].

²⁸ See Legal Principles Submissions at [465].

²⁹ See Legal Principles Submissions at [465].

³⁰ See above analysis at [10].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: ADAM AHMED

The Relevant Cases of Mr Ahmed

1. The two relevant cases concerning Mr Adam Ahmed concern his convictions before the County Court in relation to:
 - 1.1. Presentment C0303598A (Case 1);¹ and
 - 1.2. Presentment S01953959 (Case 2).²
2. The two cases were determined together as part of consolidated plea and sentencing hearings in September 2005 and October 2005.³

Case 1

3. On 28 September 2003, Mr Ahmed was arrested following the execution of a search warrant at a premises in Clayton South.⁴ On the same date, the MDID executed a search warrant at an apartment in Dublin Street, Oakleigh East.⁵ In total, approximately 14.3 kilograms of substance containing a variety of drugs were located at the addresses.⁶
4. The warrants were executed pursuant to an investigation by the Major Drug Investigation Division (codenamed 'Operation Galop'), which commenced in June 2003 and concerned the alleged manufacture and trafficking of drugs by Adam Ahmed, Colleen O'Reilly, Abbey Haynes and others.⁷
5. Mr Ahmed was charged with drug trafficking related offences committed between 8 August 2003 and 28 September 2003 and was remanded in custody.⁸ He was subsequently granted bail on 22 December 2003.⁹
6. The prosecution alleged that Mr Ahmed was a manufacturer of drugs for the purposes of sale, and was carrying on a business of trafficking in drugs between the aforementioned dates.¹⁰ It was alleged that he manufactured

¹ Un-tendered Presentment No. C0303598A, *R v Azzam Ahmed*, 2005, 1-2, OPP.0053.0001.0001 @ .0029-.0030.

² Un-tendered Presentment No. S01953959, *R v Azzam Ahmed*, 1, OPP.0053.0001.0001 @ .0118.

³ See Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 1 [1], OPP.0053.0001.0001 @ .0139.

⁴ *R v Azzam Ahmed* [2007] VSCA 270, 1 [1]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 6 [17], OPP.0053.0001.0001 @ .0144; Un-tendered Outline of Crown Case, *Azzam Ahmed & Ors*, undated, 9 [60], OPP.0053.0001.0001 @ .0114.

⁵ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 5-6 [16], OPP.0053.0001.0001 @ .0143-.0144; Un-tendered Outline of Crown Case, *Azzam Ahmed & Ors*, undated, 8 [56], OPP.0053.0001.0001 @ .0113.

⁶ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 6 [20], OPP.0053.0001.0001 @ .0144.

⁷ Un-tendered Outline of Crown Case, *Azzam Ahmed & Ors*, undated, [1], OPP.0053.0001.0001 @ .0114.

⁸ *R v Azzam Ahmed* [2007] VSCA 270, [4].

⁹ Un-tendered Summary of Proceedings, *R v Azzam Ahmed*, 18 January 2007, [3], OPP.0053.0001.0001 @ .0172.

¹⁰ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 2-3 [5], OPP.0053.0001.0001 @ .0140-.0141.

drugs and collected money with a co-accused, Ms Haynes, and that his then-partner, Ms O'Reilly, was involved in the distribution of the drugs.¹¹

7. It was alleged that the drugs were manufactured at Ms Haynes' residence in Clayton and then at the apartment in Dublin Street, Oakleigh East.¹²
8. On 23 March 2005, Mr Ahmed was committed to stand trial in relation to Case 1 and indicated an intention to plead guilty.¹³

Case 2

9. On 16 August 2004, Mr Ahmed was arrested in the course of arranging a drug transaction with co-accused, Terrence Wood.¹⁴ A search of his vehicle revealed approximately 3,000 ecstasy tablets and a quantity of cash.¹⁵ He was subsequently charged in relation to that offending and remanded in custody. Senior Constable John Brown was the informant in relation to this matter.¹⁶
10. The prosecution alleged that Mr Ahmed was involved in the manufacture of drugs for sale and was engaged in transactions involving the transfer of money interstate and abroad.¹⁷
11. The prosecution relied upon surveillance evidence and telephone intercepts in relation to both cases.¹⁸
12. On 7 September 2005, Mr Ahmed was committed to stand trial in relation to Case 2 and indicated an intention to plead guilty.¹⁹
13. On 14 September 2005, the two presentments were filed in the County Court.²⁰ Mr Ahmed was arraigned and entered a plea of guilty to the following ten counts:
 - 13.1. In relation to Case 1:
 - 13.1.1. three counts of trafficking in not less than a large commercial quantity of drugs of dependence, namely 3,4-Methylenedioxymethamphetamine (MDMA), methylamphetamine and amphetamine;

¹¹ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 2-3 [5], OPP.0053.0001.0001 @ .0140-.0141; Un-tendered Outline of Crown Case, *Azzam Ahmed & Ors*, undated, [3], OPP.0053.0001.0001 @ .0106.

¹² Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 3 [6], OPP.0053.0001.0001 @ .0141.

¹³ Un-tendered Summary of Proceedings, *R v Azzam Ahmed*, 18 January 2007, 1-2 [5], OPP.0053.0001.0001 @ .0172-.0173.

¹⁴ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 6-7 [21], OPP.0053.0001.0001 @ .0144-.0145; Un-tendered Plea Opening, *R v Azzam Ahmed*, undated, 2, OPP.0053.0001.0001 @ .0128.

¹⁵ *R v Azzam Ahmed* [2007] VSCA 270, [2]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 6-7 [21]-[22], OPP.0053.0001.0001 @ .0144-.0145.

¹⁶ Un-tendered Witness List in Brief of evidence, *R v Azzam Ahmed*, undated, 1-2, MIN.0002.0003.0301 @ .0313-0.314.

¹⁷ *R v Azzam Ahmed* [2007] VSCA 270, [3].

¹⁸ *R v Azzam Ahmed* [2007] VSCA 270, [3]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 4 [8], OPP.0053.0001.0001 @ .0142.

¹⁹ Un-tendered Summary of Proceedings, *R v Azzam Ahmed*, 18 January 2007, 2 [6], OPP.0053.0001.0001 @ .0173.

²⁰ *R v Azzam Ahmed* [2007] VSCA 270, [42].

- 13.1.2. one count of trafficking in not less than a commercial quantity of dimethylamphetamine;
- 13.1.3. one count of trafficking in ketamine; and
- 13.1.4. one count of possession of cocaine;²¹ and
- 13.2. In relation to Case 2:
 - 13.2.1. two counts of trafficking in drugs of dependence, namely methylamphetamine and ketamine; and
 - 13.2.2. two counts of trafficking in not less than a commercial quantity of drugs of dependence, namely MDMA and MDA.²²
14. During the course of the plea hearing, a character reference written by Ms Gobbo, dated 10 September 2005, was tendered on behalf of Mr Ahmed.²³
15. On 26 October 2005, Mr Ahmed was sentenced to a total effective sentence of 23 years' imprisonment, with a non-parole period of 17 years' imprisonment.²⁴
16. Mr Ahmed filed applications for leave to appeal against conviction and sentence, which was heard on 30 July 2007.²⁵ On 4 December 2007, leave was granted and the appeal was allowed. The convictions in relation to seven counts were set aside and it was ordered that verdicts of acquittal be entered on those counts.²⁶ Mr Ahmed was re-sentenced to a total effective sentence of 17 years' imprisonment, with a non-parole period of 13 years.²⁷
17. Mr Ahmed had a *subsequent matter* – he was charged with refuse/fail to answer question, which was struck out/withdrawn at the Melbourne Magistrates' Court on 11 September 2009.²⁸

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Ahmed

18. Based on the material reviewed, Ms Gobbo provided legal representation to Mr Ahmed between approximately November 2003 and March 2009. The

²¹ *R v Azzam Ahmed* [2007] VSCA 270, [4]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), [1], OPP.0053.0001.0001 @ .0139; Un-tendered Presentment No. C0303598A, *R v Azzam Ahmed*, 2005, 1-2, OPP.0053.0001.0001 @ .0029-.0030.

²² *R v Azzam Ahmed* [2007] VSCA 270, [4]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), [2], OPP.0053.0001.0001 @ .0139; Un-tendered Presentment No. S01953959, *R v Azzam Ahmed*, 2005, 1, OPP.0053.0001.0001 @ .0118.

²³ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 11 [44], OPP.0053.0001.0001 @ .0149; Exhibit RC1910 Letter from Nicola Gobbo to His Honour Judge Chettle, 10 September 2005, 1-2, MIN.5000.0001.9516 @ .9516-.9517.

²⁴ Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 15-16 [65], OPP.0053.0001.0001 @ .0153-.0154; Un-tendered Victoria Police Criminal History Report, Azzam Ahmed, 13 December 2019, 2, VPL.0099.0193.0050 @ .0051.

²⁵ See *R v Azzam Ahmed* [2007] VSCA 270.

²⁶ Un-tendered Notification of Result of Appeal or Application, *R v Azzam Ahmed*, 26 October 2005, 2 [3], OPP.0053.0001.0001 @ .0181.

²⁷ *R v Azzam Ahmed* [2007] VSCA 270, [20], [28]; Un-tendered Notification of Result of Appeal or Application, *R v Azzam Ahmed*, 26 October 2005, 2 [4], OPP.0053.0001.0001 @ .0181; Un-tendered Victoria Police Criminal History Report, Azzam Ahmed, 13 December 2019, 1-2, VPL.0099.0193.0050 @ .0050-.0051.

²⁸ Un-tendered Victoria Police Criminal History Report, Azzam Ahmed, 13 December 2019, 1, VPL.0099.0193.0050 @ .0050.

representation provided between at least 2008 and 2009 concerned an unrelated matter.²⁹

19. It appears that Ms Gobbo first became acquainted with Mr Ahmed following his arrest in relation to Case 1. According to an Informer Contact Report (ICR) entry, Ms Gobbo told her handler that she did not know Mr Ahmed prior to 2003, that she had acted for Mr Ahmed's father in the past, and that she was contacted by Mr Ahmed (through Mr Dale) on the day of his arrest in relation to Case 1.³⁰ Ms Gobbo told her handler that she was also contacted by police advising her of Mr Ahmed's arrest in relation to Case 2.³¹
20. In addition, it appears that Ms Gobbo may have had a personal relationship with Mr Ahmed subsequent to him being granted bail in December 2003. Ms Gobbo denied this when asked during her evidence to the Commission, stating 'he certainly wanted me to and told the world that he did'.³² Indications of a personal relationship include:
 - 20.1. on 26 February 2008, Ms Gobbo's handler questioned her about Mr Ahmed and she 'became emotional' and 'admitted a relationship with same'³³
 - 20.2. according to notes of meeting between [REDACTED] Hotham, Detective Senior Constable Maxwell and [REDACTED] on 14 December 2008, [REDACTED] detailed that Mr Ahmed was 'engaged to Informer 3838 at some stage'³⁴
 - 20.3. prior to his arrest on 16 August 2004, Ms Gobbo had been out to dinner with Mr Ahmed and following his arrest a water account in her name was located in his car
 - 20.4. following his imprisonment in September 2005, Ms Gobbo made payments into Mr Ahmed's prison account.³⁵
21. Ms Gobbo visited Mr Ahmed in custody on approximately 82 occasions between 23 November 2003 and 22 May 2008.³⁶

²⁹ Un-tendered Victoria Police Criminal History Report, Azzam Ahmed, 13 December 2019, 1-2, VPL.0099.0193.0050 @ .0050-.0051; Exhibit RC1841 Magistrates' Court of Victoria record of persons represented by Ms Gobbo, 2 March 2009, 20, MCV.0001.0001.0001 @ .0022.

³⁰ Exhibit RC0281 ICR3838 (072), 30 March 2007, 751, VPL.2000.0003.2337.

³¹ Exhibit RC0281 ICR3838 (034), 9 June 2006, 324-325, VPL.2000.0003.1910-VPL.2000.0003.1911.

³² Transcript of Ms Gobbo, 13 June 2019, 64

³³ Exhibit RC0281 ICR2958 (006), 26 February 2008, 63, VPL.2000.0003.0803.

³⁴ Exhibit RC1916 File note of meeting between [REDACTED] and Mr Hotham Detective Senior Constable Maxwell, 14 December 2008, 1, VPL.0100.0142.4335.

³⁵ See, eg, "Send money to [Prison]": Exhibit RC0273 Ms Nicola Gobbo diary, 30 November 2005, 54, MIN.0001.0014.0526 @.0579; "Send \$ to [Prison]": Exhibit RC0273 Ms Nicola Gobo diary, 25 February 2006, 6, MIN.0005.0003.0212 @.0217; "Send jail \$": Exhibit RC0273 Ms Nicola Gobbo diary, 29 July 2006, 24, MIN.0005.0003.0212 @.0235; Transcript of Ms Nicola Gobbo, 4 February 2020, 13054, TRN.2020.02.04.01.

³⁶ Ms Gobbo visited Mr Ahmed on 23/11/03, 06/12/03, 29/08/04, 31/08/04, 04/09/04, 05/09/04, 08/09/04, 12/09/04, 14/09/04, 19/09/04, 22/09/04, 26/09/04, 29/09/04, 03/10/04, 10/10/04, 17/10/04, 22/10/04, 24/10/04, 31/10/04, 02/11/04, 07/11/04, 14/11/04, 21/11/04, 28/11/04, 01/12/04, 05/12/04, 09/12/04, 12/12/04, 19/12/04, 24/12/04, 27/12/04, 29/12/04, 02/01/05, 09/01/05, 13/01/05, 16/01/05, 23/01/05, 30/01/05, 06/02/05, 13/02/05, 20/02/05, 27/02/05, 06/03/05, 14/03/05, 20/03/05, 03/04/05, 08/04/05, 23/02/05, 03/05/05, 18/05/05, 31/05/05, 13/06/05, 27/06/05, 23/07/05, 09/08/05, 23/08/05, 11/09/05, 20/09/05, 02/10/05, 15/10/05, 22/10/05, 27/10/05, 13/11/05, 05/12/05, 03/01/06, 22/04/06, 30/04/06, 07/05/06, 24/05/06, 18/06/06, 24/07/06, 06/08/06, 13/08/06, 05/10/06, 13/11/06, 22/12/06,

22. In relation to Case 1, Ms Gobbo appeared in court on behalf of Mr Ahmed on the following occasions:
 - 22.1. on 19 December 2003, for a bail application;³⁷
 - 22.2. on 22 December 2003, for a bail application;³⁸
 - 22.3. on 10 June 2005, at the County Court for a mention;³⁹
 - 22.4. on 16 June 2005, at the County Court for a mention;⁴⁰ and
 - 22.5. on 14 September 2005, at the County Court for a plea hearing.⁴¹
23. In relation to Case 2, Ms Gobbo appeared in court on behalf of Mr Ahmed on the following occasions:
 - 23.1. on 4 November 2004, at the Melbourne Magistrates' Court for a bail application;⁴²
 - 23.2. on 10 November 2004, at the Melbourne Magistrates' Court for a bail application;⁴³
 - 23.3. on 11 November 2004, at the Melbourne Magistrates' Court for a bail application;⁴⁴
 - 23.4. on 8 June 2005, at the Melbourne Magistrates' Court for a special mention;⁴⁵
 - 23.5. on 7 September 2005, for a committal hearing;⁴⁶ and

29/03/07, 11/06/07, 25/07/06, 21/09/07, 14/01/08, 22/05/08. See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 23 November 2003 – 22 May 2008, 15-27, CNS.0001.0003.0037 @ .0051-.0063; Exhibit RC1902 List of visits by Nicola Gobbo to Corrections, 23 November 2003-22 May 2008, 1-8, VPL.0005.0063.0201 @ .0201-.0007.

³⁷ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 45, OPP.0001.0004.0025, @ .0069.

³⁸ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 December 2003, 45, OPP.0001.0004.0025 @ .0069.

³⁹ Un-tendered Summary of Proceedings, *R v Azzam Ahmed*, 18 January 2007, 2 [7], OPP.0053.0001.0001 @ .0173.

⁴⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 June 2005, 45, OPP.0001.0004.0025 @ .0069.

⁴¹ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 14 September 2005, 52, OPP.0001.0004.0025 @ .0076; *R v Azzam Ahmed* [2007] VSCA 270, [42]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 10 [41], OPP.0053.0001.0001 @ .0153-.0148.

⁴² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 November 2004, 82, MIN.5000.7000.0001 @ .0082; Un-tendered Brief to Counsel, *Mr John Brown v Azzam Ahmed*, 4 November 2004, MIN.0002.0003.0168.

⁴³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 12 November 2004, 83, MIN.5000.7000.0001 @ .0083; Un-tendered Brief to Counsel, *Mr John Brown v Azzam Ahmed*, 4 November 2004, MIN.0002.0003.0168.

⁴⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 12 November 2004, 83, MIN.5000.7000.0001 @ .0083.

⁴⁵ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1912 Fax from Inspector Hughes to Nicola Gobbo, 13 July 2005, 2, MIN.0002.0003.0511 @ .0512.

⁴⁶ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 7 September 2005, 45, OPP.0001.0004.0025 @ .0076.

- 23.6. on 14 September 2005, at the County Court for a plea hearing.⁴⁷
24. Ms Gobbo submitted invoices for fees in relation to the abovementioned cases, including for conferences and for the bail applications on 4 November 2004 and on 11 November 2004.⁴⁸ (Note: fees were received but invoices post-dated the third period of registration)
25. Between Mr Ahmed's plea hearing and sentencing, Ms Gobbo visited Mr Ahmed in custody on four occasions.⁴⁹
26. Given Ms Gobbo appeared at multiple stages of Mr Ahmed's proceedings in relation to both Case 1 and Case 2, it is submitted that it is reasonably open to the Commissioner to infer that Ms Gobbo's representation of Mr Ahmed did not conclude immediately following her appearance at the plea hearing on 14 September 2005, and that her visits to Mr Ahmed in custody up until the date of his sentencing were in some way related to these cases. In the absence of any further information as to discussions which occurred between Ms Gobbo and Mr Ahmed during her visits subsequent to the sentencing date, there is insufficient information to determine the purpose of those visits (and thus no submission to be made that she represented him subsequent to his sentencing on 26 October 2005).

The Conduct of Ms Gobbo as a Human Source in relation to Mr Ahmed

27. Ms Gobbo provided information concerning Mr Ahmed during her representation of him on at least two occasions; on 1 October 2005 and 3 October 2005.⁵⁰ The information provided during that period included:
- 27.1. that she 'feels obligated' to Mr Ahmed because he provided care and assistance to her after she suffered a stroke;⁵¹
- 27.2. information concerning Mr Ahmed's family members;⁵²
- 27.3. the date of his arrest and length of time he had been in custody;⁵³
- 27.4. the date of an upcoming court hearing;⁵⁴
- 27.5. information concerning his relationship with known associates, including the fact that Mr Ahmed was owed money by them;⁵⁵

⁴⁷ Ms Gobbo was junior counsel to Mr Con Heliotis QC: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 14 September 2005, 45, OPP.0001.0004.0025 @ .0076; *R v Azzam Ahmed* [2007] VSCA 270, [42]; Un-tendered Reasons for Sentence, *R v Ahmed* (County Court of Victoria, Judge Chettle, 26 October 2005), 10 [41], OPP.0053.0001.0001 @ .0148.

⁴⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 November 2004, 82, MIN.5000.7000.0001 @ .0082; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 7 March 2019, 68, GMH.0001.0001.0002 @ .0068.

⁴⁹ The visits occurred on 20 September 2005, 2 October 2005, 15 October 2005 and 22 October 2005: See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 20 September 2005-22 October 2005, 22-23, CNS.0001.0003.0037 @ .0058-.0059.

⁵⁰ Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

⁵¹ Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

⁵² Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁵³ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁵⁴ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁵⁵ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23-24, VPL.2000.0003.1609-VPL.2000.0003.1610.

- 27.6. information concerning money allegedly stolen at Mr Ahmed's arrest;⁵⁶
 - 27.7. her opinion that Mr Ahmed would never sign a statement in relation to the stolen money;⁵⁷
 - 27.8. information provided to her by Mr Ahmed concerning an unrelated accused (Jimmy Allen);⁵⁸ and
 - 27.9. information concerning co-accused, Ms Haynes.⁵⁹
28. Based on the material reviewed, it appears that Ms Gobbo continued to provide information concerning Mr Ahmed between 28 October 2005 and 7 January 2009.⁶⁰ [REDACTED]
[REDACTED].⁶¹ However, it is not submitted that Ms Gobbo later represented Mr Ahmed in relation to any indictable matter in which he obtained a conviction.

Submissions under Terms of Reference 1 and 2 in relation to Mr Ahmed

- 29. It is submitted that it is open to the Commissioner to find that the two cases of Mr Ahmed may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
- 30. These submissions should be read in conjunction with the Narrative Submissions, Chapters 12, 14 and 15, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Ahmed.
- 31. The extent to which the cases of Mr Ahmed may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

- 32. First, Category 1A⁶² applies in relation to both cases, in that, between December 2003 and September 2005,⁶³ Ms Gobbo acted for Mr Ahmed while she was a human source,⁶⁴ and did not disclose same to him.⁶⁵

⁵⁶ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁵⁷ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁵⁸ Exhibit RC0281 ICR3838 (005), 3 October 2005, 25, VPL.2000.0003.1612.

⁵⁹ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

⁶⁰ Exhibit RC0281 ICR3838 (007), 28 October 2005, 46, VPL.2000.0003.1632; Exhibit RC0281 ICR2958 (052), 7 January 2009, 809, VPL.2000.0003.1549.

⁶² See Legal Principles Submissions at [249].

⁶³ See above analysis at [22]-[26].

⁶⁴ See Legal Principles Submissions at [20].

⁶⁵ See Legal Principles Submissions at [239].

33. Secondly, Category 1B⁶⁶ applies in relation to both cases, in that, in October 2005, which was during the period that Ms Gobbo acted for Mr Ahmed in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police.⁶⁷
34. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁶⁸
35. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

36. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶⁹
 - 36.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Ahmed;
 - 36.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Ahmed, appropriate disclosure was made; or alternatively
 - 36.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) then possibly a court.
37. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [36.1] were taken, and accordingly there was the potential for the right of Mr Ahmed to a fair trial to have been interfered with.
38. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Ahmed and/or his legal representatives.

⁶⁶ See Legal Principles Submissions at [249].

⁶⁷ See above analysis at [27].

⁶⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁶⁹ See Legal Principles Submissions at [384] and [452]-[457].

39. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁰
40. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷¹
41. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁷²
42. Category 3A⁷³ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
43. Category 3B⁷⁴ applies in that, in October 2005, which was during the period that Ms Gobbo acted for Mr Ahmed in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police,⁷⁵ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
44. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁰ See Legal Principles Submissions at [384] and [452]-[457].

⁷¹ See Legal Principles Submissions at [351], [362]-[373].

⁷² See Legal Principles Submissions at [351], [374].

⁷³ See Legal Principles Submissions at [465].

⁷⁴ See Legal Principles Submissions at [465].

⁷⁵ See above analysis at [27].

CASE STUDY: MR ARNOLD (A PSEUDONYM); MR HAMILTON (A PSEUDONYM); MR JOYCE (A PSEUDONYM)

MR ARNOLD (A PSEUDONYM)

The Relevant Case of Mr Arnold

1. The one relevant case of Mr Arnold concerns his convictions before the County Court in November 2008.¹
2. On 28 April 2006, the Australian Federal Police (AFP) executed a search warrant at Mr Arnold's residential address and seized a significant quantity of 3,4-Methylenedioxymethamphetamine (MDMA) tablets.² As a result, Mr Arnold was arrested and charged with offences concerning the trafficking and manufacture of MDMA.³
3. The Crown alleged that the tablets located at Mr Arnold's property had been manufactured at Mr Joyce's property.⁴ The Crown alleged that Mr Arnold attended Mr Joyce's property on four occasions during the relevant period, in order to obtain MDMA tablets for the purpose of trafficking.⁵
4. The prosecution case depended on telephone intercepts recording conversations between Mr Arnold, Mr Joyce and others, during which delivery, maintenance and use of the pill press was discussed.⁶ In addition, the prosecution also relied on the evidence of [REDACTED], [REDACTED] [REDACTED].
5. On 28 October 2008, Mr Arnold was arraigned and entered a plea of not guilty to one count of manufacturing MDMA in a marketable quantity for a commercial

¹ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 39, CDP.0034.0001.0014; Un-tendered Criminal History Report: *Mr Arnold*, 13 December 2019, VPL.0099.0193.0250.

² Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 3, 6, CDP.0034.0001.0014

³ See initial charges on Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 1, CDP.0034.0001.0011.

⁴ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 3, 6, CDP.0034.0001.0014; Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 2, CDP.0034.0001.0011; Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 4, CDP.0034.0001.0014.

⁵ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 5, CDP.0034.0001.0014.

⁶ Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 2, CDP.0034.0001.0011; Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 4, CDP.0034.0001.0014

purpose (Count 1) and one count of trafficking a marketable quantity of MDMA (Count 2).⁷

6. On 29 October 2008, Mr Arnold was re-arraigned and entered a plea of guilty to Count 2. It was directed that a verdict of acquittal be entered with respect to Count 1.⁸
7. On 31 October 2008, a plea hearing was conducted.⁹
8. On 7 November 2008, Mr Arnold was convicted and sentenced to three years and three months' imprisonment, with a non-parole period of two years' imprisonment.¹⁰

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Arnold

9. Ms Gobbo appeared in court on behalf of Mr Arnold on one occasion being at a filing hearing at the Melbourne Magistrates' Court on 1 May 2006.¹¹ She charged fees for that appearance on 29 June 2006.¹²
10. Based on the material reviewed, there is nothing to suggest that Ms Gobbo provided legal representation to Mr Arnold prior to, or subsequent to, that date.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Arnold

11. Ms Gobbo provided information to Victoria Police concerning Mr Arnold on one occasion during her representation of him. On 1 May 2006, Ms Gobbo told her handler that she was representing Mr Arnold at his filing hearing and provided information concerning the nature of his charges. She also provided information concerning Mr Arnold's association with Mr Karam and stated that she believed Mr Arnold's conduct was 'part of something bigger'.¹³
12. Ms Gobbo provided information concerning Mr Arnold following her representation of him between at least 3 May 2006 and 24 January 2008. The information provided during that period included:

⁷ Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 1, CDP.0034.0001.0011.

⁸ Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 1, CDP.0034.0001.0011.

⁹ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 2, CDP.0034.0001.0014; Un-tendered Indictment, Commonwealth Director of Public Prosecutions, Indictment, *The Queen v Mr Arnold* [2008] VCC, 1, CDP.0034.0001.0011.

¹⁰ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 39, CDP.0034.0001.0014; Un-tendered Criminal History Report: Mr Arnold, 13 December 2019, VPL.0099.0193.0250.

¹¹ Exhibit RC1841 Magistrates' Court of Victoria, 'Persons represented by Ms Gobbo', 11 July 2002, 18, MCV.0001.0001.0001, MCV.0001.0001.0020_00016; Exhibit RC0281 ICR3838 (030), 01 May 2006, VPL.2000.0003.1864.

¹² Exhibit RC1568 Ms Gobbo fee book 01, 29 November 1999, 97, MIN.5000.7000.0001 @ .0097; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 07 March 2019, 44, GMH.0001.0001.0002 @ .0044.

¹³ Exhibit RC0281 ICR3838 (030), 01 May 2006, 278, VPL.2000.0003.1864

- 12.1. Mr Arnold's phone number;¹⁴
- 12.2. Mr Arnold's nickname;¹⁵
- 12.3. information concerning Mr Arnold's finances;¹⁶
- 12.4. [REDACTED]
- 12.5. [REDACTED]
- 12.6. proposed and apparent further misconduct apparently being committed by Mr Arnold, including his involvement in the manufacture of drugs and the location of another pill press (near Broadmeadows police station);²¹
- 12.7. her opinion as to an opportunity 'for a UC [undercover] introduction';²²
- 12.8. [REDACTED]
- 12.9. [REDACTED]

¹⁴ Exhibit RC0281 ICR3838 (030), 03 May 2006, 281, VPL.2000.0003.1867; Exhibit RC0283 Information Report SID799, 20 August 2006, VPL.2000.0003.8818; Exhibit RC0283 Information Report SID817, 29 August 2006, VPL.2000.0003.8842; Exhibit RC0283 Information Report SID1569, 25 January 2008, VPL.2000.0003.8365; Exhibit RC0281, ICR2958 (1), 24 January 2008, 2, VPL.2000.0003.0743; Exhibit RC0283 Information Report SID799, 20 August 2006, VPL.2000.0003.8818; Exhibit RC0283 Information Report SID817, 29 August 2006, VPL.2000.0003.8842; Exhibit RC0283 Information Report SID1569, 25 January 2008, VPL.2000.0003.8365; Exhibit RC0281, ICR2958 (1), 24 January 2008, 2, VPL.2000.0003.0743.

¹⁵ Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117.

¹⁶ Exhibit RC0281 ICR3838 (64), 31 January 2007, 621, VPL.2000.0003.2207; Exhibit RC0281 ICR3838 (075), 16 April 2007, 4, VPL.2000.0003.2377.

¹⁷ Exhibit RC0283 Information Report SID817, 29 August 2006, VPL.2000.0003.8842; Exhibit RC0281 ICR3838 (054), 26 November 2006, 4, VPL.2000.0003.2152; Exhibit RC0281 ICR3838 (61), 9 January 2007, 3, VPL.2000.0003.2187; Exhibit RC0281 ICR3838 (064), 1 January 2007, VPL.0009.0002.1471; Exhibit RC0281 ICR3838 (065), 5 February 2007, VPL.0009.0001.3626; Exhibit RC0281 ICR3838 (069), 7 March 2007, VPL.2000.0003.2257; Exhibit RC0281 ICR3838 (113), 27 November 2007, VPL.0009.0001.4121; Exhibit RC0281, ICR2958 (001), 24 January 2008, 2, VPL.2000.0003.0743.

¹⁹ Exhibit RC0281 ICR3838 (051), 30 October 2006, 14, VPL.0009.0001.3580.

²¹ Exhibit RC0281 ICR3838 (054), 26 November 2006, 4, VPL.2000.0003.2152; Exhibit RC0281 ICR3838 (058), 18 December 2006, 1; Exhibit RC0281 ICR3838 (061), 9 January 2007, 3, VPL.2000.0003.2187; Exhibit RC0281, ICR (064), 31 January 2007, 4, VPL.0009.0002.1471; Exhibit RC0281 ICR3838 (070), 15 March 2007, 20, VPL.2000.0003.2296; Exhibit RC0281 ICR3838 (071), 21 March 2007, VPL.2000.0003.2303; Exhibit RC0281 ICR3838 (071), 22 March 2007, VPL.2000.0003.2303; Exhibit RC0281 ICR3838 (075), 16 April 2007, 4, VPL.2000.0003.2377; [REDACTED] Purana Task Force – notified verbally'; Exhibit RC0281 ICR3838 (075), 19 April 2007, VPL.2000.0003.2375; Exhibit RC0281 ICR3838 (061), 11 January 2007, VPL.2000.0003.2185.

²² Exhibit RC0281 ICR3838 (054), 26 November 2006, 4, VPL.2000.0003.2152.

Submissions under Terms of Reference 1 and 2 in relation to Mr Arnold

13. It is submitted that it is open to the Commissioner to find that the case of Mr Arnold may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. The extent to which the case of Mr Arnold may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

15. First, Category 1A²⁵ applies in that, in May 2006,²⁶ Ms Gobbo acted for Mr Arnold while she was a human source,²⁷ and did not disclose same to him.²⁸
16. Secondly, Category 1B²⁹ applies in that, in May 2006, which was during the period that Ms Gobbo acted for Mr Arnold in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.³⁰
17. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³¹
18. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³²

²⁵ See Legal Principles Submissions at [249].

²⁶ See above analysis at [9].

²⁷ See Legal Principles Submissions at [20].

²⁸ See Legal Principles Submissions at [239].

²⁹ See Legal Principles Submissions at [249].

³⁰ See above analysis at [11].

³¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

³² See Legal Principles Submissions at [384] and [452]-[457].

- 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Arnold;
- 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Arnold, appropriate disclosure was made; or alternatively
- 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Arnold to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Arnold and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³³
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁴
24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁵
25. Category 3A³⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. Category 3B³⁷ applies in that, during the period Ms Gobbo acted for Mr Arnold, she provided information in relation to him to members of Victoria Police,³⁸ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

³³ See Legal Principles Submissions at [380]-[385].

³⁴ See Legal Principles Submissions at [351], [362]-[373].

³⁵ See Legal Principles Submissions at [351], [374].

³⁶ See Legal Principles Submissions at [465].

³⁷ See Legal Principles Submissions at [465].

³⁸ See above analysis at [11].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

MR HAMILTON (A PSEUDONYM)

The Relevant Case of Mr Hamilton

28. The one relevant case of Mr Hamilton concerns his convictions before the County Court in ██████████, which arose from Operation ██████████.³⁹
29. Operation ██████████ commenced in ██████████ and was an investigation into purchases of chemicals from chemical suppliers in Victoria, used in the production of amphetamine type substances.⁴⁰ Mr Hamilton was the primary target of the operation.⁴¹
30. On ██████████, Mr Hamilton was arrested and a search warrant was executed at his home address.⁴² He was subsequently charged with drug trafficking related offences.
31. The prosecution case relied upon telephone intercepts concerning the purchase of precursor chemicals for the purpose of manufacturing methylamphetamine.⁴³
32. On 28 November 2008, Mr Hamilton was arraigned and entered a plea of guilty to five counts concerning drug trafficking related offences and possession of ██████████ offences.⁴⁴
33. He was subsequently granted leave to amend his plea, and on ██████████ pleaded guilty to:
34. one count of having in his possession a substance, equipment and documents relating to the manufacture of a drug of dependence
 - 34.1. one count of trafficking amphetamine
 - 34.2. one count of trafficking methylamphetamine
 - 34.3. one count of attempting to ██████████
 - 34.4. one count of possession ██████████.⁴⁵

³⁹ Un-tendered Reasons for Sentence, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [132], [133], RCMP.0127.0001.0002 @.0138; Un-tendered Criminal History Report: Mr Hamilton, 16 December 2019, VPL.0099.0193.1006.

⁴⁰ Un-tendered Summary of Prosecution Opening, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [1], RCMP.0127.0001.0002 @.0105.

⁴¹ Un-tendered Summary of Prosecution Opening, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [2], RCMP.0127.0001.0002 @.0105.

⁴² Un-tendered Reasons for Sentence, *The Queen v Mr Hamilton* [2009] VCC, ██████████, [45], RCMP.0127.0001.0002 @.0123; Un-tendered Summary of Prosecution Opening, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [7], RCMP.0127.0001.0002 @.0107.

⁴³ Un-tendered Summary of Prosecution Opening, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [3]-[7], RCMP.0127.0001.0002 @.0105.

⁴⁴ Un-tendered Presentment no U02595377, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, RCMP.0127.0001.0002 @.0004; Un-tendered Reasons for Sentence, *The Queen v Mr Hamilton* ██████████ VCC, ██████████, [1], RCMP.0127.0001.0002 @.0115.

⁴⁵ Un-tendered Reasons for Sentence, *The Queen v Mr Hamilton* [2009] VCC, ██████████, [7], RCMP.0127.0001.0002 @.0115.

35. On [REDACTED], he was sentenced to a total effective sentence of seven years' imprisonment, with a non-parole period of four years' imprisonment.⁴⁶

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Hamilton

36. On [REDACTED], Ms Gobbo told her handler that she had been engaged to act on behalf of Mr Hamilton.⁴⁷
37. Ms Gobbo subsequently appeared in court on behalf of Mr Hamilton on one occasion; at a bail application on [REDACTED].⁴⁸ She charged fees for this appearance.⁴⁹

The Conduct of Ms Gobbo as a Human Source in relation to Mr Hamilton

38. Ms Gobbo provided information to Victoria Police concerning Mr Hamilton during her representation of him on the following two occasions:
- 38.1. On [REDACTED], she told her handler that she had been asked to represent Mr Hamilton and provided the name of the informant in his case.⁵⁰ She stated that Mr Hamilton had made a statement and was assisting police. She told her handler that this was referred to in his [REDACTED] and that she was concerned by this.⁵¹
- 38.2. As outlined at [74] below, on [REDACTED], Ms Gobbo again told her handler that Mr Hamilton had provided a statement to police and advised that the statement [REDACTED].⁵² She said that she had spoken to two officers about this matter, namely, Detective Sergeant [REDACTED] and Detective Senior Constable [REDACTED], and that Detective Senior Constable [REDACTED], wanted to have coffee with her. The relevant Informer Contact Report (ICR) entry notes that the [REDACTED] detailing Mr Hamilton's assistance would be 'rectified'.⁵³
39. On [REDACTED], following Mr Hamilton's bail application, Ms Gobbo told her handler that she had spoken to [REDACTED] regarding Mr Hamilton. The ICR entry records that Detective Senior Constable

⁴⁶ Un-tendered Reasons for Sentence, *The Queen v Mr Hamilton* [REDACTED] VCC, [REDACTED], [132], [133], RCMP1.0127.0001.0002 @.0138; Un-tendered Criminal History Report: Mr Hamilton, 16 December 2019, VPL.0099.0193.1006.

⁴⁷ Exhibit RC0281 ICR3838 (052), 9 November 2006, VPL.2000.0003.2134, VPL.2000.0003.2135.

⁴⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090.

⁴⁹ Exhibit RC1568 Ms Gobbo fee book 01, 29 November 1999, 101, MIN.5000.7000.0001 @ .0101; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice 18 March 2019, 22, GMH.0001.0001.0008 @ .0022; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 07 March 2019, 39, GMH.0001.0001.0002 @ .0039.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

44. The extent to which the case of Mr Hamilton may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

45. First, Category 1A⁶² applies in that, in November 2006,⁶³ Ms Gobbo acted for Mr Hamilton while she was a human source,⁶⁴ and did not disclose same to him.⁶⁵
46. Secondly, Category 1B⁶⁶ applies in that, in November 2006, which was during the period that Ms Gobbo acted for Mr Hamilton in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁶⁷
47. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁶⁸ Further, in certain instances identified above,⁶⁹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁷⁰
48. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

49. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷¹

⁶² See Legal Principles Submissions at [249].

⁶³ See above analysis at [36]-[37].

⁶⁴ See Legal Principles Submissions at [20].

⁶⁵ See Legal Principles Submissions at [239].

⁶⁶ See Legal Principles Submissions at [249].

⁶⁷ See above analysis at [38], [41].

⁶⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁶⁹ See above analysis at [38].

⁷⁰ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁷¹ See Legal Principles Submissions at [384] and [452]-[457].

- 49.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Hamilton;
 - 49.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Hamilton, appropriate disclosure was made; or alternatively
 - 49.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
50. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [49.1] were taken, and accordingly there was the potential for the right of Mr Hamilton to a fair trial to have been interfered with.
 51. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Hamilton and/or his legal representatives.
 52. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷²
 53. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷³
 54. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁷⁴
 55. Category 3A⁷⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 56. Category 3B⁷⁶ applies in that, during the period Ms Gobbo acted for Mr Hamilton, she provided information in relation to him to members of Victoria,⁷⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 57. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

⁷² See Legal Principles Submissions at [380]-[385].

⁷³ See Legal Principles Submissions at [351], [362]-[373].

⁷⁴ See Legal Principles Submissions at [351], [374].

⁷⁵ See Legal Principles Submissions at [465].

⁷⁶ See Legal Principles Submissions at [465].

⁷⁷ See above analysis at [38].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

MR JOYCE (A PSEUDONYM)

The Relevant Case of Mr Joyce

58. The one relevant case of Mr Joyce concerns his convictions before the County Court in November 2008.⁷⁸
59. On 29 April 2006, a warrant was executed at Mr Joyce's property and located, amongst other items, a pill press containing traces of 3,4-Methylenedioxyamphetamine (MDMA) and methylamphetamine.⁷⁹ Mr Joyce was subsequently charged with drug offences.
60. The prosecution alleged that Mr Joyce and an associate, Bradley Thompson, manufactured the tablets between 21 April 2006 and 27 April 2006.⁸⁰ The sentencing judge found that Mr Joyce's involvement was more limited and involved the provision of the location for the use of the pill press and being on the property at times during its operation.⁸¹
61. As stated in the case analysis of Mr Arnold, the prosecution case depended on telephone intercepts recording conversations between Mr Arnold, Mr Joyce and others, during which delivery, maintenance and use of the pill press was discussed.⁸² In addition, the prosecution also relied on the [REDACTED].⁸³
62. On 31 October 2008, Mr Joyce entered a plea of guilty to:
 - 62.1. one count of manufacturing a marketable quantity of MDMA for a commercial purpose;
 - 62.2. one count of possession of cannabis; and
 - 62.3. two charges of possession of a general-category handgun that was not registered.⁸⁴
63. On 7 November 2008, he was sentenced to a total effective sentence of two years and three months' imprisonment, to be released on a recognisance

⁷⁸ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 35, 38, CDP.0034.0001.0014; Un-tendered Criminal History Report: Mr Joyce, 14 December 2019, VPL.0099.0193.3457.

⁷⁹ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 7, CDP.0034.0001.0014.

⁸⁰ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 3, CDP.0034.0001.0014.

⁸¹ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 11, CDP.0034.0001.0014.

⁸² Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 3, 5, 15, CDP.0034.0001.0014.

⁸³ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 4, CDP.0034.0001.0014; Un-tendered Presentment, *R v Mr Joyce*, 2006, CDP.0034.0001.0002 @.0003.

⁸⁴ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 1, CDP.0034.0001.0014.

release order after serving a period of 15 months' imprisonment, to be of good behaviour for a period of two years and three months.⁸⁵

64. On 23 July 2007, being a date prior to Mr Joyce's sentencing in relation to the abovementioned case, he was arrested and charged with unrelated drug trafficking offences under Victorian legislation.⁸⁶ A filing hearing was conducted in relation to that matter on 24 July 2007 at the Melbourne Magistrates' Court.

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Joyce

65. Ms Gobbo appeared on behalf of Mr Joyce at the Melbourne Magistrates' Court on 12 October 2006, for a committal mention.⁸⁷ She charged fees for her appearance at that hearing, as well as for a brief to 'advise, confer, draft Form 8A' in relation to Mr Joyce's case.⁸⁸
66. Based on the following circumstances, it is submitted that it is open to the Commissioner to infer that Ms Gobbo continued to provide legal representation to Mr Joyce until at least July 2007:
- 66.1. On 23 July 2007, solicitors for the Commonwealth Director of Public Prosecutions (CDPP) wrote a letter to Ms Gobbo in relation to Mr Joyce's case.⁸⁹ The CDPP stated that they had spoken to Mr Joyce's solicitor, who advised that further materials concerning Mr Joyce's matter should be provided directly to Ms Gobbo. The letter referred to previous correspondence with Ms Gobbo concerning difficulties she had downloading the brief of evidence, and attached further documents, including a statement provided by [REDACTED].⁹⁰
- 66.2. On 24 July 2007, following Mr Joyce's arrest on the State charges, Ms Gobbo appeared on his behalf at the Melbourne Magistrates' Court in relation to an application for the revocation of his bail on the Commonwealth charges (i.e. the abovementioned case).⁹¹ On the same date, she told her handler that she had visited Mr Joyce at the custody centre.⁹²

⁸⁵ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 35, 38. CDP.0034.0001.0014; Un-tendered Criminal History Report: Mr Joyce, 14 December 2019, VPL.0099.0193.3457.

⁸⁶ Un-tendered Reasons for Sentence, *R v Mr Arnold and Mr Joyce* [2008] VCC, 2 [1] – [3], CDP.0034.0001.0014.

⁸⁷ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 11 July 2002, 19, MCV.0001.0001.0001 @.00017; Un-tendered CDPP file note, 12 October 2006, CDP.0002.0001.0342; Un-tendered CDPP "Listing"/ "Adjournment" Report, 12 October 2006, CDP.0002.0001.0171.

⁸⁸ Exhibit RC1568 Ms Gobbo fee book 01, 29 November 1999, 97, MIN.5000.7000.0001 @ .0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 16 October 2006, 37, GMH.0001.0001.0008 @ .0037; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 16 October 2006, 40, GMH.0001.0001.0002 @ .0040.

⁸⁹ Exhibit RC1907 Letter from CDPP to Nicola Gobbo, 23 July 2007, CDP.0002.0001.0343.

⁹⁰ Exhibit RC1907 Letter from CDPP to Nicola Gobbo, 23 July 2007, CDP.0002.0001.0343.

⁹¹ Un-tendered "Listing"/ "Adjournment" Report, 24 July 2007, CDP.0002.0001.0173.

⁹² Exhibit RC0281 ICR3838 (092), 24 July 2007, VPL.2000.0003.2639.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Joyce

67. Ms Gobbo provided information to Victoria Police concerning Mr Joyce prior to and during her representation of him, between at least September 2006 and July 2007. The information provided during that period included:
- 67.1. Mr Joyce's phone number (on at least two occasions);⁹³
 - 67.2. that Mr Joyce was the owner of a property connected to drug manufacturing;⁹⁴
 - 67.3. that she did not have Mr Joyce's phone number and had 'nil further re his associates';⁹⁵
 - 67.4. that she would see Mr Joyce at his committal mention date⁹⁶ and that she had read his brief;⁹⁷
 - 67.5. information regarding Mr Joyce's association with Mr Karam;⁹⁸
 - 67.6. information regarding misconduct by Mr Joyce, including information which lead her to believe that Mr Joyce was involved in the manufacture of amphetamine;⁹⁹
 - 67.7. that Mr Joyce was a person the police 'should be looking at';¹⁰⁰ and
 - 67.8. [REDACTED]
[REDACTED].¹⁰¹

Information concerning [REDACTED] [REDACTED]

68. On 1 June 2007, Ms Gobbo told her handler Mr Anderson that she believed [REDACTED] and provided her opinion as to the utility of any [REDACTED].¹⁰²
69. On 3 July 2007, Ms Gobbo told her handler Mr Fox that [REDACTED] and 'owes people lots of money'.¹⁰³ The relevant ICR entry stated that Ms Gobbo said she would meet with Mr Joyce and then provide police with information concerning his vulnerabilities.¹⁰⁴

⁹³ Exhibit RC0281 ICR3838 (049), 19 October 2006, VPL.2000.0003.2094; Exhibit RC0281 ICR3838 (082), 9 June 2007, VPL.2000.0003.2472.

⁹⁴ Exhibit RC0281 ICR3838 (046), 26 September 2006, VPL.2000.0003.2024; Exhibit RC0281 ICR3838 (046) 27 September 2006, VPL.2000.0003.2025.

⁹⁵ Exhibit RC0281 ICR3838 047, 2 October 2006, VPL.2000.0003.2031.

⁹⁶ Exhibit RC0281 ICR3838 (047), 2 October 2006, VPL.2000.0003.2031.

⁹⁷ Exhibit RC0281 ICR3838 (047), 3 October 2006, VPL.2000.0003.2032.

⁹⁸ Exhibit RC0281 ICR38383 (047), 3 October 2006, VPL.2000.0003.2032.

⁹⁹ Exhibit RC0281 ICR3838 (051), 27 October 2006, VPL.2000.0003.2113; Exhibit RC0281 ICR3838 (069), 9 March 2007, VPL.2000.0003.2269; Exhibit RC0281 ICR3838 (081), 1 June 2007, VPL.2000.0003.2458; Exhibit RC0281 ICR3838 (082), 9 June 2007, VPL.2000.0003.2472; Exhibit RC0281 ICR3838 (087), 3 July 2007, VPL.2000.0003.2564.

¹⁰⁰ Exhibit RC0282 Transcript of conversation between Nicola Gobbo, Sandy White, Anderson and Green, 379,12 November 2006, VPL.0005.0104.0706 @ .1102.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Submissions under Terms of Reference 1 and 2 in relation to Mr Joyce

75. It is submitted that it is open to the Commissioner to find that the case of Mr Joyce may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
76. The extent to which the case of Mr Joyce may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

77. First, Category 1A¹¹⁴ applies in that, between October 2006 and July 2007,¹¹⁵ Ms Gobbo acted for Mr Joyce while she was a human source,¹¹⁶ and did not disclose same to him.¹¹⁷
78. Secondly, Category 1B¹¹⁸ applies in that, between September 2006 and July 2007, which was before and during the period that Ms Gobbo acted for Mr Joyce in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹¹⁹
79. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹²⁰ Further, in certain instances identified above,¹²¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.¹²²
80. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹¹⁴ See Legal Principles Submissions at [249].

¹¹⁵ See above analysis at [65]-[66].

¹¹⁶ See Legal Principles Submissions at [20].

¹¹⁷ See Legal Principles Submissions at [239].

¹¹⁸ See Legal Principles Submissions at [249].

¹¹⁹ See above analysis at [67]-[74].

¹²⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹²¹ See above analysis at [67]-[74].

¹²² See Legal Principles Submissions at [310]-[319] and [301]-[306].

Conduct of Victoria Police

81. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²³
 - 81.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Joyce;
 - 81.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Joyce, appropriate disclosure was made; or alternatively
 - 81.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
82. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [81.1] were taken, and accordingly there was the potential for the right of Mr Joyce to a fair trial to have been interfered with.
83. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Joyce and/or his legal representatives.
84. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²⁴
85. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²⁵
86. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹²⁶
87. Category 3A¹²⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
88. Category 3B¹²⁸ applies in that, before and during the period Ms Gobbo acted for Mr Joyce, she provided information in relation to him to members of Victoria

¹²³ See Legal Principles Submissions at [384] and [452]-[457].

¹²⁴ See Legal Principles Submissions at [380]-[385].

¹²⁵ See Legal Principles Submissions at [351], [362].-[373].

¹²⁶ See Legal Principles Submissions at [351], [374].

¹²⁷ See Legal Principles Submissions at [465].

¹²⁸ See Legal Principles Submissions at [465].

Police,¹²⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

89. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²⁹ See above analysis at [67]-[74].

CASE STUDY: JOHN BALAKIS

The Relevant Case of Mr Balakis

1. The case addressed in this case study arose for consideration as part of Stage 5 in the methodology of Counsel Assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 5 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
2. The one relevant case of Mr Balakis concerns his finding of guilt before the Melbourne Magistrates' Court on 9 November 2007, for one count of attempting to traffick amphetamine; and one count of possessing amphetamine.¹
3. Mr Balakis was sentenced without conviction to an aggregate of \$3,000 and a forfeiture order was made regarding drugs and instruments seized.²

Ms Gobbo's Legal Representation of Mr Balakis

4. Material before the Commission indicates that Ms Gobbo appeared on behalf of Mr Balakis before the Melbourne Magistrates' Court on 9 November 2007.³

The Conduct of Ms Gobbo as a Human Source in relation to Mr Balakis

5. Material before the Commission indicates that Mr Balakis was the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police from 9 October 2006⁴ until 13 November 2007.⁵ Ms Gobbo is variously recorded as informing her handlers of her plans to meet with Mr Balakis,⁶ aspects of Mr Balakis' brief;⁷ his employment background, and interactions with other persons of interest to police.⁸ She is also recorded as informing police of her suspicions as to the identity of Mr Balakis' supplier in the context of her knowledge of Mr Detective Senior Sergeant Tapai's interest in

¹ Un-tendered Victoria Police Criminal History Report, John Balakis, 13 December 2019, 1, VPL.0099.0193.0309 @ .0309.

² Un-tendered Victoria Police Criminal History Report, John Balakis, 13 December 2019, 1, VPL.0099.0193.0309 @ .0309.

³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 9 November, 66, OPP.0001.0004.0025 @ .0090; Exhibit RC0281 ICR3838 (110), 13 November 2007, 8, VPL.2000.0003.2981.

⁴ Exhibit RC0281 ICR3838 (048), 9 October 2006, 8, VPL.2000.0003.2047.

⁵ Exhibit RC0281 ICR3838 (110), 13 November 2007, 8, VPL.2000.0003.2981.

⁶ Exhibit RC0281 ICR3838 (048), 9 October 2006, 5, VPL.2000.0003.2047.

⁷ Exhibit RC0281 ICR3838 (097), 28 August 2007, 11, VPL.2000.0003.2738.

⁸ Exhibit RC0281 ICR3838 (048), 9 October 2006, 5, VPL.2000.0003.2047; Exhibit RC0281 ICR3838 (049), 16 October 2006, 8, VPL.2000.0003.2076.

same,⁹ and Mr Balakis' allegedly stated intentions to engage in future criminal activity.¹⁰

Submissions under Terms of Reference 1 and 2 in relation to Mr Balakis

6. It is submitted that it is open to the Commissioner to find that the case of Mr Balakis may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
7. The extent to which the case of Mr Balakis may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

8. First, Category 1A¹¹ applies in that, on 9 November 2007,¹² Ms Gobbo acted for Mr Balakis while she was a human source,¹³ and did not disclose same to him.¹⁴
9. Secondly, Category 1B¹⁵ applies in that before and during the period that Ms Gobbo acted for Mr Balakis in relation to the case, she provided information to members of Victoria Police about him.¹⁶
10. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁷
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹ Exhibit RC0281 ICR3838 (048), 9 October 2006, 5, VPL.2000.0003.2047.

¹⁰ Exhibit RC0281 ICR3838 (048), 9 October 2006, 9, VPL.2000.0003.2051.

¹¹ See Legal Principles Submissions at [249].

¹² See above analysis at [4].

¹³ See Legal Principles Submissions at [20].

¹⁴ See Legal Principles Submissions at [239].

¹⁵ See Legal Principles Submissions at [249].

¹⁶ See above analysis at [5].

¹⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁸
 - 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Balakis;
 - 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Balakis, appropriate disclosure was made; or alternatively
 - 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Balakis to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Balakis and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁹
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁰
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.²¹
18. Category 3A²² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
19. Category 3B²³ applies in that, before and during the period Ms Gobbo acted for Mr Balakis, she provided information in relation to him,²⁴ and there was non-

¹⁸ See Legal Principles Submissions at [384] and [452]-[457].

¹⁹ See Legal Principles Submissions at [380]-[385].

²⁰ See Legal Principles Submissions at [351], [362]-[373].

²¹ See Legal Principles Submissions at [351], [374].

²² See Legal Principles Submissions at [465].

²³ See Legal Principles Submissions at [465].

²⁴ See above analysis at [5].

disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: DOMENIC BARBARO

1. The submissions in this case study should be read in conjunction with the relevant parts of Chapters 10 and 11 of the Narrative Submission, which also contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Domenic Barbaro.

The Relevant Case of Domenic Barbaro

2. The one relevant case concerning Mr Domenic Barbaro arose from Operation Posse,¹ and comprised one charge of conspiracy to traffic in a commercial quantity of a drug of dependence, namely phenyl-2-propanone, between 1 April 2006 and 22 April 2006.² In summary, the conspiracy concerned Mr Barbaro's role in the drug manufacturing enterprise involving Mr Cooper and others, in relation to a lab at Strathmore.³
3. The prosecution case included reliance upon the evidence of Mr Cooper,⁴ [REDACTED] and [REDACTED].⁵ The informant in the case was Mr Paul Rowe.⁶ Other notable members of police involved in the prosecution as police witnesses included Mr Craig Hayes, Mr Graham Evans, Mr Jason Kelly, Mr Boris Buick, Mr James (Jim) O'Brien, and Mr Dale Flynn.⁷
4. On 17 May 2006, Mr Barbaro was charged with the offending and remanded in custody.⁸ On 29 May 2006, he was released on bail.⁹ On 11 July 2007, following a contested committal, he was committed to stand trial.¹⁰ By 15 October 2008, the matter had resolved, and Mr Domenic Barbaro entered a

¹ See Chapters 10 and 11 of the Narrative Submissions.

² Un-tendered Reasons for sentence, *R v Barbaro* [2009] VCC, 15 December 2008, 2 [1] RCMP.0125.0002.0001 @ .0128; Un-tendered Presentment No. C0605102A.1, *R v Barbaro*, 2008. RCMP.0125.0002.0001 @ .0013-18; *Domenic Barbaro v The Queen* [2009] VSCA 89, [1].

³ See Un-tendered Reasons for sentence, *R v Barbaro* [2009] VCC, 15 December 2008, 2-3 [1]-[7], RCMP.0125.0002.0001 @ 0128-9; *Domenic Barbaro v The Queen* [2009] VSCA 89, [2].

⁴ Un-tendered Presentment No. C0605102A.1, *R v Barbaro*, 2008. RCMP.0125.0002.0001 @ 0013-18; Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001. See also Transcript of Inspector Dale Flynn, 2 October 2019, 7003, TRN.2019.10.02.01.C, accepting that information provided by Mr Cooper led to the arrest of Mr Domenic Barbaro. See also Anonymous Submission 036, 4[8]

⁵ Un-tendered Presentment No. C0605102A.1, *R v Barbaro*, 2008. RCMP.0125.0002.0001 @ 0013-18.

⁶ See Un-tendered Remand/Bail Application, *Police v Barbaro*, undated, RCMP.0125.0002.0001 @ .0061. See also, Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 December 2006, 63, OPP.0001.0004.0025 @ 0087; Exhibit RC0281 ICR3838 (032), 17 May 2006, 302, VPL.2000.0003.1888; Exhibit RC0281 ICR2958 (50), 23 December 2008, 791, VPL.2000.0003.1531. See Transcript of Detective Sergeant Paul Rowe, 19 November 2019, 9485, TRN.2019.11.19.01.C.

⁷ See [REDACTED]

⁸ See Un-tendered Reasons for sentence, *R v Barbaro* [2009] VCC, 15 December 2008, 3 [10] RCMP.0125.0002.0001 @ .0129; Un-tendered Summary of Proceedings for the Court of Appeal, *Domenic Paul Barbaro v The Queen*, 1 [3], RCMP.0125.0002.0001 @ .0136.

⁹ See Un-tendered Reasons for sentence, *R v Barbaro* [2009] VCC, 15 December 2008, 3 [10] RCMP.0125.0002.0001 @ .0129; Un-tendered Summary of Proceedings for the Court of Appeal, *Domenic Paul Barbaro v The Queen*, 2 [4], RCMP.0125.0002.0001 @ .0137.

¹⁰ Un-tendered Summary of Proceedings for the Court of Appeal, *Domenic Paul Barbaro v The Queen*, 2 [5], RCMP.0125.0002.0001 @ .0137.

plea of guilty to the offending.¹¹ On 15 December 2008, Mr Domenic Barbaro was sentenced in the County Court to two years and nine months' imprisonment, with two years to be suspended for a period of three years.¹²

5. In 2009, Mr Barbaro brought a successful appeal against sentence in the Court of Appeal.¹³ The grounds of appeal did not concern Ms Gobbo.¹⁴ On 4 May 2009, in allowing the appeal, the Court of Appeal imposed a sentence of two years' imprisonment, with 15 months directed to be suspended for a period of three years.¹⁵

Ms Gobbo's Legal Representation of Mr Domenic Barbaro

6. Material before the Commission indicates that Ms Gobbo acted for or advised Mr Barbaro in relation to the case on a handful of occasions between December 2006 and December 2008. This is evident from the following instances:
 - 6.1. on 6 December 2006, the Informer Contact Reports (ICRs) record that Ms Gobbo conferred with Mr Domenic Barbaro in chambers;¹⁶
 - 6.2. on 11 December 2006, the ICRs record that Mr Barbaro again attended upon Ms Gobbo, as he was apparently in need of a solicitor and "came to see" Ms Gobbo and "discussed options";¹⁷
 - 6.3. on 15 December 2006, Ms Gobbo represented Mr Domenic Barbaro at a Committal Mention in the Melbourne Magistrates' Court;¹⁸
 - 6.4. on 22 December 2008, Ms Gobbo attended upon Mr Domenic Barbaro at the Melbourne Assessment Prison for a "professional" visit,¹⁹ apparently to discuss the prospects of an appeal against sentence.²⁰

¹¹ Un-tendered Summary of Proceedings for the Court of Appeal, *Domenic Paul Barbaro v The Queen*, 3 [9], RCMPI.0125.0002.0001 @.0137.

¹² Un-tendered Summary of Proceedings for the Court of Appeal, *Domenic Paul Barbaro v The Queen*, 4-5 [15], RCMPI.0125.0002.0001 @.0139-40; Un-tendered Reasons for sentence, *R v Barbaro* [2009] VCC, 15 December 2008, 6-7 [30] RCMPI.0125.0002.0001 @.0132-3.

¹³ *Domenic Barbaro v The Queen* [2009] VSCA 89.

¹⁴ See Un-tendered Outline of Submissions on Behalf of the Appellant, 4 March 2009, RCMPI.0125.0002.0001 @ 0147-51.

¹⁵ *Domenic Barbaro v The Queen* [2009] VSCA 89, [17].

¹⁶ Exhibit RC0281 ICR3838 (056), 6 December 2006, 577, VPL.2000.0003.2163.

¹⁷ Exhibit RC0281 ICR3838 (057), 11 December 2006, 582, VPL.2000.0003.2168.

¹⁸ See Exhibit RC1841 Magistrates' Court of Victoria record of persons represented by Ms Nicola Gobbo, 16 December 2006, 17, MCV.0001.0001.0001 @ .0017; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 December 2006, OPP.0001.0004.0025 @ .0087. See also Exhibit RC0281 ICR3838 (057), 12 December 2006, 583, VPL.2000.0003.2169, and Exhibit RC0281 ICR3838 (057), 14 December 2006, 585, VPL.2000.0003.2171, referring to the upcoming hearing on 15 December 2006; Exhibit RC0281 ICR3838 (057), 15 December 2006, 586, VPL.2000.0003.2172. See also Anonymous Submission 036, 3[2]

¹⁹ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 22 December 2008, CNS.0001.0003.0037 @ 0063; Exhibit RC1900 Corrections Victoria visitation record for Domenic Paul Barbaro, 22 December 2008, CNS.0001.0003.1384.

²⁰ See Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526; Exhibit RC0281 ICR2958 (049), 19 December 2008, 787, VPL.2000.0003.1527; Exhibit RC0281 ICR2958, 12 December 2008, 791 (050), VPL.2000.0003.1531. See also Anonymous submission 036, 3 [3] It is noted that the submission also claims that Ms Gobbo conducted a further similar and subsequent visit at Loddon Prison (see Anonymous submission 036, 3 [4]). However, this is not supported by the records of Corrections Victoria produced to the Commission (see Corrections Services Commissioner, Prisoners Visited by Ms Nicola Gobbo, CNS.0001.0003.0037).

7. Consistently with the above, a submission to the Commission states that “[a]fter his arrest Barbaro was granted bail and it was whilst he was on bail for the Posse matter he had conversations with her about his criminal proceedings.”²¹ It also states that “[a]fter his sentence in the County Court Gobbo saw Barbaro at the Melbourne Assessment Prison and they discussed his sentence and appealing that sentence.”²² Further, it asserts that “[d]uring the relevant period [he] considered himself to have an ongoing legal professional relationship with Gobbo, [and] he never waived his rights to confidentiality or legal professional privilege between himself and Gobbo.”²³

The Conduct of Ms Gobbo as a Human Source in relation to Mr Domenic Barbaro

8. Mr Barbaro was the subject of communications between Ms Gobbo (in her capacity as human source) and Victoria Police before and during the period that she represented him.²⁴ The first reference to him in such communications is on 17 May 2006, when Ms Gobbo and one of her handlers, Mr Peter Smith, discussed the circumstances of his arrest in relation to Operation Posse.²⁵
9. From that time through to December 2008, Mr Barbaro continued to occasionally feature in communications between Ms Gobbo and her handlers.²⁶ The following communications are of particular note:
 - 9.1. On the morning of 20 August 2006, in response to learning that Ms Gobbo was intending to that day visit Mr Cooper in custody, Mr Green “recommended” that she discuss the “[t]opic” of Mr Domenic Barbaro with him.²⁷ That evening, Ms Gobbo reported back to Mr Green on her visit with Mr Cooper. According to the ICRs, in relation to the suggestion that she obtain information about Mr Domenic Barbaro, she told them that: “[he] is a runner for Shane MORAN who is the source of methamine [sic]. Mr Cooper liked him and would have taught him how to cook. MORAN paid for BARBARO’s bail application and used QC

²¹ See Anonymous submission 036, 3 [2].

²² See Anonymous submission 036, 3 [3].

²³ See Anonymous submission 036, 3 [5].

²⁴ See generally Victoria Police Summary of Extract Report in relation to Mr Domenic Barbaro: VPL.4223.0001.0001.

²⁵ See Exhibit RC0281 ICR3838 (032), 17 May 2006, 302, VPL.2000.0003.1888; see also Exhibit RC0281 ICR3838 (032), 18 May 2006, 302, VPL.2000.0003.1888.

²⁶ Exhibit RC0281 ICR3838 (032), 19 May 2006, 303, VPL.2000.0003.1889; Exhibit RC0281 ICR3838 (032), 20 May 2006, 303, VPL.2000.0003.1889; Exhibit RC0281 ICR3838 (32), 26 May 2006, 310, VPL.2000.0003.1896; Exhibit RC0281 ICR3838 (042), 20 August 2006, 401, VPL.2000.0003.1987; Exhibit RC0281 ICR3838 (47), 6 October 2006, 453, VPL.2000.0003.2039; Exhibit RC0281 ICR3838 (051), 30 October 2006, 528, 531, VPL.2000.0003.2114, 2117; Exhibit RC0281 ICR3838 (056), 6 December 2006, 577, VPL.2000.0003.2163; Exhibit RC0281 ICR3838 (057), 11 December 2006, 582, VPL.2000.0003.2168; Exhibit RC0281 ICR3838 (057), 12 December 2006, 582, VPL.2000.0003.2168; Exhibit RC0281 ICR3838 (068), 11 December 2006, 586, VPL.2000.0003.2172; Exhibit RC0281 ICR3838 (072), 30 March 2007, 746, VPL.2000.0003.2333; Exhibit RC0281 ICR3838 (081), 30 May 2007, 870, VPL.2000.0003.2456; Exhibit RC0281 ICR3838 (083), 12 June 2007, 891, VPL.2000.0003.2477; Exhibit RC0281 ICR3838 (083), 14 June 2007, 893-4 VPL.2000.0003.2479-80; Exhibit RC0281 ICR3838 (088), 6 July 2007, 993, VPL.2000.0003.2579; Exhibit RC0281 ICR3838 (100), 13 September 2007, 1217, VPL.2000.0003.2803; Exhibit RC0281 ICR2958 (030), 31 July 2008, 523, VPL.2000.0003.1263; Exhibit RC0281 ICR3838 (042), 8 October 2008, 669, VPL.2000.0003.1409; Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526; Exhibit RC0281 ICR2958 (049), 19 December 2008, 787, VPL.2000.0003.1527; Exhibit RC0281 ICR2958 (050), 23 December 2008, 791, VPL.2000.0003.1531.

²⁷ Exhibit RC0281 ICR3838 (042), 20 August 2006, 401, VPL.2000.0003.1987.

Richter [sic]”.²⁸ That information was subsequently published in an Information Report.²⁹

- 9.2. On 30 October 2006, Messrs Peter Smith and Anderson met with Ms Gobbo for the purpose of allowing her to peruse briefs of evidence against a number of persons, in relation to Operation Posse, including Mr Domenic Barbaro.³⁰ During the meeting she provided them with advice on the state of the evidence, and which was passed on verbally to Mr Flynn.³¹
- 9.3. On 6 December 2006, Ms Gobbo reportedly told her handler, Mr Green, that Mr Domenic Barbaro “came to office re advise [sic]”, and suggested that [REDACTED].³²
- 9.4. On 30 May 2007, according to the ICRs, Ms Gobbo told another handler, Mr Anderson, that Mr Domenic Barbaro “should plea”; that is, that he should plead guilty.³³ It is unclear whether, in this instance, Ms Gobbo was conveying what had been told to her by Mr Barbaro or was otherwise providing her own commentary to her handlers. On that day, Ms Gobbo also communicated with Mr Rowe in relation to the matter of Mr Domenic Barbaro.³⁴
- 9.5. On 12 June 2007, Ms Gobbo reportedly told Mr Anderson that he “[w]as almost willing to plead guilty [sic]”, while also informing him of the source of funding for his legal representation.³⁵
- 9.6. On and in the period surrounding 22 December 2008, Ms Gobbo provided Messrs Peter Smith and Green with a running commentary about her attending upon Mr Domenic Barbaro at prison for a professional visit,³⁶ in relation to the prospects of an appeal against sentence.³⁷ During this time, she also queried Mr Peter Smith on whether there would be “any benefit to PURANA for [her] to speak to

²⁸ Exhibit RC0281 ICR3838 (042), 20 August 2006, 401, VPL.2000.0003.1987.

²⁹ Exhibit RC0283 Information Report SID798, 20 August 2006, VPL.2000.0003.8816.

³⁰ Exhibit RC0281 ICR3838 (051), 20 October 2006, 528, VPL.2000.0003.2114. See also Transcript of Mr Sandy White, 6 August 2019, 4023-4, TRN.2019.08.06.01.C; See also Transcript of Inspector Dale Flynn, 2 October 2019, 7089-90, TRN.2019.10.02.01.C.

³¹ Exhibit RC0281 ICR3838 (051), 30 October 2006, 532-533, VPL.2000.0003.2118-9. See also Transcript of Inspector Dale Flynn, 2 October 2019, 7091, TRN.2019.10.02.01.C.

³³ Exhibit RC0281 ICR3838, 30 May 2007, 870, VPL.2000.0003.2456.

³⁴ See Transcript of Detective Sergeant Paul Rowe, 19 November 2019, 9487, 9489, TRN.2019.11.19.01.C.

³⁵ Exhibit RC0281 ICR3838 (083), 12 June 2007, 891, VPL.2000.0003.2477.

³⁶ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 22 December 2008, CNS.0001.0003.0037 @.0063; Exhibit RC1900 Corrections Victoria visitation record for Domenic Paul Barbaro, 22 December 2008, CNS.0001.0003.1384.

³⁷ See Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526; Exhibit RC0281 ICR2958 (049), 19 December 2008, 787, VPL.2000.0003.1527; Exhibit RC0281 ICR2958 (050), 23 December 2008, 791, VPL.2000.0003.1531. See also Anonymous submission 036, 3 [3]. It is also claimed that Ms Gobbo conducted a further similar and subsequent visit at Loddon Prison (see Anonymous submission 036, 3 [4]) However, this is not supported by the records of Corrections Victoria produced to the Commission (see Un-tendered Corrections Services Commissioner, Prisoners Visited by Ms Nicola Gobbo, CNS.0001.0003.0037).

him”,³⁸ and later suggested that [REDACTED]

[REDACTED].³⁹

Relevant Conduct in relation to Mr Cooper

10. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Barbaro’s matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 10.1. the discovery of the offending the subject of Operation Posse;
 - 10.2. Mr Cooper being arrested in Operation Posse;
 - 10.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 10.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Barbaro (among others).
11. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Barbaro, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Barbaro may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions to the Commission regarding Mr Domenic Barbaro

12. A submission to the Commission advances a number of propositions about the use of Ms Gobbo as a human source by Victoria Police, including most relevantly:
 - 12.1. that “[w]hen Barbaro elected to plead guilty ... he did not know or was aware [sic] that the statements made by Cooper against Barbaro, and those charged in the Posse matter, was [sic] procured by Victoria Police with the assistance of Gobbo”;⁴⁰ and
 - 12.2. that “[i]f Barbaro was aware or had been informed of the fact and circumstances of Gobbo’s involvement with Cooper and Victoria Police, he would not have firstly had a legal professional relationship or a social one with Gobbo. Secondly, he would have not pleaded guilty to charges based on the evidence of Cooper. Thirdly, he would have challenged the admissibility of the evidence of Cooper and any other evidence obtained by the police where they relied upon the information of Gobbo to obtain warrants for searches, intercepted telephone communications, listening and tracking devices and fourthly, he may have sought a permanent stay of the criminal proceedings on the basis

³⁸ Exhibit RC0281 ICR3838 (049), 18 December 2006, 786, VPL.2000.0003.1526.

⁴⁰ Anonymous submission 036, p 4 [9].

he could not receive a fair trial given the breach of the duty of confidentially and legal professional privilege by Gobbo.”⁴¹

Submissions under Terms of Reference 1 and 2 in relation to Mr Domenic Barbaro

13. It is submitted that it is open to the Commissioner to find that the case of Mr Barbaro may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions at Chapter 11. In addition, as noted at [1] above, these submissions should also be read in light of Chapter 10 of the Narrative Submissions.
15. The extent to which the case of Mr Barbaro may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

16. First, Category 1A⁴² applies in that, at times between December 2006 and December 2008,⁴³ Ms Gobbo acted for Mr Barbaro while she was a human source,⁴⁴ and did not disclose same to him.⁴⁵
17. Secondly, Category 1B⁴⁶ applies in that, between May 2006 and December 2008, which was before and during the period that Ms Gobbo acted for Mr Barbaro in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police⁴⁷ and otherwise assisted (or attempted to assist) in his prosecution,⁴⁸ and did not disclose same to him.
18. Thirdly, Category 2A⁴⁹ applies in that evidence relied upon by the prosecution in the case against Mr Barbaro, namely the evidence of Mr Cooper,⁵⁰ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁵¹
19. Fourthly, Category 2B⁵² applies in that Ms Gobbo had knowledge of the circumstances founding the above [18] and failed to disclose same to her client, Mr Barbaro, thereby depriving him of the ability to object to its admission.
20. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may

⁴¹ Anonymous submission 036, 5 [10].

⁴² See Legal Principles Submissions at [249].

⁴³ See [6]-[7] above.

⁴⁴ See Legal Principles Submissions at [20].

⁴⁵ See Legal Principles Submissions at [239].

⁴⁶ See Legal Principles Submissions at [249].

⁴⁷ See above analysis at [8]-[9].

⁴⁸ See above analysis at [9]-[10] and Narrative Submissions at Chapter 11.

⁴⁹ See Legal Principles Submissions at [249].

⁵⁰ See above analysis at [3] and [10]-[11].

⁵¹ See Legal Principles Submissions at [196]-[222].

⁵² See Legal Principles Submissions at [249].

constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵³

21. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

22. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁴
 - 22.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Barbaro;
 - 22.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Barbaro, appropriate disclosure was made; or alternatively
 - 22.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
23. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [22.1] were taken, and accordingly there was the potential for the right of Mr Barbaro to a fair trial to have been interfered with.
24. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Barbaro and/or his legal representatives.
25. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁵
26. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

⁵³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵⁴ See Legal Principles Submissions at [452]-[457].

⁵⁵ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.⁵⁶

27. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁵⁷
28. Category 3A⁵⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
29. Category 3B⁵⁹ applies in that, before and during the period Ms Gobbo acted for Mr Barbaro, she provided information in relation to him to members of Victoria Police and otherwise assisted (or attempted to assist) in his prosecution,⁶⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. Category 4A⁶¹ applies in that, as noted above at [18], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
31. Category 4B⁶² applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
32. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁶ See Legal Principles Submissions at [351], [362]-[373].

⁵⁷ See Legal Principles Submissions at [351], [374].

⁵⁸ See Legal Principles Submissions at [465].

⁵⁹ See Legal Principles Submissions at [465].

⁶⁰ See above analysis at [17].

⁶¹ See Legal Principles Submissions at [465].

⁶² See Legal Principles Submissions at [465].

CASE STUDY: TONY BAYEH

The Relevant Case of Mr Bayeh

1. The one relevant case of Mr Bayeh concerns his conviction before the Supreme Court in December 2008 for one count of trafficking in a drug of dependence and one count of possession of equipment related to trafficking.¹
2. The trafficking offending occurred between 10 and 11 April 2006, and the possession offending occurred on 11 April 2006.² The offending arose in the context of Horty and Milad Mokbel's trafficking activities, as outlined below at [4] and [8], and Horty Mokbel was Mr Bayeh's (acquitted) co-accused.³ [REDACTED] individuals were originally presented together.⁴
3. Mr Bayeh was arrested on 26 April 2006, before being released on bail on 19 July 2006.⁵ His bail was revoked on 14 August due to non-compliance with reporting conditions and he remained in custody until trial.⁶
4. Mr Bayeh was convicted by a jury⁷ and was sentenced to three and a half years' imprisonment for the trafficking offence and two years' imprisonment for the possession offence, served concurrently,⁸ with a non-parole period of two and half years.⁹
5. The prosecution relied upon evidence given by, among others, [REDACTED],¹⁰ Mr Cooper [REDACTED].¹¹

Ms Gobbo's Legal Representation of Mr Bayeh

6. Material before the Commission indicates that while Ms Gobbo had earlier acted for Mr Bayeh in 2003 and 2004,¹² she only acted for him on one occasion in relation to the case. On 26 June 2006, she appears to have been briefed for

¹ Un-tendered Presentment No C0605102d, *The Queen v Horty Mokbel and Toreq Bayeh*, 2008, 19, OPP.0095.0001.0007; Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 235 [1], OPP.0095.0001.0007.

² See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 235 [3], OPP.0095.0001.0007.

³ See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 235 [4], OPP.0095.0001.0007.

⁴ See, eg, See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 235- 236 [5], OPP.0095.0001.0007; Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 241 [37], OPP.0095.0001.0007; Un-tendered Presentment No C0605093, *The Queen v Horty Mokbel and Toreq Bayeh*, 2008, 6, OPP.0095.0001.0007.

⁵ See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 242 - 243 [34], OPP.0095.0001.0007.

⁶ See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 243 [35], OPP.0095.0001.0007.

⁷ Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 235 [1], OPP.0095.0001.0007.

⁸ Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 246 [49]-[50], OPP.0095.0001.0007.

⁹ Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 246 [51], OPP.0095.0001.0007.

¹⁰ See Un-tendered Reasons for sentence, *R v Bayeh* [2010] VSC, 237 [10], OPP.0095.0001.0007.

¹¹ See Un-tendered Presentment No C0605102d, *The Queen v Horty Mokbel and Toreq Bayeh*, 2008, 19 OPP.0095.0001.0007.

¹² See, eg, Exhibit RC1568 Ms Gobbo fee book 01, 15 October 2003, 67, MIN.5000.7000.0001 @ .0067; Exhibit RC1568 Ms Gobbo fee book 01, 70, MIN.5000.7000.0001 @ .0070; Exhibit RC1568 Ms Gobbo fee book 01, 5 January 2004, 71, MIN.5000.7000.0001 @ .0071.

a bail review and to draft a Form 8A.¹³ While she appears to have remained interested in his case and reported on Mr Bayeh's representation both before¹⁴ and after¹⁵ that date, she does not appear to have represented him further in relation to the case.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Bayeh

7. Material before the Commission records many hundreds of references to Mr Bayeh in the context of Ms Gobbo's provision of information to police, from as early as October 2005.¹⁶ At the time, Ms Gobbo referred to having been sacked by Mr Bayeh, who she described to police as "a kind of runner for the Mokbels and...a trusted bloke."¹⁷ Again in February 2006, she is recorded as having further informed police of Mr Bayeh's associations including with Horty Mokbel,¹⁸ and Mr Cooper.¹⁹
8. Around the time of Mr Bayeh's offending, Ms Gobbo appears to have discussed it with her handlers. In April 2006, Ms Gobbo is recorded as informing her handler, Mr Green, in the context of police having seen Mr Bayeh place ketone in a car, that "he works for Horty and he is \$300,000 out of pocket"²⁰ along with other information about Mr Bayeh's role as courier of that ketone on behalf of Horty Mokbel.²¹
9. On [REDACTED] 2006, Ms Gobbo is recorded as discussing the notion of [REDACTED] and/or Mr Cooper being prosecution witnesses with her handler, Mr Green, and noting that "[t]hey all have big problems if [Mr Cooper] has rolled".²² Following Mr Bayeh's unsuccessful bail application, in [REDACTED] 2006 Ms Gobbo appears to have again enquired of her handler as to whether [REDACTED] had rolled,²³ and in the following months refers to [REDACTED] capacity to implicate Mr Bayeh.²⁴
10. Ms Gobbo is also recorded as suggesting to police that [REDACTED] [REDACTED] were "worried sick about [REDACTED]",²⁵ and that [REDACTED].²⁶ On 19 June 2006, police records indicate that Ms Gobbo informed her handler, Mr Peter Smith, that on the basis of her recent discovery that [REDACTED], she suggested that investigators [REDACTED], providing his location and her opinion that his [REDACTED].²⁷ That information is

¹³ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax invoices, 30 June 2006, 8, GMH.0001.0001.0009 @ .0008; Exhibit RC1569 Meldrum & Hyland Ms Gobbo Statement of Account, 7 March 2019, 45, GMH.0001.0001.0002 @ .0045.

¹⁴ See, eg, Exhibit RC0281 ICR3838 (032), 24 May 2006, 308, VPL.2000.0003.1886 @ .1894.

¹⁵ See, eg, Exhibit RC0281 ICR3838 (007), 28 October 2005, 44, VPL.2000.0003.1623 @ .1630, see also Exhibit RC0281 ICR3838 (035), 15 June 2006, 331, VPL.2000.0003.1913 @ .1917

¹⁶ Exhibit RC0281 ICR3838 (007), 28 October 2005, 44, VPL.2000.0003.1623 @ .1630.

¹⁷ Exhibit RC0281 ICR3838 (007), 28 October 2005, 44, VPL.2000.0003.1623 @ .1630.

¹⁸ Exhibit RC0281 ICR3838 (017), 8 February 2006, 145, VPL.2000.0003.1722 @ .1731.

¹⁹ Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1776 @ .1784.

²⁰ Exhibit RC0281 ICR3838 (027), 13 April 2006, 242, VPL.2000.0003.1827 @ .1828.

²¹ Exhibit RC0281 ICR3838 (007), 13 April 2006, 243, VPL.2000.0003.1827 @ .1829; Exhibit RC0283 Information Report IRSID721, 14 April 2006, 1, VPL.2000.0003.8696 @ 8696.

[REDACTED]

[REDACTED]

[REDACTED]

ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2319 @ .2334.

[REDACTED]

[REDACTED]

[REDACTED]

recorded as having been disseminated the following day to 'D/I Gavan RYAN Op PURANA adv 20/06/06'.

11. In April 2007, Ms Gobbo is recorded as informing her handler, Mr Anderson, of her belief that [REDACTED], which information Mr Anderson passed on verbally to Detective Inspector James (Jim) O'Brien of the Purana Taskforce.²⁸ By May 2007, it appears that Mr Kelly [REDACTED].²⁹
12. Throughout this period, and despite her early and brief representation of Mr Bayeh referred to at [6] above, Ms Gobbo appears to have been conscious of her conflict of interest in representing Mr Bayeh,³⁰ and a risk of her involvement, particularly in the evidence of Mr Cooper, becoming apparent to Mr Bayeh.³¹

Relevant Conduct in relation to Mr Cooper

13. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Bayeh's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 13.1. the discovery of the offending the subject of Operation Posse;
 - 13.2. Mr Cooper being arrested in Operation Posse;
 - 13.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 13.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Bayeh (among others).
14. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Bayeh, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Bayeh may have been deprived of any opportunity to object to the admissibility of this evidence.
15. Further, as set out in the Case Study of the [REDACTED] at Paragraphs [REDACTED] to [REDACTED], it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution

²⁸Exhibit RC0281 ICR3838 (038), 16 July 2006, 359, VPL.2000.0003.1941 @ .1945.

³¹ See, eg, Exhibit RC0281 ICR3838 (088), 4 July 2007, 980, VPL.2000.0003.2566 @ .2566; Exhibit RC0281 ICR3838 (088), 4 July 2007, 981, VPL.2000.0003.2566 @ .2567; Exhibit RC0281 ICR3838 (088), 981, 4 July 2007, VPL.2000.0003.2566 @ .2567.

of Mr Bayeh, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

16. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic) is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,³² where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.³³

Submissions under Terms of Reference 1 and 2 in relation to Mr Bayeh

17. It is submitted that it is open to the Commissioner to find that the case of Mr Bayeh may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
18. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, Chapter 11 (concerning Mr Cooper).
19. These submissions should be read in conjunction with the Narrative Submissions, Chapter 16, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Bayeh.
20. The extent to which the case of Mr Bayeh may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

21. First, Category 1A³⁴ applies in that, in around June 2006,³⁵ Ms Gobbo acted for Mr Bayeh while she was a human source,³⁶ and did not disclose same to him.³⁷
22. Secondly, Category 1B³⁸ applies in that, before and during the period that Ms Gobbo acted for Mr Bayeh in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.³⁹
23. Thirdly, Category 2A⁴⁰ applies in that evidence relied upon by the prosecution in the case against Mr Bayeh, namely the evidence of Mr Cooper,⁴¹ [REDACTED],⁴² may have been obtained in consequence of an impropriety

³² See Legal Principles Submissions at [210].

³³ See Legal Principles Submissions at [212]-[213].

³⁴ See Legal Principles Submissions at [249].

³⁵ See above analysis at [6].

³⁶ See Legal Principles Submissions at [20].

³⁷ See Legal Principles Submissions at [239].

³⁸ See Legal Principles Submissions at [249].

³⁹ See above analysis at [7]-[11].

⁴⁰ See Legal Principles Submissions at [249].

⁴¹ See above analysis at [5] and [14]-[15].

⁴² See above analysis at [5] and [15].

or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴³

24. Fourthly, Category 2B⁴⁴ applies in that Ms Gobbo had knowledge of the circumstances founding the above [22] and failed to disclose same to her client, Mr Bayeh, thereby depriving him of the ability to object to its admission.
25. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁵
26. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

27. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁶
 - 27.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Bayeh;
 - 27.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Bayeh, appropriate disclosure was made; or alternatively
 - 27.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
28. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [27.1] were taken, and accordingly there was the potential for the right of Mr Bayeh to a fair trial to have been interfered with.

⁴³ See Legal Principles Submissions at [196]-[222].

⁴⁴ See Legal Principles Submissions at [249].

⁴⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁴⁶ See Legal Principles Submissions at [384] and [452]-[457].

29. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bayeh and/or his legal representatives.
30. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁷
31. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴⁸
32. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁴⁹
33. Category 3A⁵⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
34. Category 3B⁵¹ applies in that, before and during the period that Ms Gobbo acted for Mr Bayeh in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
35. Category 4A⁵³ applies in that, as noted above at [23], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
36. Category 4B⁵⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
37. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁷ See Legal Principles Submissions at [380]-[385].

⁴⁸ See Legal Principles Submissions at [351], [362]-[373].

⁴⁹ See Legal Principles Submissions at [351], [374].

⁵⁰ See Legal Principles Submissions at [465].

⁵¹ See Legal Principles Submissions at [465].

⁵² See above analysis at [7]-[11].

⁵³ See Legal Principles Submissions at [465].

⁵⁴ See Legal Principles Submissions at [465].

CASE STUDY: MR BICKLEY (A PSEUDONYM)

The Relevant Case of Mr Bickley

1. The one relevant case concerning Mr Bickley arose from Operation Quills, and compromised one charge of trafficking 3,4-Methylenedioxymethamphetamine (MDMA) in not less than a large commercial quantity and one charge of possession of cocaine.¹
2. Operation Quills was an investigation conducted by the Major Drug Investigation Division (MDID) within the Crime Department of Victoria Police. Police members involved in that Operation included Detective Senior Sergeant James (Jim) O'Brien, Detective Sergeant Dale Flynn, Detective Sergeant Steve Mansell and Detective Senior Constable Paul Rowe.² Detective Senior Constable Rowe became the informant in Mr Bickley's matter.³
3. [REDACTED]
4. The prosecution case was that Mr Bickley, [REDACTED], worked for Mr Mokbel in relation to the manufacture and trafficking of ecstasy tablets. It was alleged that Mr Mokbel formed a relationship with Mr Bickley [REDACTED] the director and employee of a company manufacturing chemical products, and bought chemicals [REDACTED].⁵ Mr Mokbel introduced Mr Bickley to Mr Radi and Mr Farachi, and arranged for them to collect chemicals⁶ and deliver a pill press to the company's premises.⁷
5. The Crown alleged that Mr Radi and Mr Farachi taught Mr Bickley [REDACTED] to use the pill press. It was also alleged that Mr Bickley [REDACTED]

¹ Un-tendered Reasons for sentence, *R v [REDACTED]* [2007] VCC, [1], RCMP.0042.0001.0005 @.0002; Un-tendered Presentment no: C0504741.1, 2006, RCMP.0042.0001.0004.

² Exhibit RC0266 Statement of Paul Rowe, 8 June 2019, [2], VPL.0014.0035.0001 @.0001.

³ Exhibit RC0266 Statement of Paul Rowe, 8 June 2019, [2], VPL.0014.0035.0001 @.0001.

⁴ See Case Studies in Volume 3.

⁵ Un-tendered Prosecution Opening (Facts) on Plea: Operations Quills and Orbital, 21 May 2012, 1-3 [1]-[8]: RCMP.0010.0002.0002 @0086-0115.

⁶ Un-tendered Summary of charges, *Police v Antonios Mokbel, Abdullah Radi & Ghazwan Farachi*, undated, 5, OPP.0043.0006.0001 @.0022.

⁷ Un-tendered Summary of charges, *Police v Antonios Mokbel, Abdullah Radi & Ghazwan Farachi*, undated, 6, OPP.0043.0006.0001 @.0023.

saying she had been sent by the person whose name she was holding up on the paper and telling Mr Bickley not to say anything aloud and that 'he was going to be looked after.'¹⁸

13. On [REDACTED], Mr Bickley met with Mr Cooper and had a conversation with him concerning the pressing of pills. Mr Cooper, who had been arrested by police the day before and agreed to assist them. His conversation with Mr Bickley was recorded.¹⁹ The following day, Mr Cooper made a statement to police regarding his meeting with Mr Bickley.²⁰
14. On 13 June 2006, Mr Bickley was arrested based on the statement of Mr Cooper and the recorded conversation. Upon this arrest, he agreed to assist police²¹ and subsequently provided [REDACTED] statements detailing the criminal activity of his co-accused.²²
15. On 17 April 2007, Mr Bickley was arraigned and entered a plea to both charges that he faced.²³
16. A plea hearing was conducted on 9 May 2007. In the course the hearing, Mr Bickley gave undertakings that the evidence contained in his statements was true and correct, that he would give evidence in accordance with those statements against the named individuals (which included Mr Mokbel) or anyone else that the police asked him to give evidence in relation to, that he would continue any co-operation if required and would make additional statements if called on to do so.²⁴
17. On the same date, Mr Bickley was sentenced to three years' imprisonment, which was wholly suspended.²⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Bickley

18. There was conflicting evidence before the Commission as to whether, upon his arrest on 15 August 2005, Mr Bickley asked interviewing police to contact Ms

¹⁸ Un-tendered Transcript of Proceedings, *R v [REDACTED]* (County Court of Victoria, Judge Williams, 9 May 2007), 57, RCMP1.0042.0001.0003 @.0057.

¹⁹ See Chapter 11 of the Narrative Submissions (concerning Mr Cooper).

²⁰ See table in Chapter 11 of the Narrative Submissions (concerning Mr Cooper). See also Un-tendered Statement of Mr Cooper, 24 April 2006, RCMP1.0028.0003.0001 @.0154.

²¹ Un-tendered Transcript of Proceedings, *R v [REDACTED]* (County Court of Victoria, Judge Williams, 9 May 2007), 57, RCMP1.0042.0001.0003 @.0056.

²² Un-tendered Statement of Mr Bickley, 13 June 2006, VPL.0200.0002.0390; Un-tendered Statement of Mr Bickley, 20 July 2006, VPL.0200.0002.0393; Un-tendered Statement of Mr Bickley, 9 May 2007, VPL.0200.0002.0415; Un-tendered Statement of Mr Bickley, 17 May 2007, VPL.0200.0002.0418; Un-tendered Statement of Mr Bickley, 18 July 2007, VPL.0200.0002.0421; Un-tendered Statement of Mr Bickley, 8 August 2007 VPL.0200.0002.0423; Un-tendered Statement of Mr Bickley, 24 June 2008, VPL.0204.0010.0522.

²³ Un-tendered Transcript of Proceedings, *R v [REDACTED]* (County Court of Victoria, Judge Williams, 9 May 2007), 57, RCMP1.0042.0001.0003 @.0056. Un-tendered Presentment no: C0504741.1, 2006, RCMP1.0042.0001.0004.

²⁴ Un-tendered Reasons for Sentence, *R v [REDACTED]* [2007] VCC, 3-4 [11]: RCMP1.0042.0001.0005 @.0004-.0005

²⁵ Un-tendered Reasons for Sentence, *R v [REDACTED]* [2007] VCC, 9-10 [28]–[31]: RCMP1.0042.0001.0005 @.0009-.0010.

Gobbo,²⁶ or whether the interviewing police suggested to Mr Bickley that he should contact Ms Gobbo.²⁷ It is not necessary to resolve this conflict.

19. Ms Gobbo told her handler that she was unable to attend to Mr Bickley immediately upon his arrest, and she arranged for a solicitor to act on his behalf.²⁸ Later that day she visited him at the custody centre.²⁹ According to Ms Gobbo, she gave Mr Bickley 'some basic advice that one provides to anyone arrested' concerning co-accused, bail applications and restraining orders.³⁰
20. Ms Gobbo first appeared on Mr Bickley's behalf, instructed by Solicitor 2, in relation to a scheduled bail application on 31 August 2005.³¹
21. Ms Gobbo stated that she visited Mr Bickley at the Melbourne Assessment Prison on the day prior to his bail application, to obtain instructions.³² The Commission is not in possession of independent material recording this visit.
22. The application did not proceed on 31 August 2005, as, according to Ms Gobbo, no gaol order requiring that he be brought to court had been submitted by Solicitor 2.³³ Ms Gobbo is recorded as having visited Mr Bickley in custody on that day.³⁴
23. As detailed in the case study of ██████████, according to Mr Rowe, on 31 August 2005 he had a covertly recorded conversation with Ms Gobbo, in which Mansell was also a participant.³⁵ Mr Rowe gave evidence that during that conversation Ms Gobbo said she was going to be acting for ██████████ ██████████, and that she would use this as an explanation to avoid having to represent Mr Bickley.³⁶
24. In a further discussion with Mr Rowe, Ms Gobbo raised a concern that she would be in a position of conflict in representing Mr Bickley due to her representation of Mr Mokbel.³⁷ At that stage Ms Gobbo was representing Mr Mokbel who was facing a trial in the Supreme Court on Commonwealth drug charges. On 16 September 2005, Ms Gobbo told her handlers that she expressed her concern to Mr Rowe that answers arising during cross-

²⁶ Transcript of Detective Sergeant Paul Rowe, 28 June 2019, 3249, TRN.2019.06.28.01.P.

²⁷ Transcript of Mr Bickley, 18 November 2019, 9303-4, TRN.2019.11.12.01.C.

²⁸ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

²⁹ Exhibit RC0165 Letter from Nicola Gobbo to Presiding Judge, County Court of Victoria, undated, MIN.5000.0001.9354; Exhibit RC0282 Transcript of meeting between Ms Nicola Gobbo, Mr Sandy White and Mr Anderson, 16 September 2005, VPL.0005.0037.0014 @.0039-.0040.

³⁰ Exhibit RC0165 Letter from Nicola Gobbo to Presiding Judge, County Court of Victoria, undated, 2, MIN.5000.0001.9354 @.9355.

³¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 31 August 2005, 59, OPP.0001.0004.0025 @.0083; Exhibit RC1841 Magistrates' Court of Victoria Records for Ms Nicola Gobbo, 31 August 2005, 18, MCV.0001.0001.0001 @.00016.

³² Exhibit RC0165 Letter from Nicola Gobbo to Presiding Judge, County Court of Victoria, undated, 2, MIN.5000.0001.9354 @.9355.

³³ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

³⁴ Exhibit RC1570 Corrections Victoria visitation record for Mr Bickley, 31 August 2005, CNS.0001.0003.1124.

³⁵ Exhibit RC0266 Statement of Detective Sergeant Paul Rowe, 25 June 2019, 4 [25]-[26], VPL.0014.0035.0028 @.0031.

³⁶ Exhibit RC0266 Statement of Detective Sergeant Paul Rowe, 25 June 2019, 5 [30], VPL.0014.0035.0028 @.0032.

³⁷ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

examination in Mr Bickley's bail application would be adverse to the interests of Mr Mokbel.³⁸

25. Despite identifying this conflict of interest in acting on behalf of Mr Bickley and having discussed this issue with police, Ms Gobbo continued to communicate with Mr Bickley until at least early 2008. At times, these communications included Ms Gobbo providing legal advice.
26. Further, not long after raising this conflict, in early September 2005, Ms Gobbo represented ██████████ and advised him in relation to ██████████ ██████████.³⁹
27. On 13 December 2005, Ms Gobbo told her handlers, Messrs Black & Sandy White, that she had spoken to Mr Bickley's solicitor about the nature of the evidence in his case, including the fact that her client ██████████ ██████████.⁴⁰
28. On the same date, Ms Gobbo told her handler, Mr Black, that she had been speaking with Mr Bickley about his brief of evidence and was scheduled to meet with him.⁴¹
29. On 18 December 2005, Ms Gobbo told her handler, Mr Black, that Mr Bickley provided her with a copy of his brief of evidence.⁴²
30. Upon Mr Bickley's second arrest on 13 June 2006, he immediately requested legal representation from Ms Gobbo, which was facilitated by Mr Rowe. Ms Gobbo spoke to Mr Bickley over the phone on a number of occasions that day.⁴³ Mr Bickley agreed to assist police that day and was not charged with further offences.⁴⁴
31. On 20 June 2006, Ms Gobbo appeared on behalf of Mr Bickley in an application to vary his bail.⁴⁵ Ms Gobbo subsequently charged fees in relation to this appearance.⁴⁶
32. There is material before the Commission suggesting that Ms Gobbo negotiated an agreement with Purana in order that this application proceed by consent. On 19 June 2006, she told her handler she had spoken to the prosecutor, who did not have any knowledge of the arrangement with Purana Detectives. The relevant Informer Contact Report (ICR) indicates that police subsequently contacted the prosecutor in relation to the arrangement.⁴⁷

³⁸ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

³⁹ Refer to ██████████ analysis below and ██████████ case analysis at [11], [13].

⁴⁰ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Black, 13 December 2005, 40, VPL.0005.0076.0346 @.0386.

⁴¹ Exhibit RC028 ICR3838 (012), 13 December 2005, 84, VPL.2000.0003.1670.

⁴² Exhibit RC028 ICR3838 (012), 18 December 2005, 92, VPL.2000.0003.1678.

⁴³ See Chapter 10 of the Narrative Submissions.

⁴⁴ See Chapter 10 of the Narrative Submissions.

⁴⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 20 June 2006, 59, OPP.0001.0004.0025 @.0083.

⁴⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 23 June 2006, 97, MIN.5000.7000.0001 @.0097; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 7 March 2019, 45, GMH.0001.0001.0002 @.0045.

⁴⁷ Exhibit RC0281 ICR3838 (036) 19 June 2006, 336, VPL.2000.0003.1922, 'D/I Ryan was advised – matter overlooked and to be rectified first thing tomorrow'.

33. On 26 June 2006, Ms Gobbo's diary records a meeting with Mr Bickley at her chambers.⁴⁸
34. On 12 July 2006, Ms Gobbo met with Messrs Peter Smith and Anderson and confirmed that she was still acting for Mr Bickley. There was further discussion about a 'complicating factor' in Mr Bickley's court case, being her advice to his co-accused to give evidence against him and thus her inability to cross-examine the co-accused.⁴⁹
35. In early 2007 efforts were being made by Victoria Police to have Mr Bickley obtain independent legal advice.⁵⁰ Although Ms Gobbo did not represent Mr Bickley at any further court hearings, the material before the Commission suggests that she continued to involve herself in his case and advised him as to matters pertaining to his case, including his provision of assistance to police. For example:
 - 35.1. On 17 January 2007, Ms Gobbo asked her handler to speak with Mr Jim O'Brien, head of Purana, about Mr Bickley's case and queried whether he had 'done enough to stay out of gaol.'⁵¹
 - 35.2. On 23 January 2007, Ms Gobbo told her handler that she met with Mr Bickley and discussed the strength of the assistance he had provided to police.⁵² Ms Gobbo said that she told Mr Bickley that she does not believe he had done enough and advised him 'not to sign statements until the plea has been worked out.'⁵³ The following day, she again told her handler that she had advised Mr Bickley 'to get ironclad deals before he signs anything'.⁵⁴
 - 35.3. Between January and March 2007, Ms Gobbo told her handler that she had spoken to Mr Bickley's solicitor, Ms McCauley, in relation to his case.⁵⁵
 - 35.4. Prior to his committal hearing on 7 February 2007, Ms Gobbo briefed Mr Bickley, who was appearing for himself, as to what he needed to do.⁵⁶
 - 35.5. On 9 March 2007, Ms Gobbo told her handlers she had advised Mr Bickley to continue to assist police and not to bring his case forward yet, in order to obtain the most benefit in terms of a sentencing discount.⁵⁷

⁴⁸ Exhibit RC0273 Ms Nicola Gobbo diary, 26 June 2006, 21, MIN.0005.0003.0212 @.0232.

⁴⁹ Exhibit RC0282 Audio recording of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 5:17:08, VPL.2000.0002.4233; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 339, VPL.0005.0111.0183 @.0524; See Chapter 10 of the Narrative Submissions.

⁵⁰ See Chapter 16 of the Narrative Submissions.

⁵¹ Exhibit RC0281 ICR3838 (062), 17 January 2007, 607, VPL.2000.0003.2193.

⁵² Exhibit RC0281 ICR3838 (063), 23 January 2007, 611, VPL.2000.0003.2197.

⁵³ Exhibit RC0281 ICR3838 (063), 23 January 2007, 611, VPL.2000.0003.2197.

⁵⁴ Exhibit RC0281 ICR3838 (063), 24 January 2007, 613, VPL.2000.0003.2199.

⁵⁵ Exhibit RC0281 ICR3838 (064), 29 January 2007, 618, VPL.2000.0003.2204; Exhibit RC0281 ICR3838 (064), 31 January 2007, 621-622, VPL.2000.0003.2207-2208; See Chapter 16 of the Narrative submissions.

⁵⁶ Exhibit RC0281 ICR3838 (065), 6 February 2007, 628, VPL.2000.0003.2214; See Chapter 16 of the Narrative Submissions.

⁵⁷ Exhibit RC0281 ICR3838 (069), 9 March 2007, 684, VPL.2000.0003.2270.

- 35.6. As referred to at Chapter 16 of the Narrative Submissions, in May 2007 Ms Gobbo attended conferences with Mr Bickley and Mr Dunn QC, during which Mr Dunn requested that she provide a statement in support of Mr Bickley's plea hearing.⁵⁸ On 8 May 2007, Ms Gobbo told her handler that she had attended a conference with Mr Bickley and Mr Dunn and that she was no longer required to give evidence, as Mr Rowe would concede everything required. She said she had spoken to Detective Sergeant Dale Flynn in relation to Mr Bickley's plea, and advised handler that Mr Bickley had 'signed all of his statements at Purana.'⁵⁹

The Registration of Ms Gobbo as a Human Source by Victoria Police and Contact in relation to Mr Bickley⁶⁰

36. As outlined at Chapter 10 of the Narrative Submissions, the registration of Ms Gobbo as a human source in September 2005 came about following Ms Gobbo's contact with police in relation to Mr Bickley.
37. On 31 August 2005, on the morning of a scheduled bail application for Mr Bickley, Ms Gobbo spoke with the informant, Detective Senior Constable Rowe, in which she raised several issues. She said she had listened to Mr Bickley's record of interview and had concerns about a potential conflict with Mr Mokbel, in that answers elicited during any cross-examination of police upon the bail application for Mr Bickley might be adverse to the interests of her client, Mr Mokbel.⁶¹ She also said she did not want to represent Mr Bickley if it was not in his best interest but felt compelled to do so by Mr Mokbel.⁶² A detailed account of the conduct of Ms Gobbo, Detective Senior Constable Rowe and other officers on this date is contained within Chapter 10 of the Narrative Submissions.
38. Later that day, Mr Rowe and Mr Mansell had recorded conversations with Ms Gobbo.⁶³ Mr Rowe gave evidence that Ms Gobbo told them the ways in which she would obtain information from clients (such as Mr Bickley), which would be used for the benefit of Mr Mokbel and his associates,⁶⁴ and spoke of her feelings of conflict in relation to Mr Bickley as Mr Mokbel expected her to ensure he (Mr Bickley) did not co-operate with police, which she felt was against his (Mokbel's) interests.⁶⁵ In addition, Ms Gobbo told Rowe that she was going to be acting for [REDACTED], which she would use to avoid having to represent Mr Bickley.⁶⁶
39. On 1 September 2005, Ms Gobbo told Rowe that she had received an enquiry from Mr Mokbel asking why Mr Bickley's bail application had not proceeded.⁶⁷
40. On 12 September 2005 Mr O'Brien spoke with Assistant Commissioner Simon Overland about the potential recruitment of Ms Gobbo.⁶⁸ It appears that whilst it

⁵⁸ See Chapter 16 of the Narrative Submissions.

⁵⁹ Exhibit RC0281 ICR3838 (078), 8 May 2007, 830, VPL.2000.0003.2416.

⁶⁰ See Chapter 10 of the Narrative Submissions.

⁶¹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

⁶² Transcript of Detective Sergeant Paul Rowe, 28 June 2019, 3250, TRN.2019.06.28.01.P.

⁶³ See Chapter 10 of the Narrative Submissions.

⁶⁴ See Chapter 10 of the Narrative Submissions.

⁶⁵ See Chapter 10 of the Narrative Submissions.

⁶⁶ See Chapter 10 of the Narrative Submissions.

⁶⁷ See Chapter 10 of the Narrative Submissions.

⁶⁸ See Chapter 10 of the Narrative Submissions.

was initially thought that Ms Gobbo would be only helpful to investigators in relation to the investigation of Operation Quills,⁶⁹ it quickly became apparent that Ms Gobbo possessed information which would be of much greater assistance to police.⁷⁰

41. As outlined at Chapter 10 of the Narrative Submissions, Mr O'Brien developed the Operation Posse Investigation Plan (the Investigation Plan), which consolidated a number of separate drug investigations being conducted by MDID and the Purana Taskforce into a single investigation. This plan was approved by Mr Overland.⁷¹
42. Other members of Victoria Police, including Sandy White, Peter Smith, Green, Detective Sergeant Flynn and Detective Senior Constable Rowe recognised the use of Ms Gobbo as a human source in relation to Mr Bickley as being central to the Investigation Plan, which included an aim to [REDACTED] and to motivate him to do so by further investigation of his criminal activities and association with Mr Mokbel and Mr Radi. The Investigation Plan included the following reference to Operation Quills and Mr Bickley:

Offence Details/Background Information (Narrative)

...

In April 2005 MDID Operation Quills commenced investigating the manufacture and trafficking of MDMA (XTC) tablets by Mr Bickley [REDACTED] [REDACTED] involved in the manufacture of MDMA tablets at [REDACTED]. Investigators established that [REDACTED] working for [REDACTED]. At the resolution phase of the operation some 31,000 tablets were seized along with a tablet press and an amount of untableted material. admissions were made by one defendant of having produced some 80,000 in the preceding 14 days. It is known through this investigation that Mokbel and associates had access to at least a further two tablet presses that have not been recovered. Since the arrest of Mr Bickley a registered human source has been established this indicates that Antonios Mokbel is very concerned about the ramification of Mr Bickley talking to police. This has been corroborated through surveillance of a meeting between Mokbel associate Alex Radi and Mr Bickley...The source has further stated that Antonios Mokbel is attempting to source a corrupt detective within Victoria Police in an attempt to gain access to tape material from Operation Kayak and Operation Quills.⁷²

...

Investigation Objectives

Utilise the continuing information provided by [REDACTED] [REDACTED] Ms Gobbo].⁷³

...

⁶⁹ See Chapter 10 of the Narrative Submissions.

⁷⁰ See Chapter 10 of the Narrative Submissions.

⁷¹ Transcript of Mr James (Jim) O'Brien, 3 September 2019, 5469, TRN.2019.09.03.01; Exhibit RC0262 Statement of Detective Sergeant Craig Hayes, 4 [24], VPL.0014.0044.0001 @.0004.

⁷² Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 2, VPL.0100.0009.0001 @.0002.

⁷³ Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 3, VPL.0100.0009.0001 @.0003.

Seek to [REDACTED] to progress drug investigations and attempts to corrupt police members.⁷⁴

...

Main Investigative Steps

...

2. In line with reliable source information attempt to [REDACTED] to the Mokbels. [REDACTED] Mr Cooper by further investigation of current criminal activities of associates and himself. [REDACTED] Mr Cooper by use of [REDACTED] at a time most advantageous to the overall operation.

3. In line with reliable intelligence attempt to [REDACTED] to the Mokbels and associates including Alex Radi. [REDACTED] Mr Bickley by further investigation of current criminal activities and association with Antonios Mokbel and Alex Radi. [REDACTED] same by use of [REDACTED] at a time most advantageous to the overall operation.

...

The Conduct of Ms Gobbo as a Human Source in relation to Mr Bickley

43. Ms Gobbo provided information to Victoria Police concerning Mr Bickley during her representation of him, between at least August 2005 until May 2007. The information provided during that period included:

- 43.1. Mr Bickley's mobile phone number;⁷⁵
- 43.2. the car registration and make of the vehicle driven by Mr Bickley;⁷⁶
- 43.3. information concerning the relationship between Mr Bickley and Mr Mokbel, including that Mr Mokbel was paying Mr Bickley's legal fees;⁷⁷
- 43.4. information concerning an alleged attempt by Mr Bickley to bribe a police officer to drop charges against him;⁷⁸
- 43.5. information concerning Mr Bickley's second arrest on 13 June 2006;⁷⁹
- 43.6. her belief as to the likelihood of Mr Bickley providing assistance to police and strategies for gaining his assistance;⁸⁰ and
- 43.7. information concerning further misconduct committed by Mr Bickley.⁸¹

Information concerning the Relationship between Mr Bickley and Mr Mokbel

44. As outlined above, Ms Gobbo provided information to Victoria Police concerning the relationship between Mr Bickley and Mr Mokbel from the outset.

⁷⁴ Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 4, VPL.0100.0009.0001 @.0004.

⁷⁵ Exhibit RC0281 ICR3838 (008), 4 November 2005, 52, VPL.2000.0003.1638; Exhibit RC0283 Information Report SID345, 12 January 2006, VPL.2000.0003.8464. Exhibit RC0281 ICR3838 (012), 13 December 2005, 84, VPL.2000.0003.1670; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 13 December 2005, 44, VPL.0005.0076.0346 @. 0389.

⁷⁶ Exhibit RC0281 ICR3838 (023), 20 March 2006, 200, VPL.2000.0003.1786.

⁷⁷ See [45] below. See also, Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

⁷⁸ See [46]–[49] below.

⁷⁹ See [50]–[55] below.

⁸⁰ See [56]–[62] below.

⁸¹ See [63] below.

On 31 August 2005, according to Mr Rowe, Ms Gobbo spoke of her feelings of conflict in relation to Mr Bickley as Mr Mokbel expected her to ensure he did not co-operate with police, which she felt was against his interests.⁸² Further, on 1 September 2005, Ms Gobbo told Mr Rowe that Mr Mokbel had asked why Mr Bickley's bail application did not proceed.⁸³

45. Following Ms Gobbo's registration by Victoria Police on 16 September 2005, she continued to provide information regarding the relationship between Mr Bickley and Mr Mokbel, including:
 - 45.1. Mr Mokbel's reaction upon being told of Mr Bickley's arrest,⁸⁴ including that he was panicked about Mr Bickley's arrest, was 'desperate for Mr Bickley to do some sort of deal' and 'wants to keep Mr Bickley sweet somehow, possibly with money';⁸⁵
 - 45.2. Ms Gobbo's opinion 'that it is patently obvious that Mokbel is involved'⁸⁶ and that it was clear that Mr Mokbel was paying Mr Bickley's legal fees;⁸⁷
 - 45.3. that Mr Mokbel was concerned about Mr Bickley providing information against him;⁸⁸
 - 45.4. her opinion that Mr Bickley 'must have something very big on Mokbel';⁸⁹
 - 45.5. that Mr Mokbel wanted Ms Gobbo to write a statement for Mr Bickley to the effect that Mr Mokbel was not involved in his matter for Mr Bickley to then copy in his own handwriting and sign;⁹⁰ and
 - 45.6. that Mr Mokbel had taped Mr Bickley reading a statement regarding Mr Mokbel's non-involvement in the charges.⁹¹

Information concerning an Alleged Attempt by Mr Bickley to Bribe a Police Officer to Have Charges against Him Withdrawn

46. Between at least November 2005 and February 2006, Ms Gobbo provided information to her handlers concerning an alleged attempt by Mr Bickley to bribe a police officer to have charges against him withdrawn.
47. On 9 November 2005, Ms Gobbo told her handler that, according to Mr Bickley, he had paid ██████████ to an associate (██████████), to be given to a 'contact with the ██████████ of the ██████████',⁹² so that charges against him

⁸² See Chapter 10 of the Narrative Submissions.

⁸³ See Chapter 10 of the Narrative Submissions.

⁸⁴ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589: 'Mokbel panicked and went into quite a state'.

⁸⁵ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

⁸⁶ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

⁸⁷ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

⁸⁸ Exhibit RC0281 ICR3838 (003), 22, 23, 23, 26 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0283 Information Report SID269, 29 September 2005, VPL.2000.0003.8395.

⁸⁹ Exhibit RC0281 ICR3838 (003), 22, 23, 23, 26 September 2005, 15, VPL.2000.0003.1601.

⁹⁰ Exhibit RC0281 ICR3838 (003), 22, 23, 23, 26 September 2005, 14-15, VPL.2000.0003.1600-.1601; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005, 14, VPL.0005.0076.0004 @.0017.

⁹¹ Exhibit RC0281 ICR3838 (015), 10 January 2006, 115, VPL.2000.0003.1701.

⁹² Exhibit RC0281 ICR3838 (008), 9 November 2005, 56, VPL.2000.0003.1642.

would be dropped. The material suggests that it was intended that this would be secured by having tapes relevant to Mr Bickley's proceedings disappear.⁹³

48. On 17 January 2006, Ms Gobbo told her handler that Mr Bickley had paid ██████ to ██████ and could not understand why his charges had not been withdrawn.⁹⁴
49. On 20 February 2006, Ms Gobbo informed police that Mr Bickley told her he 'paid a lot of money to have the tapes in his pending court case disappear and they have not.'⁹⁵

Information and Conduct in relation Mr Bickley's Second Arrest on 13 June 2006⁹⁶

50. As outlined above, Mr Bickley was arrested on 13 June 2006 on the basis of a recorded conversation he had with Mr Cooper on ██████. At that time, Ms Gobbo was acting on behalf of both Mr Bickley and Mr Cooper, and was actively involved in Mr Cooper ██████ and assisting police. Mr Cooper provided at least two statements relating to Mr Bickley's misconduct.⁹⁷
51. Prior to that conversation, on 14 March 2006, Ms Gobbo told her handler that ██████, and that Mr Bickley had paperwork for other presses when police searched his factory.⁹⁸
52. On 16 March 2006, Ms Gobbo told her handler that Mr Cooper wanted to give her a phone to pass on to Mr Bickley, 'as Mr Bickley had access to a pill press, (or maybe 3 x presses) and powders.'⁹⁹ Later that day, Ms Gobbo told her handler that she had met with Mr Cooper and was given the phone to pass onto Mr Bickley. Ms Gobbo provided her handler with the phone number of the contact saved in the phone and the phone number of the phone itself.¹⁰⁰ See Chapter 10 of the Narrative Submissions in relation to the issue of compromise this created in respect of Ms Gobbo.
53. On 17 March 2006, following discussions with handlers about what she should do with the phone, Ms Gobbo met with Mr Bickley and gave him the phone she had received from Mr Cooper.¹⁰¹
54. On ██████, Mr Cooper ██████ attend a meeting Mr Bickley ██████ ██████ to discuss the sale of ecstasy.¹⁰² The day prior to meeting with Mr Bickley, Mr Cooper contacted Ms Gobbo 'for

⁹³ Exhibit RC0281 ICR3838 (012), 13 December 2005, 84, VPL.2000.0003.1670.

⁹⁴ Exhibit RC0281 ICR3838 (016), 17 January 2006, 124, VPL.2000.0003.1710.

⁹⁵ Exhibit RC0281 ICR3838 (019), 20 February 2006, 159, VPL.2000.0003.1745.

⁹⁶ See Chapter 11 of the Narrative Submissions.

⁹⁷ Un-tendered Statement of Mr Cooper, 24 April 2006, COM.0064.0001.0002 @.0006-.0007; Un-tendered Statement of Mr Cooper, 6 August 2006, COM.0064.0001.0001 @.0084-.0088.

⁹⁸ Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773.

⁹⁹ Exhibit RC0281 ICR3838 (023), 1 March 2005, 19, VPL.2000.0003.1776; Exhibit C0283 Information Report SID481, 10 April 2006, VPL.2000.0003.8596.

¹⁰⁰ Exhibit RC0281 ICR3838 (023), 16 March 2006, 192, VPL.2000.0003.1778, 'I/R not submitted re these numbers due to potential compromise of HS, however, on 30/3/06 SPU affidavit certified re this information'.

¹⁰¹ Exhibit RC0281 ICR3838 (023), 17 March 2006, 193, VPL.2000.0003.1779.

¹⁰² Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 10, COR.1000.0001.0040 @.0010.

reassurance' and asked her 'if anyone was suspicious'.¹⁰³ Immediately prior to the meeting Mr Cooper contacted Ms Gobbo and they discussed his welfare.¹⁰⁴ Mr Cooper then met with Mr Bickley and they had a discussion about a pill press and a large quantity of ecstasy.¹⁰⁵

55. On 13 June 2006, Mr Bickley was arrested on the basis of this recorded discussion with Mr Cooper¹⁰⁶ and a statement provided by Mr Cooper in relation to the meeting, which he signed on [REDACTED].¹⁰⁷

Information concerning the Likelihood of Mr Bickley Assisting to Police and Strategies for Gaining His Assistance

56. As outlined above and at Chapter 10 of the Narrative Submissions, Mr Bickley agreed to assist police and was not charged in relation to the further offending.¹⁰⁸ It is submitted that Ms Gobbo played a material role in the process of Mr Bickley agreeing to assist police in relation to numerous criminal accused or suspects. The conduct of Ms Gobbo and Victoria Police in obtaining assistance from Mr Bickley included the following.
57. On 28 November 2005, Ms Gobbo told her handler that she had met with Mr Bickley, who told her that [REDACTED] wanted him to make a statement against Mr Mokbel. Ms Gobbo said she advised Mr Bickley to 'establish exactly what [REDACTED] want from him'.¹⁰⁹
58. On 2 May 2006, Ms Gobbo told her handler that Mr Bickley believed Mr Cooper [REDACTED] during their meeting on [REDACTED] and that he had been informed that he would be arrested.¹¹⁰
59. Between 4 June 2006 and 13 June 2006 (the day of Mr Bickley's second arrest), Ms Gobbo provided information to her handlers regarding her belief as to the likelihood of Mr Bickley providing assistance to police and strategies in relation to same. Further details concerning [REDACTED] of Mr Cooper and [REDACTED] Mr Bickley by Victoria Police is outlined at Chapter 10 of the Narrative submissions. In particular:
- 59.1. On 4 June 2006, Ms Gobbo provided her opinion to her handler that Mr Bickley would 'assist police when he is arrested if he is granted bail'.¹¹¹
- 59.2. On 7 June 2006, Ms Gobbo was asked by her handler, Mr Green, for 'angles on gaining Mr Bickley's assistance on arrest,' which were

¹⁰³ Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 10, VPL.0008.0001.0466 @.0475.

¹⁰⁴ Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 10, VPL.0008.0001.0466 @.0475.

¹⁰⁵ Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 10, VPL.0008.0001.0466 @.0475; Exhibit RC0281 ICR3838 (028), 24 April 2006, 265, VPL.2000.0003.1851.

¹⁰⁶ Exhibit RC0281 ICR3838 (035), 13 June 2006, 329, VPL.2000.0003.1915.

¹⁰⁷ Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 10, VPL.0008.0001.0466 @.0475.

¹⁰⁸ Exhibit RC0559 Operation Bendigo Legal Conflict Report on information supplied relation to the arrest of Mr Cooper, 15 September 2014, 14, VPL.0008.0001.0466 @.0479.

¹⁰⁹ Exhibit RC0281 ICR3838 (009), 28 November 2005, 65, VPL.2000.0003.1651. Note: Ms Gobbo stated she had not seen [REDACTED] brief against Mr Bickley at this stage.

¹¹⁰ Exhibit RC0281 ICR3838 (030), 2 May 2006, 208, VPL.2000.0003.1866.

¹¹¹ Exhibit RC0281 ICR3838 (034), 4 June 2006, 318, VPL.2000.0003.1904.

recorded in the relevant ICR entry under the heading 'Bickley Arrest tips.'¹¹² Ms Gobbo advised that:

- 59.2.1. Mr Bickley should be granted bail so that he could further a business idea which was worth millions to him;
 - 59.2.2. the approach should be to 'talk short and to the point';
 - 59.2.3. there should be 'no threats like last time interviewed'; and
 - 59.2.4. Mr Bickley no longer had Mr Mokbel's backing as had been previously promised.¹¹³
- 59.3. On 8 June 2006, Mr Sandy White and Mr Green met with Purana Taskforce investigators, Mr O'Brien, Mr Flynn and Mr Rowe, where the arrest tips were passed to investigators.¹¹⁴
- 59.4. On 9 June 2006, Ms Gobbo met with Mr Sandy White and Mr Green and discussed the impending second arrest of Mr Bickley and the concern they had of keeping any contact with Mr Bickley and Ms Gobbo quiet. Ms Gobbo also expressed her concern that Mr Bickley might be interviewed by someone other than Mr Flynn and might reveal that she had been involved in passing a phone between him and Mr Cooper.¹¹⁵
- 59.5. On the same date, Ms Gobbo discussed providing advice on the phone to avoid having to attend the police station which had the potential for compromise,¹¹⁶ and referred to the advice she would give Mr Bickley upon his arrested, stating '*Well, what is wrong with me explaining to him on the phone, "You realise that you're unlikely" - I mean, what's wrong with me saying to him, "Look, you realise that you're unlikely to get bail again unless you assist the police?"*'.¹¹⁷ She again provided her opinion as to whether Mr Bickley might assist police, stating that if Mr Bickley was 'handled properly...I think [he] will turn.'¹¹⁸
60. On 14 June 2006 (the day after Mr Bickley's arrest and agreement to assist police), Ms Gobbo told her handler that she had met with Mr Bickley who was 'scared at what he is going to do', wanted his bail changed, was worried that 'it could be a set up', but was 'fine' about helping police.¹¹⁹

61. [REDACTED]

¹¹² Exhibit RC0281 ICR3838 (034), 7 June 2006, 320, VPL.2000.0003.1906, 'Op Purana advised in briefing re same'.

¹¹³ Exhibit RC0281 ICR3838 (034), 7 June 2006, 320, VPL.2000.0003.1906. See also Chapter 10 of the Narrative Submissions.

¹¹⁴ See Chapter 10 of the Narrative Submissions.

¹¹⁵ See Chapter 10 of the Narrative Submissions.

¹¹⁶ Exhibit RC0282 Audio recording of meeting between Nicola Gobbo, Green and Sandy White, 9 June 2006, 1:56:45; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Green and Sandy White, 9 June 2006, 168, VPL.0005.0097.0536 @.0703.

¹¹⁷ See Chapter 10 of the Narrative Submissions.

¹¹⁸ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Green and Sandy White, 9 June 2006, 246, VPL.0005.0097.0536 @.0718.

¹¹⁹ Exhibit RC0281 (034), 14 June 2006, 329, VPL.2000.0003.1915.

[REDACTED]
[REDACTED].¹²¹

62. On 26 June 2006, Ms Gobbo told her handler that Mr Bickley was 'reluctant to plead guilty' as he had never been involved in criminal proceedings before, but that she believed that his attitude would change in time.¹²²

Information concerning Further Misconduct Committed by Mr Bickley

63. In the period between Mr Bickley's provision of statements to police and pending the commencement of his plea hearing, Ms Gobbo provided information to her handlers concerning an allegation that Mr Bickley was [REDACTED] and was misleading police as to the information he was providing them. [REDACTED]:

- 63.1. On 12 December 2006, Ms Gobbo told her handler that Mr Bickley had advised a friend of Horty Mokbel's that he had [REDACTED]

[REDACTED]
[REDACTED].¹²³

- 63.2. On 5 March 2007, Ms Gobbo told her handler that Mr Bickley was 'pulling the wool over the eyes of the police.'¹²⁴ She repeated the above, that Mr Bickley's friend [REDACTED] knew that Mr Bickley was assisting police, and advised that this information had been passed onto Horty Mokbel. According to Ms Gobbo, as a result of these people becoming aware of Mr Bickley's position, he would be 'unable to get to Horty'.¹²⁵ On the same date, Ms Gobbo alleged that Mr Bickley was [REDACTED].¹²⁶

- 63.3. On 16 March 2007, Ms Gobbo had a further discussion with her handler concerning Mr Bickley's apparent admissions that he was [REDACTED], lying and misleading police.¹²⁷

- 63.4. On 8 May 2007, Ms Gobbo told her handler that Mr Bickley had 'signed all of his statements at Purana' and that [REDACTED] had included information in the statement concerning [REDACTED], despite only having met [REDACTED] on one occasion. According to Ms Gobbo, Mr Bickley provided this information 'to build up the statements'.¹²⁸

Knowledge as to Conflict

64. At various times, Ms Gobbo seemed aware of, and discussed with her handlers, areas of conflict which could arise, or had arisen, through her representation of Mr Bickley. Further details can be found at Chapter 16 of the Narrative Submissions. Some examples include:

- 64.1. On 12 July 2006, during a meeting with Mr Peter Smith and Mr Anderson, Ms Gobbo confirmed that she was still acting for Mr Bickley

¹²² Exhibit RC0281 (036), 26 June 2006, 344, VPL.2000.0003.1930.

¹²³ Exhibit RC0281 ICR3838 (057), 12 December 2006, 583, VPL.2000.0003.2169.

¹²⁴ Exhibit RC0281 ICR3838 (069), 5 March 2007, 671, VPL.2000.0003.2257.

¹²⁵ Exhibit RC0281 ICR3838 (069), 5 March 2007, 671, VPL.2000.0003.2257.

¹²⁶ Exhibit RC0281 ICR3838 (069), 5 March 2007, 671, VPL.2000.0003.2257.

¹²⁷ Exhibit RC0281 ICR3838 (069), 5 March 2007, 671, VPL.2000.0003.2257; Exhibit RC0281 ICR3838 (070), 16 March 2007, 713, VPL.2000.0003.2299.

¹²⁸ Exhibit RC0281 ICR3838 (078), 8 May 2007, 830, VPL.2000.0003.2416.

and discussed that she had provided advice to a co-accused to give evidence against him and her inability to cross-examine the co-accused.¹²⁹

- 64.2. On 31 January 2007, Ms Gobbo discussed with her handler, Mr Green, the fact that Mr Bickley was unhappy with his current legal representation and wanted Ms Gobbo to represent him in court. Ms Gobbo asked her handler if she should represent him, stating that she had not seen the statements that were made and there was 'no conflict at this stage'.¹³⁰ Ms Gobbo told her handler that Mr Bickley had said to her that 'but for her he would not be talking'.¹³¹ Green advised Ms Gobbo to keep her distance from Mr Bickley, and stated that it was 'not advisable to represent him'.¹³²
- 64.3. On 19 March 2007, Ms Gobbo expressed her concern to her handler, Mr Anderson, that Mr Bickley had requested that she give evidence in his family law proceeding regarding child visitation.¹³³ She discussed her concerns with her handler, who provided her with 'a number of suggestions...to avoid 3838 giving evidence'.¹³⁴
- 64.4. On 16 April 2007 and 17 April 2007, Ms Gobbo was instructed by her handler, Mr Anderson, not to involve herself in Mr Bickley's court hearing.¹³⁵ Despite this advice, she continued to communicate with Mr Bickley in relation to his plea hearing and finalisation of his statements.
- 64.5. As outlined at Chapter 16 of the Narrative Submissions, in May 2007, Ms Gobbo expressed concern when Mr Bickley's counsel, Mr Dunn, requested that she provide a character reference and statement for use at Mr Bickley's plea hearing.¹³⁶ Ms Gobbo declined to provide either document, and there was a suggestion that she may be subpoenaed to give evidence.¹³⁷ Ms Gobbo told her handler that she was concerned that if she was called as a witness Mr Bickley's counsel 'could ask any range of questions relating to her knowledge of Mr Bickley's involvement with the police [REDACTED] [REDACTED] [REDACTED]'.¹³⁸ As a consequence, an agreement was reached that Detective Senior Constable Rowe would concede the points to be raised by defence counsel during the plea hearing and give all evidence required.¹³⁹

¹²⁹ Exhibit RC0282 Audio recording of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 5:17:08, VPL.2000.0002.4233; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 12 July 2006, 339, VPL.0005.0111.0183. See also Chapter 10 of the Narrative Submissions

¹³⁰ Exhibit RC0281 ICR3838 (064), 31 January 2007, 621, VPL.2000.0003.2207.

¹³¹ Exhibit RC0281 ICR38383 (064), 31 January 2007, 621, VPL.2000.0003.2207.

¹³² Exhibit RC0281 ICR38383 (064), 31 January 2007, 622, VPL.2000.0003.2208; See Chapter 16 of the Narrative Submission.

¹³³ Exhibit RC0281 ICR38383 (071), 19 March 2007, 717, VPL.2000.0003.2303.

¹³⁴ Exhibit RC0281 ICR38383 (071), 19 March 2007, 717, VPL.2000.0003.2303.

¹³⁵ Exhibit RC0281 ICR38383 (075), 16 April 2007, 293, VPL.2000.0003.2379; Exhibit RC0281(075), 17 April 2007, 293-4, VPL.2000.0003.2379-.2380.

¹³⁶ Exhibit RC0281 (075), 4 May 2007, 823, VPL.2000.0003. 2409; Exhibit RC0281 (078), 8 May 2007, 829, VPL.2000.0003.2415; See Chapter 16 of the Narrative Submissions.

¹³⁷ Exhibit RC0281 ICR38383 (077), 4 May 2007, 823, VPL.2000.0003.2409.

¹³⁸ Exhibit RC0281 ICR38383 (077), 4 May 2007, 824, VPL.2000.0003.2410.

¹³⁹ Exhibit RC0281 ICR38383 (078), 7 May 2007, 827, VPL.2000.0003.2413; See Chapter 16 of the Narrative Submissions

Relevant Conduct in relation to Mr Cooper

65. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Bickley's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or illegal. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 65.1. the discovery of the offending the subject of Operation Posse;
 - 65.2. Mr Cooper being arrested in Operation Posse;
 - 65.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including –
 - 65.3.1. engaging in, [REDACTED] meeting with Mr Bickley, [REDACTED] incriminate him; and
 - 65.3.2. making statements implicating others (including Mr Bickley) and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 65.3.3. the evidence of Mr Cooper being relied upon in the prosecution of Mr Bickley (among others).
 - 65.4. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Bickley, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Bickley may have been deprived of any opportunity to object to the admissibility of this evidence.

The Circumstances of Mr Bickley Agreeing to Co-Operate with and Assist Authorities

66. As noted above, Mr Bickley began co-operating with and assisting police upon his arrest on 13 June 2006. He went on to provide [REDACTED] statements to police implicating others in alleged criminal activities. At his plea hearing, he gave undertakings to continue to assist the authorities and to give evidence in accordance with his statements in any relevant subsequent prosecutions.
67. It is submitted that it is open to find that Mr Bickley's evidence, to the extent it was relied upon in subsequent proceedings, may have been obtained improperly or illegally in two distinct ways.
68. First, it is submitted that it is open to infer, based on the surrounding circumstances, that Mr Bickley's decision to co-operate with and assist authorities may have been influenced by the course that Mr Cooper took. It appears from the above that Mr Bickley's decision was made in the context of him being arrested, on 13 June 2006, based on the assistance provided to Victoria Police by Mr Cooper. In these circumstances, it is open to reason that, but for Mr Cooper's decision to co-operate with and assist the authorities (which may have been obtained by way of improper or illegal conduct of Ms Gobbo and members of Victoria Police, as addressed in the Narrative

Submissions at Chapter 11), Mr Bickley would not himself have elected to assist authorities.

69. Based on the foregoing, it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police that led Mr Cooper to agree to assist and co-operate with authorities, and Mr Bickley's subsequent decision to do so. On this basis, it may be argued that the evidence and assistance which Mr Bickley gave, and which was relied upon in subsequent proceedings, may have been obtained improperly or illegally by virtue of its causal connection (albeit indirect) to the circumstances surrounding Mr Cooper.
70. Secondly, it is submitted that Mr Bickley's evidence may have also been obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in direct relation to him (that is, independently of their conduct in relation to Mr Cooper). Such conduct included:
 - 70.1. the provision of information by Ms Gobbo in relation to Mr Cooper and Mr Bickley in circumstances where she was their legal representative
 - 70.2. the discovery of the offending the subject of Operation Posse
 - 70.3. the provision of legal representation by Ms Gobbo to Mr Cooper who engaged in, and [REDACTED] with Mr Bickley, [REDACTED] [REDACTED] to incriminate him
 - 70.4. the provision of 'Arrest Tips' by Ms Gobbo to members Victoria Police prior to the arrest of Mr Bickley in June 2006 designed to encourage Mr Bickley to assist the authorities
 - 70.5. the plan between Ms Gobbo and members of Victoria Police that when Mr Bickley was arrested on the Operation Posse offences she would provide advice to Mr Bickley over the telephone to avoid disclosure issues associated with her attendance at the police station
 - 70.6. Mr Bickley being arrested in Operation Posse in June 2006 for trafficking in a large commercial quantity of MDMA, in circumstances where he was on bail for the same charge following his arrest in Operation Quills in August 2005, which charge carried a maximum penalty of life imprisonment
 - 70.7. the facilitation by members of Victoria Police with knowledge of Ms Gobbo's status as a human source, of contact by Mr Bickley with Ms Gobbo for the purposes of providing him with legal representation
 - 70.8. the provision of legal representation by Ms Gobbo to Mr Bickley following his arrest in June 2006
 - 70.9. the concealment from Mr Bickley:
 - 70.9.1. of Ms Gobbo's role as the legal representative of Mr Cooper
 - 70.9.2. that the evidence against Mr Bickley in relation to Operation Posse might be compromised
 - 70.10. the concealment of Ms Gobbo's role as a human source from Mr Bickley, the prosecution and the court

- 70.11. that although Mr Bickley was not charged with the Operation Posse offending, he was led to believe by members of Victoria Police that he would be charged if he did not co-operate with the authorities.
71. It is submitted that the above conduct may have been improper or illegal, in that:
- 71.1. Victoria Police used Ms Gobbo as a human source against Mr Bickley, who to the knowledge of Victoria Police was her client
- 71.2. Victoria Police allowed the threat that if Mr Bickley did not co-operate with the authorities he would be charged with that offending, when there was an awareness that the evidence founding those charges would potentially be compromised
- 71.3. Ms Gobbo had a conflict of interest between her role as a human source for Victoria Police and as the legal representative of Mr Bickley
- 71.4. Ms Gobbo had a conflict of interest between her role as legal representative of Mr Bickley and as legal representative of Mr Cooper
- 71.5. Mr Bickley was deprived of his right to independent legal representation
- 71.6. there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bickley and/or his legal representatives in Operation Quills, or in the alternative to take steps to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
72. Whilst the foregoing points as to how Mr Bickley's evidence may itself have been obtained improperly or illegally do not alter the ways in which Mr Bickley's case may have been affected, they do have a flow-on effect in subsequent matters in which his evidence was relied upon.
73. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic) is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁴⁰ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁴¹

Submissions under Terms of Reference 1 and 2 in relation to Mr Bickley

74. It is submitted that it is open to the Commissioner to find that the case of Mr Bickley may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

¹⁴⁰ See Legal Principles Submissions at [210].

¹⁴¹ See Legal Principles Submissions at [212]-[213].

75. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11 (concerning Mr Cooper).
76. The extent to which the case of Mr Bickley may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

77. First, Category 1A¹⁴² applies in that, between August 2005 and May 2007,¹⁴³ Ms Gobbo acted for Mr Bickley while she was a human source,¹⁴⁴ and did not disclose same to him.¹⁴⁵
78. Secondly, Category 1B¹⁴⁶ applies in that, between August 2005 and May 2007,¹⁴⁷ which was during the period that Ms Gobbo acted for Mr Bickley in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and otherwise assisted in his prosecution.¹⁴⁸ and did not disclose same to him.
79. Thirdly, Category 2A¹⁴⁹ applies in that evidence relied upon by the prosecution in the case against Mr Bickley, namely the evidence of Mr Cooper,¹⁵⁰ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁵¹
80. Fourthly, Category 2B¹⁵² applies in that Ms Gobbo had knowledge of the circumstances founding the above [79] and failed to disclose same to her client, Mr Bickley, thereby depriving him of the ability to object to the admission of that evidence.
81. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁵³
82. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection

¹⁴² See Legal Principles Submissions at [249]

¹⁴³ See above analysis at [18]-[35].

¹⁴⁴ See Legal Principles Submissions at [20]

¹⁴⁵ See Legal Principles Submissions at [239]

¹⁴⁶ See Legal Principles Submissions at [249].

¹⁴⁷ See above analysis at [26], [27], [30] – [32], [37] – [38], [40] – [42], [46] – [68].

¹⁴⁸ See above analysis at [50]-[55], [66] – [69]

¹⁴⁹ See Legal Principles Submissions at [249].

¹⁵⁰ See above analysis at [66]-[73].

¹⁵¹ See Legal Principles Submissions at [249].

¹⁵² See Legal Principles Submissions at [249].

¹⁵³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

83. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁵⁴
- 83.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Bickley;
 - 83.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Bickley, appropriate disclosure was made; or alternatively
 - 83.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
84. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [83.1] were taken, and accordingly there was the potential for the right of Mr Bickley to a fair trial to have been interfered with.
85. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bickley and/or his legal representatives.
86. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁵⁵
87. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁵⁶
88. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁵⁷
89. Category 3A¹⁵⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

¹⁵⁴ See Legal Principles Submissions at [384] and [452]-[457].

¹⁵⁵ See Legal Principles Submissions at [380]-[385].

¹⁵⁶ See Legal Principles Submissions at [351], [362]-[373].

¹⁵⁷ See Legal Principles Submissions at [351] and [374].

¹⁵⁸ See Legal Principles Submissions at [465].

90. Category 3B¹⁵⁹ applies in that, between August 2005 and May 2007,¹⁶⁰ which was during the period that Ms Gobbo acted for Mr Bickley in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and otherwise assisted in his prosecution,¹⁶¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
91. Category 4A¹⁶² applies in that, as noted above at [79], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
92. Category 4B¹⁶³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
93. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁵⁹ See Legal Principles Submissions at [465].

¹⁶⁰ See above analysis at [26], [27], [30] – [32], [37] – [38], [40] – [42], [46] – [68].

¹⁶¹ See above analysis at [50]-[55], [66] – [69].

¹⁶² See Legal Principles Submissions at [465].

¹⁶³ See Legal Principles Submissions at [465].

CASE STUDY: CHRISTOPHER BINSE

The Relevant Case of Mr Binse

1. The one relevant case of Mr Christopher Binse concerns his convictions before the County Court in December 2006.¹
2. On 18 January 2006, Mr Binse was arrested and charged in relation to threatening to shoot two employees at the Spearmint Rhino Gentleman's Club on 13 November 2005.²
3. The prosecution case was that Mr Binse attended at the club for the purposes of confronting a person named Jay.³ It was alleged that upon attending the club, Mr Binse pointed a loaded firearm at two employees, demanded to see 'Jay', removed a bullet from the gun and left the bullet at reception.⁴
4. Mr Binse ultimately entered a plea of guilty to:
 - 4.1. one count of being a prohibited person possessing an unregistered firearm;
 - 4.2. two counts of common assault;
 - 4.3. two counts of carrying a firearm whilst committing an indictable offence; and
 - 4.4. two counts of possessing a drug of dependence.⁵
5. On 1 December 2006, he was sentenced to a total effective sentence of four years' imprisonment, with a non-parole period of two years' imprisonment.⁶

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Binse

6. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo may have commenced providing legal representation to Mr Binse on or

¹ Un-tendered Reasons for Sentence, *The Queen v Christopher Binse* (County Court of Victoria, Judge Rizkalla), 1 December 2006, 31 [38], RCMP1.0070.0002.0001 @ .0031; Un-tendered Victoria Police Criminal History Report, Christopher Binse, 16 December 2019, 11, 12, VPL.0099.0193.0467 @ .0477, .0478.

² Un-tendered Summary, *Police v Christopher Binse*, undated 2,3, RCMP1.0070.0002.0001 @ .0002, .0003.

³ Un-tendered Reasons for Sentence, *The Queen v Christopher Binse* (County Court of Victoria, Judge Rizkalla), 1 December 2006, 27 [20], RCMP1.0070.0002.0001 @ .0027.

⁴ Un-tendered Reasons for Sentence, *The Queen v Christopher Binse* (County Court of Victoria, Judge Rizkalla), 1 December 2006, 27 [22], RCMP1.0070.0002.0001 @ .0027.

⁵ Un-tendered Reasons for Sentence, *The Queen v Christopher Binse* (County Court of Victoria, Judge Rizkalla), 1 December 2006, 24 [10], RCMP1.0070.0002.0001 @ .0024; Un-tendered Victoria Police Criminal History Report, Christopher Binse, 16 December 2019, 11, 12, VPL.0099.0193.0467 @ .0477, .0478.

⁶ Un-tendered Reasons for Sentence, *The Queen v Christopher Binse* (County Court of Victoria, Judge Rizkalla), 1 December 2006, 31 [38], RCMP1.0070.0002.0001 @ .0031; Un-tendered Victoria Police Criminal History Report, Christopher Binse, 16 December 2019, 11, VPL.0099.0193.0467 @ .0477.

around 8 March 2006, when she told her handler that Mr Binse was her 'new client'.⁷

7. In addition, on 7 April 2006, Ms Gobbo charged fees for a 'brief to advise & draft Form 8A' in relation to Mr Binse's case.⁸

The Conduct of Ms Gobbo as a Human Source in relation to Mr Binse

8. Ms Gobbo provided information to Victoria Police concerning Mr Binse during her representation of him on at least the following two occasions:
 - 8.1. On 8 March 2006, Ms Gobbo told her handler that Mr Binse was her new client and advised that his matter concerned 'a threat to kill Jay Malkoun'.⁹
 - 8.2. During a meeting on 5 April 2006, Ms Gobbo discussed with her handlers, Mr Green & Peter Smith, whether she could act for Mr Binse given she had previously met Mr Malkoun on one occasion.¹⁰
9. Ms Gobbo continued to provide information to police concerning Mr Binse following her representation of him until at least August 2008. This information included:
 - 9.1. Mr Binse's relationship with a known associate;¹¹
 - 9.2. the person apparently responsible for paying Mr Binse's legal fees;¹²
 - 9.3. an alleged attempt by others to kill Mr Binse whilst he was in prison, facilitated by Jay Malkoun;¹³
 - 9.4. the fact that Mr Binse was looking for Mr Malkoun in relation to a disagreement concerning repayment of a debt owed by Mr Malkoun, and the involvement of Mick Gatto as a 'mediator';¹⁴ and
 - 9.5. the fact that Mr Gatto had paid Mr Binse a sum of money and would mediate the dispute between Mr Binse and Mr Malkoun.¹⁵

⁷ Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766.

⁸ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 7 March 2019, 49, GMH.0001.0001.0002 @ .0049; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 7 April 2006, 95 MIN.5000.7000.0001 @ .0095.

⁹ Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766.

¹⁰ Exhibit RC0282 Transcript of meeting between Green, Peter Smith and Nicola Gobbo, 5 April 2006, 183, VPL.0005.0076.1119 @ .1301.

¹¹ Exhibit RC0283 Information Report SID729, 16 April 2006, 1, VPL.2000.0003.8708.

¹² Exhibit RC0281 ICR3838 (027), 17 April 2006, 248, VPL.2000.0003.1834; Exhibit RC0281, ICR3838 (040), 2 August 2006, 379, VPL.2000.0003.1965; Exhibit RC0281 ICR3838 (046), 21 September 2006, 431, VPL.2000.0003.2017.

¹³ Exhibit RC0281 ICR3838 (044), 2 September 2006, 414, VPL.2000.0003.2000; Exhibit RC0283 Information Report SID833, 2 September 2006, 1, VPL.2000.0003.8856; Exhibit RC0281 ICR3838 (046), 21 September 2006, 431, VPL.2000.0003.2017.

¹⁴ Exhibit RC0281 ICR2958 (013), 12 April 2008, 155, VPL.2000.0003.0895.

¹⁵ Exhibit RC0281 ICR2958 (036), 29 August 2008, 572, VPL.2000.0003.1312.

Submissions under Terms of Reference 1 and 2 in relation to Mr Binse

10. It is submitted that it is open to the Commissioner to find that the case of Mr Binse may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
11. The extent to which the case of Mr Binse may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

12. First, Category 1A¹⁶ applies in that, between March 2006 and April 2006,¹⁷ Ms Gobbo acted for Mr Binse while she was a human source,¹⁸ and did not disclose same to him.¹⁹
13. Secondly, Category 1B²⁰ applies in that, between March 2006 and April 2006, which was during the period that Ms Gobbo acted for Mr Binse in relation to the case, and did not disclose same to him.²¹
14. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²² Further, in certain instances identified above,²³ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁴
15. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See above analysis at [6]-[7].

¹⁸ See Legal Principles Submissions at [20].

¹⁹ See Legal Principles Submissions at [239].

²⁰ See Legal Principles Submissions at [249].

²¹ See above analysis at [8].

²² See Legal Principles Submissions at [320]-[329] and [307]-[309].

²³ See above analysis at [8].

²⁴ See Legal Principles Submissions at [310]-[319] and [301]-[306].

recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁵

- 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Binse;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Binse, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Mr Binse to a fair trial to have been interfered with.
 18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Binse and/or his legal representatives.
 19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁶
 20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁷
 21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁸
 22. Category 3A²⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 23. Category 3B³⁰ applies in that, during the period Ms Gobbo acted for Mr Binse, she provided information in relation to him to members of Victoria Police,³¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

²⁵ See Legal Principles Submissions at [384] and [452]-[457]

²⁶ See Legal Principles Submissions at [380]-[385].

²⁷ See Legal Principles Submissions at [351], [362]-[373].

²⁸ See Legal Principles Submissions at [351], [374].

²⁹ See Legal Principles Submissions at [465].

³⁰ See Legal Principles Submissions at [465].

³¹ See above analysis at [8].

24. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: MR BOYD (A PSEUDONYM)

The Relevant Case of Mr Boyd

1. The one relevant case of Mr Boyd arose from Operation Posse,¹ and concerned his pleas of guilty and sentence in the County Court on 23 October 2008 for:
 - 1.1. one charge of trafficking in a commercial quantity of methylamphetamine between 19 December 2003 and 2 December 2005; and
 - 1.2. one charge of possessing an unregistered general category handgun on 27 October 2006 (the case).²
2. In brief terms, the offences arose from Mr Boyd's involvement in drug trafficking activities with Mr Cooper between 2003 and 2005.³ On 27 October 2006, Mr Boyd was arrested, at which time he was found in possession of the handgun the subject of the second charge.⁴ The prosecution case against Mr Boyd included reliance upon the evidence of Mr Cooper.⁵ The informant in the case was Mr Graham Evans.⁶ Other notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Craig Hayes, and Mr Dale Flynn.⁷
3. In November 2007, committal proceedings were conducted before the Magistrates' Court.⁸ On 15 October 2008, Mr Boyd was arraigned on the charges and entered pleas of guilty.⁹ On 23 October 2008, he was convicted and sentenced in the County Court to a total effective term of imprisonment of three years and two months, with a non-parole period of 18 months.¹⁰

¹ See Chapters 10 and 11 of the Narrative Submissions. See also Un-tendered Bail Application Notes, *Mr Boyd*, undated, 11-12, OPP.0053.0001.0003 @ .0011-.0012.

² See Un-tendered Presentment No. C0705675.3, *The Queen v Mr Boyd*, 2008, 8-10, OPP.0053.0001.0003 @ .0008-.0010; Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 2 [1], OPP.0004.0002.0470 @ .0471.

³ Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 2 [3], OPP.0004.0002.0470 @ .0471.

⁴ Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 2 [2]-[3], OPP.0004.0002.0470 @ .0471.

⁵ See Un-tendered Presentment No. C0705675.3, *The Queen v Mr Boyd*, 2008, 8-10, OPP.0053.0001.0003 @ .0008-.0010; Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 3-4 [8], OPP.0004.0002.0470 @ .0472-.0473; Un-tendered Statement of Mr Cooper, 20 February 2007, VPL.6038.0031.7521.

⁶ See Un-tendered Order of Magistrate J F Fitz-Gerald in *Police v Mr Boyd* (Magistrates' Court of Victoria at Melbourne, W01163406, 7 May 2007). See also Un-tendered Presentment No. C0705675.3, *The Queen v Mr Boyd*, 2008, 8-10, OPP.0053.0001.0003 @ .0008-.0010.

⁷ See Un-tendered Presentment No. C0705675.3, *The Queen v Mr Boyd*, 2008, 8-10, OPP.0053.0001.0003 @ .0008-.0010.

⁸ See Un-tendered Crown Summary for Case Conference, *Mr Boyd*, [REDACTED], 15 January 2008, 17, OPP.0053.0001.0003 @ .0017.

⁹ Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 3 [7], OPP.0004.0002.0470 @ .0472.

¹⁰ Un-tendered Reasons for Sentence, *R v Mr Boyd*, (County Court of Victoria, Judge Howie, 23 October 2008), 5 [13], OPP.0004.0002.0470 @ .0474.

Whether Ms Gobbo Acted as Mr Boyd's' Lawyer

4. There is no evidence before the Commission to suggest that Ms Gobbo acted as a legal representative for Mr Boyd in relation to the impugned case.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Boyd

5. While there is no evidence to suggest that Ms Gobbo provided Victoria Police with any information about Mr Boyd, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is relevant to an assessment of Mr Boyd's' matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 5.1. the discovery of the offending the subject of Operation Posse;
 - 5.2. Mr Cooper being arrested in Operation Posse;
 - 5.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 5.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Boyd (among others).
6. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Boyd, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Boyd may have been deprived of any opportunity to object to the admissibility of this evidence.
7. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹¹ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹²

Submissions under Terms of Reference 1 and 2 in relation to Mr Boyd

8. It is submitted that it is open to the Commissioner to find that the case of Mr Boyd may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

¹¹ See Legal Principles Submissions at [210].

¹² See Legal Principles Submissions at [222].

9. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
10. The extent to which the case of Mr Boyd may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

11. Category 2A¹³ applies in that evidence relied upon by the prosecution in the case against Mr Boyd, namely the evidence of Mr Cooper,¹⁴ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁵
12. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

13. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁶
 - 13.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Boyd;
 - 13.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Boyd, appropriate disclosure was made; or alternatively
 - 13.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
14. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [13.1] were taken, and accordingly there was the potential for the right of Mr Boyd to a fair trial to have been interfered with.
15. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Boyd and/or his legal representatives.
16. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest

¹³ See Legal Principles Submissions at [249].

¹⁴ See [2] and [5]-[6] above.

¹⁵ See Legal Principles Submissions at [196]-[222].

¹⁶ See Legal Principles Submissions at [384] and [452]-[457].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁷

17. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁸
18. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁹
19. Category 4A²⁰ applies in that, as noted above at [11], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
20. Category 4B²¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
21. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁷ See Legal Principles Submissions at [380]-[385].

¹⁸ See Legal Principles Submissions at [351], [362]-[373].

¹⁹ See Legal Principles Submissions at [351], [374].

²⁰ See Legal Principles Submissions at [465].

²¹ See Legal Principles Submissions at [465].

CASE STUDY: CRAIG BRADLEY

The Relevant Case of Mr Bradley

1. The one relevant case of Mr Craig Bradley concerns his convictions before the Supreme Court in October 2007.¹
2. On 12 February 2006, Mr Bradley was arrested and charged in relation to an incident involving a shootout with two on-duty police officers.²
3. The prosecution case was that Mr Bradley stole a motor vehicle in late November 2005, and on 12 February 2006 he crashed that vehicle into the front of a house in Sydenham.³ It was alleged that Mr Bradley was approached by a neighbour, to whom he indicated that he had a handgun, and then left the scene.⁴ Shortly after, Mr Bradley was intercepted by police and shot at two police officers.⁵ One of the officers was injured in the course of the exchange.⁶
4. Following contested committal proceedings in the Magistrates' Court on 23 October 2006,⁷ Mr Bradley was committed to stand trial on seven counts.⁸
5. On 30 July 2007, the trial commenced in the Supreme Court.⁹ Mr Bradley was arraigned and, in the absence of the jury, pleaded guilty to one count of theft (Count 1) and one count of being a prohibited person in possession of a firearm (Count 7). Mr Bradley pleaded not guilty to the remaining counts.¹⁰
6. On 10 August 2007, the jury returned a verdict. Mr Bradley was acquitted of two counts of attempted murder (Counts 2 and 5) but found guilty of the remaining counts, being charges of reckless conduct endangering life and intentionally cause injury.¹¹

¹ Un-tendered Annotated Presentment No. U00326102, *R v Craig Stuart Bradley*, 30 January 2007, 6-7, OPP.0043.0002.0005 @.0006-.0007; *R v Bradley* [2007] VSC 418, [26]-[27]; Un-tendered Victoria Police Criminal History Report, Craig Stewart Bradley, 16 December 2019, VPL.0099.0193.0557.

² *R v Bradley* [2007] VSC 418, [12].

³ *R v Bradley* [2007] VSC 418, [2].

⁴ *R v Bradley* [2007] VSC 418, [3].

⁵ *R v Bradley* [2007] VSC 418, [5].

⁶ *R v Bradley* [2007] VSC 418, [6].

⁷ Exhibit RC1931 Victoria Police response to Royal Commission's information request, Annexure B, 12 February 2019, VPL.0003.0003.0001.

⁸ Un-tendered Annotated Presentment No. U00326102, *R v Craig Stuart Bradley*, 2007, 4, OPP.0043.0002.0005 @.0004.

⁹ Un-tendered Appeal Summary of Proceedings, *R v Craig Stewart Bradley*, undated, 30 [5], OPP.0043.0002.0005 @.0030.

¹⁰ Un-tendered Appeal Summary of Proceedings, *R v Craig Stewart Bradley*, undated, 30 [6], OPP.0043.0002.0005 @.0030; Un-tendered Annotated Presentment No. U00326102, *R v Craig Stuart Bradley*, 2007, 4, OPP.0043.0002.0005 @.0004.

¹¹ *R v Bradley* [2007] VSC 418, [1]; Un-tendered Annotated Presentment No. U00326102, *R v Craig Stuart Bradley*, 2007, 4, OPP.0043.0002.0005 @.0004.

7. On 10 October 2007 Mr Bradley was sentenced to a total effective sentence of nine years and three months' imprisonment, with a non-parole period of seven years' imprisonment.¹²
8. Mr Bradley subsequently sought leave to appeal against conviction on one of the charges, and leave to appeal against sentence on all charges.¹³
9. On 18 February 2010, the application for leave to appeal against conviction was granted, the conviction recorded against Count 4 was quashed, the sentence imposed on that count set aside and the Court of Appeal directed that a judgment and verdict of acquittal be entered on that count.¹⁴ As a result, the sentencing discretion was re-opened and Mr Bradley was sentenced to a total effective sentence of nine years and three months' imprisonment, with a non-parole period of four years and nine months' imprisonment.¹⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Bradley

10. Based on the following circumstances, it is submitted that it is open to the Commissioner to infer that Ms Gobbo provided legal representation to Mr Bradley between around February 2006 and May 2007:
 - 10.1. On 24 February 2006, Ms Gobbo told her handler that Mr Bradley was to be her new client.¹⁶
 - 10.2. On 25 May 2006, she charged fees for a 'brief to draft Form 8A & advise'.¹⁷
 - 10.3. On 17 October 2006, Ms Gobbo visited Mr Bradley in custody.¹⁸
 - 10.4. On 23 October 2006, she appeared on behalf of Mr Bradley at the Melbourne Magistrates' Court for a committal hearing.¹⁹
 - 10.5. On 1 November 2006, Ms Gobbo charged fees for her conference with Mr Bradley in custody and for her appearance at the committal hearing.²⁰

¹² Un-tendered Annotated Presentment No. U00326102, *R v Craig Stuart Bradley*, 2007, 6, OPP.0043.0002.0005 @.0006; *R v Bradley* [2007] VSC 418, [41]; Un-tendered Victoria Police Criminal History Report, Craig Stewart Bradley, 16 December 2019, VPL.0099.0193.0557.

¹³ Un-tendered Appeal Summary of Proceedings, *R v Craig Stewart Bradley*, undated, 34 [37], OPP.0043.0002.0005 @.0034.

¹⁴ Un-tendered Victoria Police Criminal History Report, Craig Stewart Bradley, 16 December 2019, VPL.0099.0193.0557.

¹⁵ Un-tendered Notification of Result of Appeal or Application, *R v Bradley*, 18 February 2010, 62-3, OPP.0043.0002.0005 @.0062-.0063; See also *R v Bradley* [2010] VSCA 70; Un-tendered Victoria Police Criminal History Report, Craig Stewart Bradley, 16 December 2019, VPL.0099.0193.0557.

¹⁶ Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751.

¹⁷ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Accounts, 7 March 2019, 47, GMH.0001.0001.0002 @.0047.

¹⁸ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 17 October 2006, 25, CNS.0001.0003.0037 @.0061.

¹⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 October 2006, 63, OPP.0001.0004.0025 @.0086.

²⁰ Exhibit RC1568 Ms Gobbo fee book 01, 1 November 2006, 100, MIN.5000.7000.0001 @.0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Accounts, 7 March 2019, 39, GMH.0001.0001.0002 @.0039; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 8 November 2006, 26, GMH.0001.0001.0008 @.0026.

11. On 21 May 2007, during a meeting with her handlers Mr Sandy White and Mr Anderson, Ms Gobbo stated that she was acting for Mr Bradley.²¹ She was asked by her handler whether she could identify who shot Mr Sergi, and she replied, 'I act for the bloke, I'm sure it's Craig Bradley'. She was then asked directly by the handler as to whether she was acting for Mr Bradley and responded, 'yeah, Craig.'
12. It should be noted that although apparently not adduced in the course of Mr Bradley's trial, there was evidence that suggested Mr Bradley had intended to harm Antonio Sergi. According to the police summary, which was part of the brief that Ms Gobbo would have perused, at the time of Mr Bradley's arrest he was found with a piece of paper containing the address of Antonio Sergi and details of his vehicle, and a photo of Mr Sergi with a line drawn across his eye.²²

The Conduct of Ms Gobbo as a Human Source in relation to Mr Bradley

13. Ms Gobbo provided information to Victoria Police concerning Mr Bradley prior to and during her representation of him, between at least 15 February 2006 and 21 May 2007. The information provided during that period included:
 - 13.1. that Mr Karam had asked her about Mr Bradley's offending and wanted to know who was representing him²³
 - 13.2. her opinion that the offending may have been linked to an ecstasy import involving Mr Karam and Mr Sergi²⁴
 - 13.3. that Mr Bradley was to be her new client²⁵
 - 13.4. information concerning the nature of the charges against Mr Bradley²⁶
 - 13.5. information concerning matters for which Mr Bradley was not charged (including the fact that he was 'en route to shoot Tony Sergi' at the time of the offending)²⁷
 - 13.6. the name of the informant in the matter (Justin Tippett)²⁸ and the fact she had spoken to same²⁹

²¹ Exhibit RC0282 Transcript of meeting between Anderson, Sandy White and Nicola Gobbo, 21 May 2007, 318-320, VPL.0005.0137.0318-VPL.0005.0137.0320.

²² Un-tendered Police Summary of Offences, Craig Bradley & Ors, undated, 11-12, OPP.0043.0002.0005 @.0011-0012.

²³ Exhibit RC0281 ICR3838 (018), 15 February 2006, 154, VPL.2000.0003.1740; Exhibit RC0281 ICR3838 (020), 25 February 2006, 168, VPL.2000.0003.1754.

²⁴ Exhibit RC0281 ICR3838 (020), 25 February 2006, 168, VPL.2000.0003.1754.

²⁵ Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751.

²⁶ Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751; Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075.

²⁷ Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751; Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075; Exhibit RC0281 ICR3838 (051), 23 October 2006, 519, VPL.2000.0003.2105; Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117.

²⁸ Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117.

²⁹ Exhibit RC0282 Transcript of meeting between Anderson, Sandy White and Nicola Gobbo, 21 May 2007, 318-320, VPL.0005.0137.0001 @.0318-.0320.

- 13.7. the fact that Mr Bradley was not on bail and his parole had been revoked³⁰
 - 13.8. that she was going to visit Mr Bradley at Port Phillip prison³¹
 - 13.9. that she intended to advise Mr Bradley that due to her conflict with Mr Sergi (including that she would 'not be able to cross examine Sergi if required'³²) she would not be able to represent him³³
 - 13.10. that she was 'unable to get out of representing' Mr Bradley as he was not charged with any offence against Mr Sergi and there may be no requirement to cross-examine Mr Sergi in the course of the committal hearing³⁴
 - 13.11. the fact that Mr Bradley had not been charged with planning to shoot Mr Sergi and 'did not want to discuss this incident at all'³⁵
 - 13.12. that Mr Bradley had not given an account as to why he was at the scene of the incident³⁶
 - 13.13. information concerning other alleged offending committed by Mr Bradley³⁷
 - 13.14. that the photo of Mr Sergi that was found on Mr Bradley at the time of his arrest had originated from an Australian Federal Police photoboard included in a brief of evidence, and that she could assist police to locate the relevant photoboard.³⁸
14. [REDACTED]
[REDACTED].³⁹ Ms Gobbo provided information to Victoria Police concerning Mr Sergi between at least 26 September 2005 and 29 April 2007.⁴⁰ The information provided included provision of Mr Sergi's phone number and information concerning his relationship with Mr Karam.⁴¹ As mentioned at [13.9] and [13.10] above, Ms

³⁰ Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117.

³¹ Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075; Exhibit RC0281 ICR3838 (049), 16 October 2006, 490, VPL.2000.0003.2076.

³² Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075.

³³ Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075.

³⁴ Exhibit RC0281 ICR3838 (049), 16 October 2006, 491, VPL.2000.0003.2077.

³⁵ Exhibit RC0281 ICR3838 (051), 23 October 2006, 519, VPL.2000.0003.2105.

³⁶ Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117.

³⁷ Exhibit RC0281 ICR3838 (051), 30 October 2006, 532, VPL.2000.0003.2118.

³⁸ Exhibit RC0282 Transcript of meeting between Anderson, Sandy White and Nicola Gobbo, 21 May 2007, 318-320, VPL.0005.0137.0001 @.0318-.0320.

⁴⁰ Exhibit RC0281 ICR3838 (003), 22 September 2005, 14, VPL.2000.0003.1600; Exhibit RC0281 ICR3838 (008), 14 November 2005, 57, VPL.2000.0003.1643; Exhibit RC0281 ICR3838 (018), 15 and 16 February 2006, 154-5, VPL.2000.0003.1740-VPL.2000.0003.1741; Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751; Exhibit RC0281 ICR3838 (049), 15 October 2006, 489, VPL.2000.0003.2075; Exhibit RC0281 ICR3838 (051), 23 October 2006, 519, VPL.2000.0003.2105; Exhibit RC0281 ICR3838 (051), 30 October 2006, 531, VPL.2000.0003.2117; Exhibit RC0281 ICR3838 (063), 25 January 2007, 614, VPL.2000.0003.2200; Exhibit RC0281 ICR3838 (069), 9 March 2007, 686, VPL.2000.0003.2272; Exhibit RC0281 ICR3838 (073), 3 April 2007, 764, VPL.2000.0003.2350; Exhibit RC0281 ICR3838 (077), 29 April 2007, 816, VPL.2000.0003.2402.

⁴¹ Exhibit RC0281 ICR3838 (018), 16 February 2006, 155, VPL.2000.0003.1741.

Gobbo appeared to have some awareness that she might have been conflicted in acting on behalf of Mr Bradley due to her relationship with Mr Sergi.⁴²

15. Ms Gobbo continued to provide information to Victoria Police concerning Mr Bradley following her representation of him, until at least 3 May 2008.⁴³

Submissions under Terms of Reference 1 and 2 in relation to Mr Bradley

16. It is submitted that it is open to the Commissioner to find that the case of Mr Bradley may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
17. The extent to which the case of Mr Bradley may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

18. First, Category 1A⁴⁴ applies in that, between February 2006 and May 2007,⁴⁵ Ms Gobbo acted for Mr Bradley while she was a human source,⁴⁶ and did not disclose same to him.⁴⁷
19. Secondly, Category 1B⁴⁸ applies in that, between February 2006 and May 2007, which was before and during the period that Ms Gobbo acted for Mr Bradley in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴⁹
20. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁰ Further, in certain instances identified above,⁵¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁵²
21. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the

⁴² Exhibit RC0281 ICR3838 (049), 15 October 2006, 489-490, VPL.2000.0003.2075-

VPL.2000.0003.2076; Exhibit RC0281 ICR3838 (049), 16 October 2006, 491, VPL.2000.0003.2077.

⁴³ Exhibit RC0281 ICR2958 (012), 4 April 2008, 135, VPL.2000.0003.0875; Exhibit RC0281 ICR2958 (014), 16 April 2008, 170, VPL.2000.0003.0910; Exhibit RC0281 ICR2958 (017), 3 May 2008, 262, VPL.2000.0003.1002.

⁴⁴ See Legal Principles Submissions at [249].

⁴⁵ See above analysis at [10].

⁴⁶ See Legal Principles Submissions at [20].

⁴⁷ See Legal Principles Submissions at [239].

⁴⁸ See Legal Principles Submissions at [249].

⁴⁹ See above analysis at [13]-[14].

⁵⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵¹ See above analysis at [13].

⁵² See Legal Principles Submissions at [310]-[319] and [301]-[306].

evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

22. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵³
 - 22.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Bradley;
 - 22.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Bradley, appropriate disclosure was made; or alternatively
 - 22.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
23. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [22.1] were taken, and accordingly there was the potential for the right of Mr Bradley to a fair trial to have been interfered with.
24. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bradley and/or his legal representatives.
25. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁴
26. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁵
27. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁵⁶
28. Category 3A⁵⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of

⁵³ See Legal Principles Submissions at [384] and [452]-[457].

⁵⁴ See Legal Principles Submissions at [380]-[385].

⁵⁵ See Legal Principles Submissions at [351], [362]-[373].

⁵⁶ See Legal Principles Submissions at [351], [374].

⁵⁷ See Legal Principles Submissions at [351], [374].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

29. Category 3B⁵⁸ applies in that, before and during the period Ms Gobbo acted for Mr Bradley, she provided information in relation to him to members of Victoria Police,⁵⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁸ See Legal Principles Submissions at [465].

⁵⁹ See above analysis at [13].

CASE STUDY: SHANE BUGEJA

The Relevant Case of Mr Bugeja

1. The one relevant case of Mr Shane Bugeja concerns his convictions before the County Court in October 2011.¹
2. On 21 August 2005, pursuant to the execution of a search warrant at a laboratory in Knowsley, Victoria, Mr Bugeja was arrested and charged with drug trafficking related offences.² The warrant was executed as a result of an investigation into an attempt to manufacture methylamphetamine at the laboratory,³ and resulted in the arrest of four co-accused, namely; George Lipp, Brian Zerna, Lance Johnson and Khodi Ali.
3. The prosecution alleged that the primary organiser of the enterprise was Mr Zerna, assisted by Mr Lipp. The prosecution case was that Mr Bugeja, under the direction of Mr Lipp, acted as the “cook”.⁴ It was alleged that Mr Bugeja also assisted in setting up the laboratory, and delivered equipment and chemicals for the purpose of manufacturing methylamphetamine.⁵
4. The prosecution case relied on evidence gathered by optical surveillance, tracking device and telephone intercepts.⁶
5. Mr Bugeja pleaded not guilty and his trial commenced on 31 October 2007 in the Supreme Court of Victoria.⁷ The trial was adjourned upon the failure of one of the co-accused, Mr Lipp, to appear on that date.⁸ Mr Bugeja was ultimately tried, together with Mr Johnson, Mr Zerna and Mr Ali, between 7 November 2007 and 20 December 2007.⁹
6. On 20 December 2007, Mr Bugeja was found guilty by a jury of conspiring to traffick in not less than a large commercial quantity of methylamphetamine.¹⁰
7. A plea hearing was conducted on 24 April 2008.¹¹

¹ *R v Bugeja & Johnson* [2013] VSC 191.

² *R v Bugeja & Johnson* [2013] VSC 191, [10], [17].

³ *R v Bugeja & Johnson* [2013] VSC 191, [10].

⁴ *R v Bugeja & Johnson* [2013] VSC 191, [13].

⁵ *R v Bugeja & Johnson* [2013] VSC 191, [13].

⁶ Prosecution Opening on Plea, *R v Bugeja & Johnson* [2013] VSC 191, [8].

⁷ Un-tendered Summary of Proceedings, *DPP v Shane Francis Bugeja & Lance Craig Johnson*, 22 October 2007, 3 [7], OPP.0048.0001.0003 @.0057.

⁸ Un-tendered Summary of Proceedings, *DPP v Shane Francis Bugeja & Lance Craig Johnson*, 22 October 2007, 3 [6], OPP.0048.0001.0003 @.0057.

⁹ Un-tendered Summary of Proceedings, *DPP v Shane Francis Bugeja & Lance Craig Johnson*, 22 October 2007, 4-10, OPP.0048.0001.0003 @.0058-.0064.

¹⁰ Un-tendered Presentment No. C0504743.3, *R v Lance Craig Johnson, Brian David Zerna, Shane Francis Bugeja and George Ernest Lipp*, 2011, 3, OPP.0048.0001.0003 @.0004; *DPP v Johnson, Zerna and Bugeja* [2008] VSC 330, [1].

¹¹ Un-tendered Summary of Proceedings, *DPP v Shane Francis Bugeja & Lance Craig Johnson*, 22 October 2007, 11, OPP.0048.0001.0003 @.0064.

8. On 28 August 2008, Mr Bugeja was sentenced to ten years' imprisonment, with a non-parole period of eight years' imprisonment.¹²
9. Mr Bugeja made an application for leave to appeal his conviction and sentence. On 26 November 2010, the appeal was allowed and a re-trial ordered.¹³
10. On 6 October 2011, Mr Bugeja entered a plea of guilty to one count of conspiring to traffick in not less than a commercial quantity of methylamphetamine.¹⁴
11. On 27 March 2013, Mr Bugeja was sentenced to three years' imprisonment, with one year of the sentence suspended for a period of one year.¹⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Bugeja

12. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo provided legal representation to Mr Bugeja between at least September 2005 and November 2007.
13. Although an Informer Contact Report (ICR) entry records that Ms Gobbo told her handler that Mr Rob Karam asked her to visit Mr Bugeja in custody in August 2005,¹⁶ there is no extraneous record of this visit. According to the records produced to the Commission by Corrections Victoria, Ms Gobbo is recorded as having visited Mr Bugeja in custody on two occasions; on 11 September 2005 and 15 October 2005.¹⁷
14. Ms Gobbo appeared at court on behalf of Mr Bugeja on the following occasions:
 - 14.1. on 10 October 2005, at the Melbourne Magistrates' Court for a bail application¹⁸
 - 14.2. on 2 October 2006, 4 October 2006, 5 October 2006, 6 October 2006 and 9 October 2006, at the Melbourne Magistrates' Court for a committal hearing.¹⁹

¹² *DPP v Johnson, Zerna and Bugeja* [2008] VSC 330, [54]; Un-tendered Victoria Police Criminal History Report, Shane Francis Bugeja, 16 December 2019, VPL.0099.0193.0615.

¹³ *Bugeja & Johnson v The Queen* [2010] VSCA 321, [31]; Un-tendered Victoria Police Criminal History Report, Shane Francis Bugeja, 16 December 2019, VPL.0099.0193.0615.

¹⁴ *R v Bugeja & Johnson* [2013] VSC 191, [1].

¹⁵ *R v Bugeja & Johnson* [2013] VSC 191, [37]; Un-tendered Victoria Police Criminal History Report, Shane Francis Bugeja, 16 December 2019, VPL.0099.0193.0615.

¹⁶ Exhibit RC0281 ICR3838 (015), 12 January 2006, 11, VPL.2000.0003.1695 @.1705.

¹⁷ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 11 September 2005, 22, CNS.0001.0003.0037 @.0058; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 15 October 2005, 23, CNS.0001.0003.0037 @.0059.

¹⁸ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Gobbo, 10 October 2005, 18, MCV.0001.0001.0001 @.0016; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 November 2005, 92, MIN.5000.7000.0001 @.0092.

¹⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 2, 4-6, 9 October 2006, 60, OPP.0001.0004.0025 @.0084; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Ms Gobbo, 11 July 2002, 18-19, MCV.0001.0001.0020 @.0017.

15. Ms Gobbo charged fees for her appearances at the committal hearings.²⁰ In addition, between February 2006 and June 2006, she charged fees for a brief to draft a bail affidavit²¹ and a brief to 'advise, peruse brief and draft Form 8A'.²² Material before the Commission suggests that Ms Gobbo received a copy of the brief of evidence from Mr Bugeja in March 2006.²³
16. Based on the following circumstances, it is submitted that although Mr Bugeja had alternate counsel engaged for his trial commencing in October 2007, it can be inferred that Ms Gobbo continued to provide ostensible representation to him until at least 1 November 2007:
 - 16.1. On 31 October 2007, Ms Gobbo told her handler that Mr Bugeja, together with Mr Zerna, came and saw her during the lunch break of their trial. She provided information to her handlers concerning Mr Bugeja's defence tactics, including that he intended to allege that Purana officers stole an amount of phenyl-2-propanone (P2P) from a container located under the warrant.²⁴
 - 16.2. On 1 November 2007, Ms Gobbo told her handler that she had been contacted by the informant of Mr Bugeja's matter, Detective Sergeant Mark Upton, who was returning her call from a few days prior. She stated that Mr Bugeja had wanted her to make a plea offer. It appears that Detective Sergeant Upton replied that the offer was too late as the jury had already been empanelled.²⁵

The Conduct of Ms Gobbo as a Human Source in relation to Mr Bugeja

- 16.3. The conduct of Ms Gobbo as a human source in relation to Mr Bugeja is discussed in the following paragraphs.
- 16.4. Ms Gobbo provided information concerning Mr Bugeja to Victoria Police during her representation of him, between at least 22 December 2005 and 1 November 2007.²⁶ The information provided by Ms Gobbo during this period included:

²⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 11 October 2006, 100, MIN.5000.7000.0001 @.0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 11 October 2006, 38, GMH.0001.0001.0008 @.0038; See also Exhibit RC1569 Meldrum & Hyland Statement of Account Ms Nicola Gobbo, 11 October 2006, 41, GMH.0001.0001.0002 @.0041.

²¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 25 February 2006, 94, MIN.5000.7000.0001 @.0094.

²² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 28 June 2006, 97, MIN.5000.7000.0001 @.0097.

²³ Exhibit RC0281 ICR3838 (020), 2 March 2006, 168, VPL.2000.0003.1759.

²⁴ See 'Action: Not disseminated as risk of compromise too great' at Exhibit RC0281 ICR3838 (107), 31 October 2007, 1341, VPL.2000.0003.2927.

²⁵ Exhibit RC0281 ICR3838 (107), 1 November 2007, 1343, VPL.2000.0003.2929.

²⁶ Exhibit RC0281 ICR3838 (013), 22 December 2005, 95, VPL.2000.0003.1681; Exhibit RC0281 ICR3838 (107), 1 November 2007, 1343, VPL.2000.0003.2929.

- 16.5. information concerning Mr Bugeja's association with Mr Rob Karam,²⁷ including the fact that Mr Karam used Mr Bugeja as a 'gopher'²⁸ and that he was paying Mr Bugeja's legal fees²⁹
- 16.6. information concerning Mr Bugeja's association with Mr Ketch³⁰
- 16.7. personal details concerning Mr Bugeja, including information concerning his family;³¹ his employment;³² and his phone number (on at least three occasions)³³
- 16.8. identification of Mr Bugeja from a photograph³⁴
- 16.9. the fact that she met with Mr Bugeja and Mr Zerna³⁵
- 16.10. Ms Gobbo's opinion as to Mr Bugeja's mental health and intellect³⁶
- 16.11. Ms Gobbo's opinion as that Mr Bugeja 'wants to fit in, therefore he is open to exploitation by the group'³⁷
- 16.12. information concerning possible further misconduct by Mr Bugeja, including in relation to further drug trafficking activities³⁸
- 16.13. that Mr Bugeja provided Ms Gobbo with a copy of his brief³⁹
- 16.14. that Mr Bugeja believed he was being followed⁴⁰
- 16.15. the dates of Mr Bugeja's court hearings⁴¹

²⁷ Exhibit RC0281 ICR3838 (013), 22 December 2005, 95, VPL.2000.0003.1681; Exhibit RC0281 ICR3838 (043), 28 December 2005, 102, VPL.2000.0003.1688; Exhibit RC0281 ICR3838 (015), 12 January 2006, 119, VPL.2000.0003.1705; Exhibit RC0281 ICR3838 (024), 30 March 2006, 217, VPL.2000.0003.1803; Exhibit RC0281 ICR3838 (028), 24 April 2006, 264, VPL.2000.0003.1850; Exhibit RC0281 ICR3838 (044), 7 September 2006, 417, VPL.2000.0003.2003; Exhibit RC0281 ICR3838 (086), 29 June 2007, 949, VPL.2000.0003.2535; Exhibit RC0281 ICR3838 (089), 11 July 2007, 1003, VPL.2000.0003.2589; Exhibit RC0281 ICR3838 (098), 6 September 2007, 1195, VPL.2000.0003.2781; Exhibit RC0281 ICR3838 (098), 6 September 2007, 1195, VPL.2000.0003.2781.

²⁸ Exhibit RC0281 ICR3838 (016), 19 January 2006, 126, VPL.2000.0003.1712.

²⁹ Exhibit RC0281 ICR3838 (018), 14 February 2006, 152, VPL.2000.0003.1738.

³⁰ Exhibit RC0281 ICR3838 (062), 16 January 2007, 609, VPL.2000.0003.2195.

³¹ Exhibit RC0281 ICR3838 (013), 23 December 2005, 97, VPL.2000.0003.1683; Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713.

³² Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713.

³³ See 'Action: SID507-231205 submitted' at Exhibit RC0281 ICR3838 (013), 23 December 2005, 97, VPL.2000.0003.1683; See 'Action: Hand deliver to A/DDI O'Brien, Op Purana... Report forwarded to: hand delivered 12/05/06 to S/C Spargo, by S/C 31690' at Exhibit RC0283 Information Report IRSID 507, 23 December 2005, VPL.2000.0003.8609; See 'I/R SID349 Refers' at Exhibit RC0281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; See 'Action: Disseminated to Op Purana, Report forwarded to: D/S/Sgt O'Brien Op Purana' at Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713.

³⁴ See 'I/R SID349 Refers' at Exhibit RC0281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; Exhibit RC0269 Transcript of meeting with Sandy White, Peter Smith and Ms Nicola Gobbo, 12 January 2006, VPL.0005.0051.0548 @.0730.

³⁵ Exhibit RC0281 ICR3838 (084), 21 June 2007, 921, VPL.2000.0003.2507.

³⁶ Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713.

³⁷ Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713.

³⁸ Exhibit RC0281 ICR3838 (019), 23 February 2006, 163, VPL.2000.0003.1749; Exhibit RC0281 ICR3838 (047), 3 October 2006, 446, VPL.2000.0003.2032; Exhibit RC0281 ICR3838 (087), 3 July 2007, 973-977, VPL.2000.0003.2559-VPL.2000.0003.2563.

³⁹ Exhibit RC0281 ICR3838 (020), 2 March 2006, 168, VPL.2000.0003.1759.

⁴⁰ Exhibit RC0281 ICR3838 (022), 14 March 2006, 186, VPL.2000.0003.1772.

⁴¹ Exhibit RC0281 ICR3838 (024), 28 March 2006, 215, VPL.2000.0003.1801; Exhibit RC0281 ICR3838 (048), 29 September 2006, 457, VPL.2000.0003.2043; Exhibit RC0281 ICR3838 (105), 15 October 2007, 1302, VPL.2000.0003.2888.

- 16.16. that additional charges had been laid against Mr Bugeja⁴²
 - 16.17. information concerning a plea offer put to the informant in Mr Bugeja's case⁴³
 - 16.18. information concerning defence tactics regarding Mr Bugeja's trial (that he intends to allege that police stole P2P)⁴⁴
 - 16.19. Ms Gobbo's opinion that [REDACTED] and her suggestion that 'now may be [REDACTED]'.⁴⁵
17. Ms Gobbo continued to provide information to police concerning Mr Bugeja following her representation of him, until at least June 2008. The information provided by Ms Gobbo during this period included:
- 17.1. information concerning Mr Bugeja's association with Mr Karam⁴⁶
 - 17.2. updates as to court proceedings, including dates of proceedings⁴⁷ and hearing outcomes⁴⁸
 - 17.3. information concerning defence tactics regarding Mr Bugeja's trial (that he intends to sack his barrister with the hope of getting a re-trial⁴⁹).

Submissions under Terms of Reference 1 and 2 in relation to Mr Bugeja

18. It is submitted that it is open to the Commissioner to find that the case of Mr Bugeja may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
19. The extent to which the cases of Mr Bugeja may have been affected can be measured by virtue of the following matters.

⁴² Exhibit RC0281 ICR3838 (047), 29 September 2006, 443, VPL.2000.0003.2029.

⁴³ Exhibit RC0281 ICR3838 (107), 1 November 2007, 1343, VPL.2000.0003.2929.

⁴⁴ See 'Action: Not disseminated as risk of compromise too great' at Exhibit RC0281 ICR3838 (107), 31 October 2007, 1341, VPL.2000.0003.2927.

⁴⁶ Exhibit RC0281 ICR3838 (119), 14 January 2008, 1572, VPL.2000.0003.3158; Exhibit RC0281 ICR2958 (018), 5 May 2008, 271, VPL.2000.0003.1011; Exhibit RC0281 ICR2958 (025), 20 June 2008, 468, VPL.2000.0003.1208.

⁴⁷ Exhibit RC0281 ICR3838 (110), 11 November 2007, 1391, VPL.2000.0003.2977.

⁴⁸ Exhibit RC0281 ICR3838 (107), 2 November 2007, 1348, VPL.2000.0003.2934; Exhibit RC0281 ICR3838 (110), 11 November 2007, 1391, VPL.2000.0003.2977; Exhibit RC0281 ICR3838 (116), 20 December 2007, 1534, VPL.2000.0003.3120.

⁴⁹ Exhibit RC0281 ICR3838 (114), 4 December 2007, 1495, VPL.2000.0003.3081.

Conduct of Ms Gobbo

20. First, Category 1A⁵⁰ applies in that, between September 2005 and November 2007,⁵¹ Ms Gobbo acted for Mr Bugeja while she was a human source,⁵² and did not disclose same to him.⁵³
21. Secondly, Category 1B⁵⁴ applies in that, between December 2005 and November 2007, which was during the period that Ms Gobbo acted for Mr Bugeja in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁵⁵
22. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁶ Further, in certain instances identified above,⁵⁷ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁵⁸
23. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

24. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁹
 - 24.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Bugeja
 - 24.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Bugeja, appropriate disclosure was made; or alternatively

⁵⁰ See Legal Principles Submissions at [249].

⁵¹ See above analysis at [13]-[16].

⁵² See Legal Principles Submissions at [20].

⁵³ See Legal Principles Submissions at [239].

⁵⁴ See Legal Principles Submissions at [249].

⁵⁵ See above analysis at [16.4].

⁵⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵⁷ See above analysis at [16.4].

⁵⁸ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁵⁹ See Legal Principles Submissions at [384] and [452]-[457].

- 24.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
25. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [24.1] were taken, and accordingly there was the potential for the right of Mr Bugeja to a fair trial to have been interfered with.
26. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bugeja and/or his legal representatives.
27. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁶⁰
28. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁶¹
29. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁶²
30. Category 3A⁶³ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
31. Category 3B⁶⁴ applies in that, during the period Ms Gobbo acted for Mr Bugeja, she provided information in relation to him to members of Victoria Police,⁶⁵ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
32. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶⁰ See Legal Principles Submissions at [380]-[385].

⁶¹ See Legal Principles Submissions at [351], [362]-[373].

⁶² See Legal Principles Submissions at [351], [374].

⁶³ See Legal Principles Submissions at [465].

⁶⁴ See Legal Principles Submissions at [465].

⁶⁵ See above analysis at [16.4].

CASE STUDY: MR COOPER'S RELATIVE

The Relevant Case of Mr Cooper's Relative

33. The relevant case of Mr Cooper's relative concerns his conviction and sentence before the County Court on [REDACTED] 2007 for one charge of trafficking in a large commercial quantity of methyl-amphetamine between [REDACTED] 2002 and [REDACTED] 2003.¹ The charge arose from Operation [REDACTED],² and concerned Mr Cooper's relative's involvement (along with [REDACTED] in a drug manufacturing enterprise based at [REDACTED].³
34. On [REDACTED] 2003, Mr Cooper's relative was arrested and charged with the offending.⁴ He was then remanded in custody until being released on bail on [REDACTED] 2003.⁵ He entered a plea of guilty at an early stage, in approximately 2005, and the committal proceedings were not contested.⁶ Ultimately, prior to his plea and sentence, he provided considerable information and assistance to Victoria Police,⁷ including signing [REDACTED] statements dated [REDACTED] 2007.⁸ On [REDACTED] 2007, Mr Cooper's relative was sentenced in the County Court to a term of imprisonment of [REDACTED] years, with a minimum non-parole period of [REDACTED] years.⁹

Ms Gobbo's Legal Representation of Mr Cooper's Relative

35. Evidence before the Commission indicates that Ms Gobbo acted for Mr Cooper's relative in relation to the case between August 2004 and October 2005, as follows:
- 35.1. on [REDACTED] 2004, Ms Gobbo marked fees of \$2,750 in the matter of "Police v Mr Cooper's relative" for a "[b]rief to draft Form 8A";¹⁰

¹ See Un-tendered Presentment C0303299, *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, OPP.0053.0001.0009 @.0003; See also Un-tendered Transcript of Plea, *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, T18, OPP.0053.0001.0009 @ .0183.

² See Un-tendered Notes Re:- [REDACTED], undated, OPP.0053.0001.0009, @.0011

³ See Un-tendered Reasons for Sentence *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, 375 [92], OPP.0053.0001.0009, @0375.

⁴ See Un-tendered Reasons for Sentence *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, 377 [96], OPP.0053.0001.0009, @0377; See Un-tendered Notes Re:- [REDACTED], undated, OPP.0053.0001.0009, @.0152; See Un-tendered Transcript of Plea, *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, OPP.0053.0001.0009 @ .0242.

⁵ See Un-tendered Transcript of Plea *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, OPP.0053.0001.0009 @ .0242.

⁶ See Un-tendered Transcript of Plea *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, OPP.0053.0001.0009 @ .0333, 0340.

⁷ Un-tendered Reasons for Sentence *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, [96]-[97], [101], OPP.0053.0001.0009 @ .0377.

⁸ Un-tendered Transcript of Plea *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, OPP.0053.0001.0009 @ .0219-0226; Un-tendered Statements of [REDACTED], [REDACTED] 2007, OPP.0050.0002.0008.

⁹ Un-tendered Reasons for Sentence *R v [REDACTED] & Mr Cooper's Relative* [2007] VCC, [REDACTED] 2007, [104], OPP.0053.0001.0009 @ .0378.

¹⁰ Exhibit RC1568 Ms Gobbo fee book 01, [REDACTED] 2004, 100, MIN.5000.7000.0001 @ 0079.

- 35.2. on [REDACTED] 2004, Ms Gobbo appeared on behalf of Mr Cooper's relative before the Melbourne Magistrates' Court;¹¹
 - 35.3. on [REDACTED] 2005, Ms Gobbo appeared on behalf of Mr Cooper's relative at a case conference;¹²
 - 35.4. on [REDACTED] 2005, Ms Gobbo marked fees of \$1,100 in the matter of "The Queen v Mr Cooper's relative [REDACTED]" for a "[b]rief to appear at County Court adjournment application";¹³ and
 - 35.5. on [REDACTED] 2005, Ms Gobbo appeared on behalf of Mr Cooper's relative at a mention hearing before the County Court.¹⁴
36. Whilst on 4 October 2006 there is an ambiguous reference in the Informer Contact Reports (ICRs) stating that Ms Gobbo "wants to resolve Mr Cooper's relative Crt matters [sic]",¹⁵ it is submitted that this record does not form a sufficient basis to find that she did act for him during or around that period. The notion that Mr Cooper's relative's matters needed to be "resolved" at that time also appears to be contrary to the fact that his matter had already been resolved to a plea of guilty in 2005, as addressed above.

The Use of Ms Gobbo as a Human Source in relation to Mr Cooper's Relative

Ms Gobbo's Informing in Direct relation to Mr Cooper's Relative

37. Mr Cooper's relative was the subject of communications between Ms Gobbo (in her capacity as human source) and Victoria Police on three occasions during the period that she represented him:
- 37.1. first, on 26 September 2005, during a meeting with Mr Sandy White, her controller, and Mr Peter Smith, her handler, Ms Gobbo discussed Mr Cooper's relative, including details of his alleged drug activities;¹⁶
 - 37.2. secondly, on 1 October 2005, Ms Gobbo advised Mr Sandy White and Mr Peter Smith that Mr Cooper's relative did not have any nicknames;¹⁷ and
 - 37.3. thirdly, on [REDACTED] 2005, Mr Cooper's relative featured in discussions between Ms Gobbo and Messrs Peter Smith and Sandy White on the evening after she appeared on his behalf in a mention before the County Court.¹⁸ At the beginning of the conversation, Mr Sandy White asked Ms Gobbo whether she was in court that day for

¹¹ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, [REDACTED] 2004, 79, MCV.0001.0001.0001 @ .0079.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, [REDACTED] 2005, 65, OPP.0001.0004.0025 @ .0065.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, [REDACTED] 2005, MIN.5000.7000.0001 @ .0092.

¹⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, [REDACTED] 2005, 65, OPP.0001.0004.0025 @ .0065.

¹⁵ See Exhibit RC0281 ICR3838 (047), 4 October 2006, 449, VPL.2000.0003.2035.

¹⁶ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005, 068, 123, 125-6 VPL.0005.0076.0004 @ .0071, .0126, .0128-.0129.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

fact that Mr Cooper had commenced assisting police.²⁹ It was following that conversation with Mr Cooper, that Mr Cooper's relative himself commenced, in █████ 2006, providing assistance to the authorities and the statement making process.³⁰

41. Based on the foregoing, it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police that led Mr Cooper to agree to assist and co-operate with authorities, and Mr Cooper's relative's subsequent decision to do so. On this basis, it may be argued that the evidence and assistance which Mr Cooper's relative gave, and which was relied upon in subsequent proceedings, may have been obtained illegally or impropriety by virtue of its causal connection (albeit indirect) to the circumstances surrounding Mr Cooper. Whilst this point does not alter the ways in which Mr Cooper's relative's case may have been affected, it does have a flow-on effect in subsequent matters in which the evidence of Mr Cooper's relative was relied upon.³¹
42. It is important to recognise, as noted in the Legal Principles Submissions at [222], that the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,³² where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.³³

Submissions under Terms of Reference 1 and 2 in relation to Mr Cooper's Relative

43. It is submitted that it is open to the Commissioner to find that the case of Mr Cooper's relative may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
44. The extent to which the case of Mr Cooper's relative may have been affected can be measured by virtue of the following matters.

²⁹ See Un-tendered Transcript of proceedings, *The Police v Horty Mokbel*, 21 November 2007, OPP.0053.0001.0008 @ .0120-0123.

³⁰ See Un-tendered Transcript of proceedings, *The Police v Horty Mokbel*, 21 November 2007, OPP.0053.0001.0008 @ .0120-0123.

³¹ See, eg, the case studies of Milad Mokbel and Jacques El-Hage, in Volume 3.

³² See Legal Principles Submissions at [210], citing: *R v Hill* (2012) 6 ACTLR 167, 185 [98]-[99] (Refshauge J); *R v Petroulias [No 8]* (2007) 175 A Crim R 417, 425 [25] (Johnson J). *Re Lee* (2009) 212 A Crim R 442, 449 [31] (Penfold J); *DPP v Kaba* (2014) 44 VR 526, 618 [337], 648 [472] (Bell J).

³³ See Legal Principles Submissions at [220], citing: *Kadir v The Queen* (2020) 94 ALJR 168, 179 [41] (Kiefel CJ, Bell, Keane, Nettle and Edelman JJ). See also *Slater (a Pseudonym) v The Queen* [2019] VSCA 213, at [44]-[45].

Conduct of Ms Gobbo

45. First, Category 1A³⁴ applies in that, between August 2004 and October 2005,³⁵ Ms Gobbo acted for Mr Cooper's relative in relation to the case while she was a human source,³⁶ and did not disclose same to him.³⁷
46. Secondly, Category 1B³⁸ applies in that, in September 2005 and October 2005, which was during the period that Ms Gobbo acted for Mr Cooper's relative in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.³⁹
47. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁰
48. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

49. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴¹
 - 49.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Cooper's relative;
 - 49.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Cooper's relative, appropriate disclosure was made; or alternatively
 - 49.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.

³⁴ See Legal Principles Submissions at [249].

³⁵ See above analysis at [35].

³⁶ See Legal Principles Submissions at [20].

³⁷ See Legal Principles Submissions at [239].

³⁸ See Legal Principles Submissions at [249].

³⁹ See above analysis at [37].

⁴⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁴¹ See Legal Principles Submissions at [384] and [452]-[457].

50. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [49.1] were taken, and accordingly there was the potential for the right of Mr Cooper's relative to a fair trial to have been interfered with.
51. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Cooper's relative and/or his legal representatives.
52. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴²
53. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴³
54. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁴⁴
55. Category 3A⁴⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
56. Category 3B⁴⁶ applies in that, during the period Ms Gobbo acted for Mr Cooper's relative, she provided information in relation to him to members of Victoria Police,⁴⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
57. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴² See Legal Principles Submissions at [380]-[385].

⁴³ See Legal Principles Submissions at [351], [362]-[373].

⁴⁴ See Legal Principles Submissions at [351], [374].

⁴⁵ See Legal Principles Submissions at [465].

⁴⁶ See Legal Principles Submissions at [465].

⁴⁷ See above analysis at [37].

CASE STUDY: ALEXANDRA CVETANOVSKI

The Relevant Case of Mrs Alexandra Cvetanovski

1. The one relevant case concerning Mrs Cvetanovski arose from Operation Waugh and comprised two counts of obtaining financial advantage by deception.¹
2. The charges related to Mrs Cvetanovski's involvement, together with her husband, Mr Zlate Cvetanovski,² in fraudulent loan applications made to Adelaide Bank.³ The offending took place between 18 November 2003 and 10 May 2005.⁴ The offending was discovered in the course of investigations of Purana Taskforce into Mr Zlate Cvetanovski.⁵
3. On 8 March 2007, Mrs Cvetanovski was arrested and charged in relation to the offending.⁶ In December 2007, following contested committal proceedings, she was committed for trial.⁷
4. In November 2009, a trial commenced before the County Court but was aborted because the prosecution sought to adduce evidence without prior notice.⁸ Ultimately, the proceedings resolved to pleas of guilty to the two counts of obtaining financial advantage by deception.⁹ In April 2010, following a plea hearing before the County Court, Mrs Cvetanovski was sentenced, without conviction, to serve a Community-based Order for two years.¹⁰

¹ Un-tendered Presentment No C0705665.4, *R v Alexandra Silvana Cvetanovski*, 2007, RCMP.0028.0002.0002 @.0001-.0003; Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, RCMP.0028.0002.0002 @.0090-.0113.

² See Case Study of Mr Zlate Cvetanovski.

³ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, RCMP.0028.0002.0002 @.0090-.0113, in particular at [1]-[7]; Un-tendered Crown Summary of Facts on Plea, 23 April 2010, RCMP.0028.0002.0002 @.0004-.0006.

⁴ See Un-tendered Presentment No C0705665.4, *R v Alexandra Silvana Cvetanovski*, 2007, RCMP.0028.0002.0002; Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, RCMP.0028.0002.0002 @.0090-.0113, in particular at [1]-[7]; Un-tendered Crown Summary of Facts on Plea, 23 April 2010, RCMP.0028.0002.0002 @.0004-.0006.

⁵ See Case Study of Mr Zlate Cvetanovski. See also Un-tendered Crown Summary of Facts on Plea, 23 April 2010, [18], RCMP.0028.0002.0002 @.0005.

⁶ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, [30], RCMP.0028.0002.0002 @.0090-.0113; See also Crown Summary of Facts on Plea, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, 23 April 2010, [18], RCMP.0028.0002.0002 @.0004-.0006.

⁷ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, [30], RCMP.0028.0002.0002 @.0090-.0113.

⁸ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, [30], RCMP.0028.0002.0002 @.0090-.0113.

⁹ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, [30]-[31], RCMP.0028.0002.0002 @.0090-.0113.

¹⁰ Un-tendered Reasons for Sentence, *R v Alexandra Silvana Cvetanovski* [2010] VCC 0727, [52], RCMP.0028.0002.0002 @.0090-.0113.

Ms Gobbo's Legal Representation of Mrs Alexandra Cvetanovski

5. Material before the Commission indicates that on 17 and 18 December 2007, Ms Gobbo appeared on behalf of Mrs Cvetanovski in her committal hearing before the Magistrates' Court at Melbourne.¹¹

The Conduct of Ms Gobbo as a Human Source in relation to Mrs Alexandra Cvetanovski

6. Mrs Cvetanovski was the subject of communications between Ms Gobbo (in her capacity as human source) and Victoria Police before and during the period that Ms Gobbo represented her.

Prior to Charge on 8 March 2007

7. Between 13 February 2006 and Mrs Cvetanovski's arrest in March 2007, Ms Gobbo provided extensive information to Victoria Police about Mrs Cvetanovski's husband, Mr Zlate Cvetanovski.¹² In that context, Ms Gobbo also provided specific information that related to Mrs Cvetanovski.¹³ In particular, such information included:
 - 7.1. information about Mrs Cvetanovski's name, and her relationship to Mr Cvetanovski¹⁴
 - 7.2. information about her employment¹⁵
 - 7.3. the visual identification of Mrs Cvetanovski by Ms Gobbo, in photos taken at Mr Cooper's birthday party in [REDACTED] 2006¹⁶
 - 7.4. information about Ms Cvetanovski receiving a summons to attend coercive hearings¹⁷
 - 7.5. information about private matters concerning Mrs Cvetanovski's marriage,¹⁸ and other aspects of her personal life¹⁹

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 18 December 2007, 13, MIN.5000.7000.0103 @.0115; Exhibit RC0281 ICR3838 (115), 16 December 2007, 1527, VPL.2000.0003.3113; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 21 December 2007, 3, GMH.0001.0001.0006 @.0003; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 07 March 2019, 21, GMH.0001.0001.0002 @ 0021; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 17 December 2007, 68, OPP.0001.0004.0025 @.0092.

¹² See Case Study of Mr Zlate Cvetanovski.

¹³ See: Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1784; Exhibit RC0281 ICR3838 (035), 17 June 2006, 332, VPL.2000.0003.1918; Exhibit RC0281 ICR3838 (036) 23 June 2006, 341, VPL.2000.0003.1927; Exhibit RC0281 ICR3838 (036), 25 June 2006, 342, VPL.2000.0003.1928; Exhibit RC0281 ICR3838 (041), 14 August 2006, 392, VPL.2000.0003.1978; Exhibit RC0281 ICR3838 (051), 25 October 2006, 521, VPL.2000.0003.2107; Exhibit RC0281 ICR3838 (054), 26 November 2006, 566, VPL.2000.0003.2152; Exhibit RC0281 ICR3838 (063), 26 January 2007, 615, VPL.2000.0003.2201.

¹⁴ See Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737.

¹⁵ See Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737.

¹⁶ See Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1784.

¹⁷ See Exhibit RC0281 ICR3838 (041), 14 August 2006, 392, VPL.2000.0003.1978.

¹⁸ See, eg: Exhibit RC0281 ICR3838 (051), 25 October 2006, 521, VPL.2000.0003.2107; Exhibit RC0281 ICR3838 (054), 26 November 2006, 566, VPL.2000.0003.2152.

¹⁹ See eg: Exhibit RC0281 ICR3838 (063) 26 January 2007, 615, VPL.2000.0003.2201.

7.6. information about Mr Cvetanovski apparently storing drug related material at Mrs Cvetanovski's mother's house²⁰

7.7. suggesting to police [REDACTED]
[REDACTED]
[REDACTED].²¹

Between Charge on 8 March 2007 and Committal in December 2007

8. Ms Gobbo continued to provide information to police about Mrs Cvetanovski in the period following her arrest on 8 March 2007. Indeed, on the day after the arrest, 9 March 2007, Ms Gobbo suggested to police [REDACTED]
[REDACTED].²² Further, in the week that followed, Ms Gobbo gave police information about the source of funds for Mrs Cvetanovski's legal fees.²³ Later, on 15 June 2007, Ms Gobbo suggested to police that [REDACTED]
[REDACTED].²⁴

9. Finally, on 16 December 2007, the eve of Mrs Cvetanovski's committal hearing, Ms Gobbo told police that she "thinks [REDACTED]
[REDACTED].²⁵ She also expressed the view to police that Mrs Cvetanovski "will be committed" at the hearing the following day.²⁶

Submissions under Terms of Reference 1 and 2 in relation to Ms Alexandra Cvetanovski

10. It is submitted that it is open to the Commissioner to find that the case of Mrs Cvetanovski may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

11. The extent to which the case of Mrs Cvetanovski may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

12. First, Category 1A²⁷ applies in that, on 17 and 18 December 2007,²⁸ Ms Gobbo acted for Mrs Cvetanovski while she was a human source,²⁹ and did not disclose same to her.³⁰

²⁰ Exhibit RC0281 ICR3838 (051), 25 October 2006, 521, VPL.2000.0003.2107.
[REDACTED]
[REDACTED]

²³ See, Exhibit RC0281 ICR3838 (070), 14 March 2006, 704, VPL.2000.0003.2290.
[REDACTED]
[REDACTED]
[REDACTED]

²⁶ Exhibit RC0281 ICR3838 (115), 16 December 2007, 1527, VPL.2000.0003.3104.

²⁷ See Legal Principles Submissions at [249].

²⁸ See above analysis at [5].

²⁹ See Legal Principles Submissions at [20].

³⁰ See Legal Principles Submissions at [239].

13. Secondly, Category 1B³¹ applies in that, between 13 February 2006 and 16 December 2007, which was before and during the period that Ms Gobbo acted for Mrs Cvetanovski in relation to the case, Ms Gobbo provided information in relation to her to members of Victoria Police and did not disclose same to her.³²
14. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³³
15. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁴
 - 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mrs Cvetanovski;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mrs Cvetanovski, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Mrs Cvetanovski to a fair trial to have been interfered with.
18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mrs Cvetanovski and/or her legal representatives.

³¹ See Legal Principles Submissions at [249].

³² See above analysis at [7]-[9].

³³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

³⁴ See Legal Principles Submissions at [384] and [452]-[457].

19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³⁵
20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁶
21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her guilty plea.³⁷
22. Category 3A³⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
23. Category 3B³⁹ applies in that, before and during the period Ms Gobbo acted for Mr Cvetanovski, she provided information in relation to her to members of Victoria Police,⁴⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
24. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁵ See Legal Principles Submissions at [380]-[385].

³⁶ See Legal Principles Submissions at [351], [362]-[373].

³⁷ See Legal Principles Submissions at [351], [374].

³⁸ See Legal Principles Submissions at [465].

³⁹ See Legal Principles Submissions at [465].

⁴⁰ See above analysis at [7]-[9].

CASE STUDY: ZLATE CVETANOVSKI

1. The submissions which follow concerning Mr Cvetanovski should be read in conjunction with relevant parts of Chapters 10, 11 and 20 of the Narrative Submissions which contain a detailed account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cvetanovski.

The Relevant Cases of Zlate Cvetanovski

2. The relevant matters concerning Mr Zlate Cvetanovski comprise four cases, as reflected in the following presentments and indictments:
 - 2.1. Presentment X00990583 (CR-09-0083), arising from Operation Posse (Posse Case);¹
 - 2.2. Presentment C0705665.5 (CR-07-02867), arising from Operation Waugh (Waugh Case);²
 - 2.3. Indictment C0906741.3 (CR-11-01669), arising from Operation Coverdrive (Coverdrive Case);³ and
 - 2.4. Indictment Y03562453 (CR-11-02251), arising from Operation Mouse (Mouse Case).⁴
3. Each case is summarised in turn.

The Posse Case

4. The Posse Case concerned one charge of trafficking in a large commercial quantity of methamphetamine between 1 June 2005 and 22 April 2006.⁵ The prosecution case against Mr Cvetanovski alleged that he was involved with Mr Cooper in manufacturing methylamphetamine at premises in ██████████ Preston (Preston premises), and ██████████, Strathmore (Strathmore premises).⁶ The enterprise was said to be part of the “Mokbel crime syndicate”.⁷

¹ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), OPP.0004.0001.5232 [Restricted]; Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015.

² See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), OPP.0004.0001.5232. [Restricted]

³ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* [2014] VCC 71; Un-tendered Reasons for Sentence, *Zlate Cvetanovski v The Queen* [2015] VSCA 65; Un-tendered Indictment No. C0906741.3, *DPP v Cvetanovski*, 2011, 1-4, RCMP.0010.0002.0003 @.0064-.0067

⁴ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* [2014] VCC 71.

⁵ Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 2-3 [6], OPP.0004.0001.5232 @.5233-.5234 [Restricted]; Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015.

⁶ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 3 [7], OPP.0004.0001.5232 @.5234 [Restricted]; Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 1-6, RCMP.0010.0002.0004 @.0016-.0021. See also Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, *R v Cvetanovski*, 16 February 2012, 1-9, RCMP.0010.0002.0004 @.0427-.0435.

⁷ Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, [1] RCMP.0010.0002.0004 @.0016.

5. The evidence of Mr Cooper was central in the case.⁸ Other notable witnesses relied upon as part of the prosecution case included [REDACTED].¹¹ The informant in the case was Detective Senior Constable Craig Hayes.¹² Other notable members of police named as witnesses on the indictment included Mr Graham Evans, Mr Paul Rowe, Mr Dale Flynn, [REDACTED], Mr Kelly, Mr James Coghlan, Mr Graham Evans, Mr Mark Sheridan and Mr Pearce.¹³
6. There was also other evidence relied upon, including material which arose from the execution of search warrants at premises on Glenside [REDACTED] (Glenside Premises), and Cannes [REDACTED] (Cannes [REDACTED] premises),¹⁴ as well as from search and surveillance warrants executed at the Preston¹⁵ and Strathmore premises.¹⁶ It appears, however, that the evidence obtained from the Glenside premises was ultimately excluded by the trial judge.¹⁷

⁸ Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 3 [7], 8 [42], OPP.0004.0001.5232 @.5234, .5239 [Restricted]. See also Exhibit RC1914 Confidential Memorandum on the Prosecution of Zlate Cvetanovski, 29 July 2016, exhibited in *AB & EF v CD* [2017] VSC 350, exhibit JRC-8, 13, COR.1000.0001.0509 @.0013. The evidence of Cooper was critical to the success of the prosecution case: Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015; Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 5 [13], RCMP.0010.0002.0004 @.0020.

⁹ Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015. See also Un-tendered Trial Judge's charge, *DPP v Cvetanovski*, 6 July 2011, 56-60, RCMP.0010.0002.0004_0350 @.0397-.0402; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 6 [32], OPP.0004.0001.5232 @.5237 [Restricted].

¹⁰ Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015. See also Transcript of Inspector Dale Flynn, 2 October 2019, 7044-7045, TRN.2019.10.02.01 [unpublished]; Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 4 [13] RCMP.0010.0002.0004 @.0019; Un-tendered Trial Judge's charge, *DPP v Cvetanovski*, 6 July 2011, 47-52, RCMP.0010.0002.0004 @.0397-.0402; Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, *R v Cvetanovski*, 16 February 2012, 5-6 [8], RCMP.0010.0002.0004 @.0431-.0432; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 6 [32], OPP.0004.0001.5232 @.5237 [Restricted].

¹¹ Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015. See also Transcript of Inspector Dale Flynn, 2 October 2019, 7044-7045, TRN.2019.10.02.01 [unpublished]; Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 4 [13] RCMP.0010.0002.0004 @.0019; Un-tendered Trial Judge's charge, *DPP v Cvetanovski*, 6 July 2011, 52-56, RCMP.0010.0002.0004_0350 @.0402-.0406; Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, *R v Cvetanovski*, 16 February 2012, 5-6 [8], RCMP.0010.0002.0004 @.0431-.0432; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 6 [32], OPP.0004.0001.5232 @.5238 [Restricted].

¹² See Exhibit RC1747 Victoria Police Offenders Processed Matrix, undated, 13, VPL.0100.0147.7069 @.0012; See especially Un-tendered Presentment No. X00990583, *R v Cvetanovski*, 2009, 1-15, RCMP.0010.0002.0004 @.0001-.0015.

¹³ See [REDACTED]

¹⁴ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 20 [17]-[18], RCMP.0010.0002.0004 @.0020.

¹⁵ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 5-6 [19], RCMP.0010.0002.0004 @.0020-.0021.

¹⁶ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 4 [13], 5 [15]-[16], RCMP.0010.0002.0004 @.0019-.0020.

¹⁷ See Un-tendered Ruling, *DPP v Cvetanovski*, RCMP.0010.0002.0004 @.0028-.0038.

7. On 25 April 2006, Mr Cvetanovski was arrested in relation to the Posse offending, before being released without charge.¹⁸ He was subsequently interviewed on 26 April 2006, 8 March 2007, and 15 April 2008.¹⁹ On each occasion, he gave a “no comment” interview.²⁰
8. On 15 April 2008, he was charged and remanded in custody, before being released on bail on 23 April 2008.²¹ Following subsequent trials in the County Court,²² Mr Cvetanovski was found guilty on 8 July 2011.²³ According to the trial judge, the prosecution case was “strong” and the guilty verdict “almost inevitable”.²⁴
9. On 13 April 2012, he was sentenced in the County Court for the Posse Case and Waugh Case together. The total effective sentence for both cases was 11 years’ imprisonment, with a non-parole period of nine years.²⁵

The Waugh Case

10. The Waugh Case concerned offending committed between 18 November 2003 and 26 February 2007, comprising three counts of obtaining property by deception, and one count of attempting to obtain property by deception.²⁶ The charges related to fraudulent loan applications made by Mr Cvetanovski to financial institutions.²⁷ The informant in the case was Mr Craig Hayes.²⁸
11. The case was the product of an investigation conducted by the Purana Taskforce named Operation Waugh.²⁹ The prosecution case included reliance

¹⁸ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 6 [21], RCMP.0010.0002.0004 @.0021. See also Un-tendered Amended Prosecution Submissions on Plea, *DPP v Zlate Cvetanovski*, 17 December 2003, 1, RCMP.0010.0002.0003 @.0085; Exhibit RC0538 Statement of Inspector Dale Flynn, 12 June 2019, 11 [61], VPL.0014.0042.0001 @.0011.

¹⁹ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 6 [21], RCMP.0010.0002.0004 @.0021.

²⁰ See Un-tendered Amended Summary of Prosecution Opening, *DPP v Cvetanovski*, 25 March 2011, 6 [21], RCMP.0010.0002.0004 @.0021.

²¹ See Un-tendered Prosecution Opening, *DPP v Cvetanovski*, October 2012, [1], RCMP.0010.0002.0003 @.0068.

²² The two trials of Mr Cvetanovski in the Posse Case are addressed in more detail below.

²³ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 2 [2], OPP.0004.0001.5232 @.5233 [Restricted].

²⁴ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 19-10 [49], OPP.0004.0001.5232 @.5240-.5241 [Restricted].

²⁵ Un-tendered Record of orders, Zlate Cvetanovski, 13 April 2012, 1-2, RCMP.0010.0002.0004 @.0730-.0731. See also Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 12 [66], OPP.0004.0001.5232 @.5243 [Restricted]. As part of the sentence, ancillary orders were made, namely disposal orders and an order that Mr Cvetanovski undergo a forensic procedure for the taking of an intimate sample: Un-tendered Record of orders, Zlate Cvetanovski, 13 April 2012, 1-2, RCMP.0010.0002.0004 @.0730-.0731.

²⁶ See Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 2 [1], OPP.0004.0001.5232 @.5233 [Restricted]; Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, 27 February 2012, [1], RCMP.0010.0002.0004 @.0555.

²⁷ Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 2 [5], OPP.0004.0001.5232 @.5233 [Restricted]; See also Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, 27 February 2012, 1-2, RCMP.0010.0002.0004 @.0555-.0556.

²⁸ See Exhibit RC1747 Victoria Police Offenders Processed Matrix, undated, 14, VPL.0100.0147.7069 @.0013. See also Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 17 December 2007, 68, OPP.0001.0004.0025 @.0092.

²⁹ See Un-tendered Crown Summary for Case Conference, *R v Alexandra Cvetanovski & Zlate Cvetanovski*, 7 February 2008, 3, OPP.0004.0001.5649 @.5651.

upon evidence of telephone calls between January and February 2007, which were obtained by telephone intercept warrants.³⁰

12. On 8 March 2007, Mr Cvetanovski was charged and bailed for the Waugh offences.³¹ Mr Cvetanovski's wife, Mrs Alexandra Cvetanovski, was also charged.³² In December 2007, joint committal proceedings took place, at the end of which both Mr and Mrs Cvetanovski were committed for trial.³³
13. In 2011, Mr Cvetanovski was tried before the County Court and was found guilty of the four offences.³⁴ On 13 April 2012, he was sentenced in the County Court for the Waugh and Posse cases together. As set out above, the total effective sentence was 11 years' imprisonment, with a non-parole period of nine years.³⁵

The Coverdrive Case

14. The Coverdrive Case involved five charges against Mr Cvetanovski relating to the manufacturing and trafficking of amphetamines between 27 October 2008 and 27 February 2009, at premises in Tullamarine and Mount Wallace.³⁶
15. As part of the investigation, the police had installed surveillance devices at the two premises and in vehicles driven by Mr Cvetanovski.³⁷ Eventually, police executed search warrants at the premises and seized large amounts of

³⁰ See Un-tendered Crown Summary for Case Conference, *R v Alexandra Cvetanovski & Zlate Cvetanovski*, 7 February 2008, 3, 5-7 OPP.0004.0001.5649 @.5651, .5653-5655; Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, 27 February 2012, 5 [40], RCMP.0010.0002.0004 @.0559. The telephone calls were also referred to in the course of the prosecution final address at trial and the judge's charge: Transcript of Proceedings, 782, 856, 863, RCMP.0010.0002.0003, 0476, 0540, 0547.

³¹ ³¹ Un-tendered Submissions on Pre-Sentence Detention, *DPP v Zlate Cvetanovski*, undated, [1], OPP.0004.0002.3249 @.3249. See also Un-tendered Amended Prosecution Submissions on Plea, *DPP v Zlate Cvetanovski*, 17 December 2003, 1, RCMP.0010.0002.0003 @.0085; Un-tendered Summary of Prosecution Opening on the Hearing of the Plea, 27 February 2012, 7 [53], RCMP.0010.0002.0004 @.0561

³² See submissions in case study of Alexandra Cvetanovski.

³³ See Exhibit RC1923 Office of Public Prosecutions Victoria list of Persons Represented by Ms Nicola Gobbo from 2003-2009, 13, OPP.0001.0001.0001 @.0013; Un-tendered Transcript of Proceedings, *The Police v Alexandra and Zlate Cvetanovski* (Melbourne Magistrates' Court of Victoria, Magistrate Rozencwajg, 17 December 2007), OPP.0006.0002.0007; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 21 December 2007, 21, GMH.0001.0001.0002 @.0021; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 18 December 2007, 20, MCV.0001.0001.0001 @.0018; Un-tendered Application for leave, Mr Zlate Cvetanovski, 15 February 2019, 1-5, TEMP011.

³⁴ Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 2 [1], OPP.0004.0001.5232 @.5233 [Restricted].

³⁵ See Un-tendered Record of orders, Zlate Cvetanovski, 13 April 2012, 1-2, RCMP.0010.0002.0004 @.0730-.0731; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* (County Court of Victoria, Montgomery J, 13 April 2012), 12 [66], OPP.0004.0001.5232 @.5243 [Restricted].

³⁶ Un-tendered Indictment No. C0906741.3, *DPP v Cvetanovski*, 2011, 1-4, RCMP.0010.0002.0003 @.0064-.0067; See Un-tendered Prosecution Opening, *DPP v Cvetanovski*, October 2012, 1-10, RCMP.0010.0002.0003 @.0068-.0077; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* [2014] VCC 71, [1], [3]-[7], [14]-[28]; Un-tendered Reasons for Sentence, *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [4]-[21].

³⁷ Un-tendered Prosecution Opening, *DPP v Cvetanovski*, October 2012, 1-10, RCMP.0010.0002.0003 @.0068-.0077; Un-tendered Reasons for Sentence, *DPP v Cvetanovski* [2014] VCC 71, [14]-[18]; See Un-tendered Reasons for Sentence, *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [4]-[21].

substances, materials and equipment in connection with drug trafficking.³⁸ That material was the foundation of the charges.³⁹

16. On 27 February 2009, Mr Cvetanovski was arrested, charged, and remanded in custody for the Coverdrive offences.⁴⁰ On 24 August 2011, Mr Cvetanovski entered pleas of guilty to the Coverdrive charges.⁴¹ Following subsequent unsuccessful attempts to challenge the validity of certain charges on the indictment,⁴² plea hearings took place in December 2013 and January 2014 for the Coverdrive and Mouse cases together.⁴³ On 4 February 2014, Mr Cvetanovski was sentenced in the County Court for the two cases. The total effective sentence, taking into account both cases, was six years' imprisonment.⁴⁴ Further, two years of the sentence was ordered to be served cumulatively with the existing sentence imposed in the Posse and Waugh cases, and a new non-parole period was set as six years and six months.⁴⁵ In 2015, Mr Cvetanovski unsuccessfully sought leave to appeal against his convictions in the Coverdrive Case before the Victorian Court of Appeal.⁴⁶ The grounds of appeal did not concern Ms Gobbo.⁴⁷

The Mouse Case

17. The Mouse Case concerned two charges of obtaining a financial advantage by deception, to a value of approximately \$12,000, between 2 August 2007 and 27 March 2008.⁴⁸ The offending was committed whilst Mr Cvetanovski was on bail in the Waugh Case.⁴⁹ The offending the subject of the first charge was uncovered following the execution of search warrants at Mr Cvetanovski's parents' home in ██████████, Avondale Heights, on 27 February 2009, and at his ex-wife's home in ██████████, Essendon, on 6 March 2009.⁵⁰ At each location, police seized goods which had been obtained by fraudulent credit card transactions.⁵¹ The offending the subject of the second charge was

³⁸ Prosecution Opening [RCMPI.0010.0002.0003] at RCMP.0010.0002.0003_0068-0077; Un-tendered, *DPP v Cvetanovski* [2014] VCC 71 (4 February 2014) [10]-[20] (Coish J); See Un-tendered, *Zlate Cvetanovski v The Queen* [2015] VSCA 65 (16 April 2015) [4]-[21].

³⁹ Prosecution Opening [RCMPI.0010.0002.0003] at RCMP.0010.0002.0003_0068-0077; Un-tendered, *DPP v Cvetanovski* [2014] VCC 71 (4 February 2014) [19]-[28] (Coish J).

⁴⁰ Un-tendered, *DPP v Cvetanovski* [2014] VCC 71, [40]; See also Un-tendered Amended Prosecution Submissions on Plea, *DPP v Cvetanovski*, 17 December 2013, 2, RCMP.0010.0002.0003 @.0086.

⁴¹ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [22]; See also Un-tendered Amended Prosecution Submissions on Plea, *DPP v Cvetanovski*, 17 December 2013, 2, RCMP.0010.0002.0003 @.0086.

⁴² See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [22]-[28].

⁴³ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [22]-[28]; *DPP v Cvetanovski* [2014] VCC 71.

⁴⁴ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [29]; *DPP v Cvetanovski* [2014] VCC 71, [56]; Un-tendered Record of Orders, 4 February 2014, RCMP.0010.0002.0003 @.0196-0197. Disposal orders were also made.

⁴⁵ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [30]; *DPP v Cvetanovski* [2014] VCC 71, [103].

⁴⁶ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [71]-[73].

⁴⁷ See *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [2].

⁴⁸ Un-tendered Indictment Y03562453, *DPP v Cvetanovski*, undated, 1-8, RCMP.0010.0002.0003 @.0001-.0008.

⁴⁹ *DPP v Cvetanovski* [2014] VCC 71, [37]; Un-tendered Record of Orders, 4 February 2014, RCMP.0010.0002.0003 @.0195.

⁵⁰ *DPP v Cvetanovski* [2014] VCC 71, [10]-[13]; See also Un-tendered Prosecution Opening on Plea, *DPP v Cvetanovski*, 22 October 2012, 2, RCMP.0010.0002.0003 @.0010; Un-tendered Summary of Prosecution Opening, *DPP v Cvetanovski*, 5 March 2012, RCMP.0010.0002.0003 @.0047.

⁵¹ Un-tendered *DPP v Cvetanovski* [2014] VCC 71, [10]-[13]; See also Un-tendered Prosecution Opening on Plea, *DPP v Cvetanovski*, 22 October 2012, RCMP.0010.0002.0003 @.0009-.0011.

uncovered following the earlier execution of another search warrant at a separate property in Queensland on 20 November 2007.⁵²

18. On 27 February 2009, Mr Cvetanovski was arrested, charged, and remanded in custody for the Mouse offences.⁵³ Ultimately, he pleaded guilty, and on 4 February 2014 he was sentenced in the County Court for the Mouse and Coverdrive cases together. In the Mouse Case, he was sentenced to 10 months' imprisonment on the first count and one month on the second count, with certain orders as to cumulation and concurrency.⁵⁴ The total effective sentence, taking into account both cases, was six years' imprisonment.⁵⁵

Ms Gobbo's Legal Representation of Mr Cvetanovski

19. There is conflicting material before the Commission as to the extent to which Ms Gobbo acted as counsel for Mr Cvetanovski at relevant times. On the one hand, in his submission to the Commission, dated 8 March 2019, Mr Cvetanovski states, inter alia:⁵⁶

[5] Ms Gobbo is well known to me. I regularly met Ms Nicola Gobbo for legal advice between 2005 and 2009 and during this period I was arrested and charged for various drug trafficking and deception offences.

[6] I frequently discussed my charges and my wife's charges (Mrs Alexandra Cvetanovski) with Ms Gobbo and she represented both of us at our committal hearing in December 2007.

...

[13] Following my arrest [in relation to the Posse Case] and before I was interviewed, Ms Gobbo advised me not to speak to police.

20. Further, in the application for leave to appear before the Commission, filed on behalf of Mr Cvetanovski, dated 15 February 2019, the following is stated, inter alia:⁵⁷

[Ms Gobbo] was [Mr] Cvetanovski's Counsel since 2005 when he was first introduced to [her] through Cooper. [Ms Gobbo] appeared on behalf of [Mr] Cvetanovski and his wife at the Magistrates Court [sic] for a Committal Hearing (Operation Waugh) and although not formally briefed, was providing ongoing legal and strategic advice to [Mr] Cvetanovski between the years 2005 to 2008 in relation to matters where he was charged and ultimately convicted of (Operations Posse and Coverdrive).

⁵² *DPP v Cvetanovski* [2014] VCC 71, [10]-[13]; See also Un-tendered Prosecution Opening on Plea, *DPP v Cvetanovski*, 22 October 2012, RCMPI.0010.0002.0003 @.0009-.0011.

⁵³ *DPP v Cvetanovski* [2014] VCC 71, [40]; See also Un-tendered Amended Prosecution Submissions on Plea, *DPP v Cvetanovski*, 17 December 2013, RCMPI.0010.0002.0003 @.0085-.0086.

See *DPP v Cvetanovski* [2014] VCC 71, [48]-[61]; Un-tendered Record of Orders, 4 February 2014, RCMPI.0010.0002.0003 @.0195.

⁵⁵ See Un-tendered, *Zlate Cvetanovski v The Queen* [2015] VSCA 65, [29]; Un-tendered Record of Orders, 4 February 2014, RCMPI.0010.0002.0003 @.0195.

⁵⁶ Submission 054, Zlate Cvetanovski, 2 [5]-[6], [13], SUB.0054.0001.0001

⁵⁷ Un-tendered Application for leave, Mr Zlate Cvetanovski, 15 February 2019, 1, TEMP011. Further, similar submissions were advanced in Un-tendered Application for leave, Mr Zlate Cvetanovski, 15 March 2019, 1, TEMP011.

21. In addition, in Mr Cvetanovski's current appeal proceedings before the Court of Appeal, he contends that Ms Gobbo was providing legal advice to him at material times in relation to the Posse Case.⁵⁸
22. On the other hand, in her evidence before the Supreme Court in *AB & EF v CD* [2017] VSC 350, Ms Gobbo said that she did not "recall" having appeared on behalf of Mr Cvetanovski for any court hearing,⁵⁹ but that she was "not sure" about this.⁶⁰ She accepted, however, that she "may have" had conversations and discussions with Mr Cvetanovski's then solicitor, Mr Cosimo Chiodo, in relation to Mr Cvetanovski's matters.⁶¹ She also accepted that she had engaged in "discussions ... in general terms" with Mr Cvetanovski about his cases.⁶² She accepted that she had advised him upon his arrest and prior to his interview on 25 April 2006 (in relation to the Posse Case),⁶³ but she otherwise gave evidence to the effect that she had not given him any other "legal advice".⁶⁴ She was not asked about these matters in her evidence before the Commission.
23. Documentary records are also conflicting. For example, according to records produced to the Commission by the Office of Public Prosecutions, on 17 December 2007, Ms Gobbo appeared for both Mr Cvetanovski and his wife at their joint committal proceedings in the Waugh Case.⁶⁵ However, the cover sheet of the transcript of those proceedings suggests that she appeared only for Mrs Cvetanovski, and not Mr Cvetanovski, at the hearing.⁶⁶ Ms Gobbo's clerk's records⁶⁷ and fee books,⁶⁸ as well as records produced by the

⁵⁸ See *Zlate Cvetanovski v The Queen* [2020] VSCA 126, [17].

⁵⁹ Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 319-322, COR.1000.0001.0356 @98-101 [Restricted].

⁶⁰ Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 319-321, COR.1000.0001.0356 @98-100 [Restricted].

⁶¹ Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 320-321, COR.1000.0001.0356 @99-100 [Restricted].

⁶² Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 322, COR.1000.0001.0356 @101 [Restricted].

⁶³ Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 1 March 2017), 421-423, COR.1000.0001.0367 @ 85-87. Ms Gobbo said that she had no "specific recollection" of the content of the advice. Cf. Exhibit RC1911 Letter of Mr Zlate Cvetanovski to Hon. Murray Kellam AO, 27 February 2015, Exhibit JRC-4 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, COR.1000.0003.0122, quoted in Exhibit RC1391 *AB & EF v CD* [2017] VSC 350 (19 June 2017), 116-9 [402], COR.1000.0001.0002 @.0117 - @.0119

⁶⁴ Exhibit RC1177 Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 322, COR.1000.0001.0356 @101 [Restricted]; See also Un-tendered *AB & EF v CD* [2017] VSC 350, 119 [405], COR.1000.0001.0002 @.0119 [Restricted].

⁶⁵ See Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 17 December 2007, 68, OPP.0001.0004.00025 @.0092.

⁶⁶ See Un-tendered Transcript of Proceedings, *The Police v Alexandra and Zlate Cvetanovski* (Melbourne Magistrates' Court of Victoria, Magistrate Rozencwajg, 17 December 2007), 1, OPP.0006.0002.0007 @.0007. It is noted that whilst Mr Cvetanovski is said to be represented by Mr Chiodo on the cover sheet of the transcript, it appears that Ms Gobbo was the only defence counsel who was addressed by the Magistrate and who conducted cross-examination of the witnesses, Transcript of Proceedings, *The Police v Alexandra and Zlate Cvetanovski* (Melbourne Magistrates' Court of Victoria, Magistrate Rozencwajg, 17 December 2007), 5, 28, 36, 41, 50, 73, OPP.0006.0002.0007 @.0012, .0035, .0043, .0048, .0058, .0081.

⁶⁷ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 21 December 2007, 21, GMH.0001.0001.0002 @.0021. It is noted that Ms Gobbo's court book has no entry for any day in December 2007.

⁶⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 18 December 2007, 13, MIN.5000.7000.0103 @.0115.

Magistrates' Court of Victoria,⁶⁹ also suggest that she formally appeared only for his wife at that hearing.

24. Whilst the material before the Commission concerning the issue is conflicting, it is submitted that it is open to the Commissioner to find that Ms Gobbo *did* act as a lawyer for Mr Cvetanovski between approximately 2005 and 2009, as he claims. That submission is made on the basis that Ms Gobbo's evidence in the *AB v CD* proceedings was somewhat equivocal on the issue, whereas Mr Cvetanovski's contention on the matter is expressed with some certainty. The OPP records, to an extent, corroborate the position taken by Mr Cvetanovski. Further, as addressed below, the Informer Contact Reports (ICRs) and other contemporaneous records of Ms Gobbo's informing also make clear that Mr Cvetanovski and Ms Gobbo were in ongoing contact between at least 2006 and 2008, which included communications about his legal matters.⁷⁰ The analysis below proceeds on the basis that Ms Gobbo did act as a lawyer for Mr Cvetanovski between approximately 2005 and 2009.

The Conduct of Ms Gobbo as a Human Source in Relation to Mr Cvetanovski

Relevant Conduct of Ms Gobbo and Victoria Police in relation to the Posse Case

The Use of Ms Gobbo as a Human Source in Early 2006, prior to Mr Cvetanovski's First Arrest on 25 April 2006

25. It appears that Ms Gobbo first met Mr Cvetanovski in 2005, through his then friend and associate, Mr Cooper.⁷¹ In early 2006, prior to Mr Cvetanovski's arrest on 25 April 2006, Ms Gobbo provided extensive information about him to Victoria Police. In particular, such information included:
- 25.1. information concerning his alleged involvement in drug trafficking activities⁷²

⁶⁹ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 18 December 2007, 20, MCV.0001.0001.0001 @.0018.

⁷⁰ See generally, Un-tendered Victoria Police Summary of Extracts, Zlate Cvetanovski, 25 March 2019, RCMPI.0008.0001.0013.

⁷¹ See Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; See also Un-tendered Application for leave, Mr Zlate Cvetanovski, 15 February 2019, 1, TEMP011.

⁷² See, eg: Exhibit RC0281 ICR3838 (021), 6 March 2006, 178, VPL.2000.0003.1764; Exhibit RC0281 ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817.

- 25.2. information about his financial affairs,⁷³ including the suggestion that he was engaged in alleged money laundering activities⁷⁴
 - 25.3. details of his email address⁷⁵ and telephone numbers⁷⁶
 - 25.4. information about the identifying features of his motor vehicles⁷⁷
 - 25.5. details of his family and personal life⁷⁸
 - 25.6. information about the persons with whom he was said to be associated.⁷⁹
26. During this period, numerous Information Reports (IRs) were prepared which detailed information about Mr Cvetanovski that had been provided by Ms Gobbo.⁸⁰ Further, some of the IRs were forwarded to members of the Purana taskforce,⁸¹ while on other occasions, the handlers appeared to have “updated” members of Purana directly.⁸²

⁷³ Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704; Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; Exhibit RC0281 ICR3838 (017), 30 January 2006, 137, VPL.2000.0003.1723; Exhibit RC0281 ICR3838 (019), 21 February 2006, 160, VPL.2000.0003.1746; Exhibit RC0281 ICR3838 (020), 24 February 2006, 166, VPL.2000.0003.1752; Exhibit RC0281 ICR3838 (028), 18 April 2006, 250; VPL.2000.0003.1836; Also see Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477; Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; Exhibit RC0283 Information Report IRSID407, 24 February 2006, 1, VPL.2000.0003.8519. For example, on 21 and 22 January 2006, she told police, inter alia, that Mr Cvetanovski was a “money launderer” and that he was “the key to Cooper’s [sic] money”: See Exhibit RC0281 ICR3838 (019), 21 February 2006, 160, VPL.2000.0003.1746; and Exhibit RC0281 ICR3838 (019), 22 February 2006, 161, VPL.2000.0003.1747.

⁷⁴ See eg, Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; Exhibit RC0281 ICR3838 (019), 21 February 2006, 160, VPL.2000.0003.1746; and Exhibit RC0281 ICR3838 (019), 22 February 2006, 161, VPL.2000.0003.1747.

⁷⁵ Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477; Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706.

⁷⁶ Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; Exhibit RC0283 Information Report IRSID375, 17 February 2006, 1, VPL.2000.0003.8491; Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; Exhibit RC0281 ICR3838 (019), 21 February 2006, 161, VPL.2000.0003.1747.

⁷⁷ Exhibit RC0281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477; Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737.

⁷⁸ Exhibit RC0281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707.

⁷⁹ Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; See also Exhibit RC0283 Information Report IRSID537, 26 April 2006, 1, VPL.2000.0003.8643 (this information was directed to Mr James (Jim) O’Brien at Purana); Exhibit RC0283 Information Report IRSID410, 24 February 2006, 1, VPL.2000.0003.8522; Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; See Exhibit RC0283 Information Report IRSID407, 24 February 2006, 1, VPL.2000.0003.8519; See Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477.

⁸⁰ See, for example, Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477; Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; Exhibit RC0283 Information Report IRSID407, 24 February 2006, 1, VPL.2000.0003.8519; Exhibit RC0283 Information Report IRSID410, 24 February 2006, 1, VPL.2000.0003.8522; Exhibit RC0283 Information Report IRSID458, 5 March 2006, 1, VPL.2000.0003.8573; Exhibit RC0283 Information Report IRSID537, 26 April 2006, 1, VPL.2000.0003.8643.

⁸¹ Exhibit RC0283 Information Report IRSID537, 26 April 2006, 1, VPL.2000.0003.8643.

⁸² Exhibit RC0281 ICR3838 (015), 9 January 2006, 113, VPL.2000.0003.1699; Exhibit RC0281 ICR3838 (027), 13 April 2006, 241, VPL.2000.0003.1827; Exhibit RC0281 ICR3838 (028), 22 April 2006, 259, VPL.2000.0003.1845; Exhibit RC0281 ICR3838 (028), 24 April 2006, 264, VPL.2000.0003.1850.

27. In addition, at least one telephone intercept warrant and five search warrants were obtained in April 2006 targeting Mr Zlate Cvetanovski under Operation Posse. The applications for these warrants were based upon three separate affidavits (each of which, as noted below, relied in part upon intelligence from Ms Gobbo):
- 27.1. First, the affidavit of Detective Acting Inspector James (Jim) O'Brien, sworn on 21 April 2006,⁸³ was relied upon in the successful application for two warrants, namely:
- 27.1.1. SW84/06 – a search warrant, granted on 21 April 2006, targeting Commonwealth Bank of Australia records in relation to accounts in the names of Mr Zlate Cvetanovski and Ms Alexandra Cvetanovski;⁸⁴ and
- 27.1.2. SW86/06 – a search warrant, granted on 21 April 2006, targeting Adelaide Bank records in relation to accounts in the names of Mr Zlate Cvetanovski and Ms Alexandra Cvetanovski.⁸⁵
- 27.2. Secondly, the affidavit of Detective Acting Senior Sergeant Dale Flynn, sworn on 21 April 2006,⁸⁶ was relied upon in the successful application for three warrants, namely:
- 27.2.1. SW90/06 – a search warrant, granted on 21 April 2006, targeting a property in ██████████, Avondale Heights;⁸⁷
- 27.2.2. SW92/06 – a search warrant, granted on 21 April 2006, targeting the Cannes ██████ premises;⁸⁸ and
- 27.2.3. SW94/06 – a search warrant, granted on 21 April 2006, targeting the Glenside premises.⁸⁹
28. Thirdly, the affidavit of Detective Senior Sergeant Russell Fletcher (based upon information provided by Detective Sergeant Dale Flynn⁹⁰), sworn 21 April 2006, was relied upon in the successful application for one warrant, namely D02715, a telephone intercept warrant, granted on 21 April 2006, targeting a mobile telephone utilised by Mr Zlate Cvetanovski.⁹¹ Evidence before the Commission indicates that this warrant was revoked on 26 April 2006.⁹²
29. All three of the foregoing affidavits make express reference to information obtained by Ms Gobbo (as "Informer 21803838").⁹³

⁸³ See Un-tendered Affidavit of Mr James (Jim) O'Brien, sworn 21 April 2006, VPL.2100.0016.0001.

⁸⁴ See Un-tendered Warrant SW84/06, 21 April 2006, VPL.2100.0019.0021.

⁸⁵ See Un-tendered Warrant SW86/06, 21 April 2006, VPL.2100.0019.0022.

⁸⁶ See Exhibit RC0733 Affidavit of Inspector Dale Flynn, sworn 21 April 2006, VPL.0005.0035.1204.

⁸⁷ See Un-tendered Warrant SW90/06, 21 April 2006, VPL.2100.0021.0005.

⁸⁸ See Un-tendered Warrant SW92/06, 21 April 2006 OPP.0007.0003.0593.

⁸⁹ See Un-tendered Warrant SW94/06, 21 April 2006 OPP.0007.0003.0594.

⁹⁰ See Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 21 April 2006, 2 [6] VPL.2100.0004.0001 @.0002.

⁹¹ See Un-tendered Warrant D02715, 21 April 2006, VPL.2100.0009.0024.

⁹² See Un-tendered Schedule A, Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 19 February 2008, 26 VPL.2100.0004.0156 @.0181.

⁹³ Un-tendered Affidavit of Mr James (Jim) O'Brien, sworn 21 April 2006, 2 [18], 3 [18], [26], 4 [27], [35], [36], 5 [36], [37], [38], [42], [43], 6 [43], [46], [47], [49], 7 [50], VPL.2100.0016.0001 @.0002-.0007; Exhibit RC0733 Affidavit of Inspector Dale Flynn, sworn 21 April 2006, 2, VPL.0005.0035.1204 @.1205;

Relevant Conduct of Ms Gobbo and Victoria Police in relation to Mr Cooper

30. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Cvetanovski's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 30.1. the discovery of the offending the subject of Operation Posse
 - 30.2. Mr Cooper being arrested in Operation Posse
 - 30.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 30.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Cvetanovski (among others).
31. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Cvetanovski in the Posse Case, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Cvetanovski may have been deprived of any opportunity to object to the admissibility of this evidence.
32. Further, as set out in the Case Studies of ██████████ ██████████ that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and to those persons' respective subsequent decisions to do so. On this basis, it may be argued that the evidence of ██████████ ██████████, relied upon in the prosecution of Mr Cvetanovski, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

Conduct of Ms Gobbo and Victoria Police surrounding Mr Cvetanovski's First Arrest on 25 April 2006

33. In the days between Mr Cooper's arrest on 22 April 2006, and Mr Cvetanovski's arrest on 25 April 2006, Ms Gobbo was in ongoing contact with Mr Cvetanovski. In particular, according to the ICRs:
 - 33.1. On 23 April 2006, Ms Gobbo met Mr Cvetanovski at the car wash business (in which she was a part-owner), and immediately afterwards

Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 21 April 2006 at 6-7 [27], 13-14 [37], 15 [43], 18 [50], 20 [58], 21 [59], 22 [66], 23-24 [68], 26-27 [72], 30 [79], [80], 31 [82], 33-34 [88], 36 [93], 38-41 [102]-[107] VPL.2100.0004.0001 @.0006-.0007, .0013-.0014, .0015, .0018, @.0020-.0024, .0026-.0027, .0030, .0031, .0033-.0034, .0036, .0038-.0041.

reported their discussion to Mr Peter Smith.⁹⁴ The relevant ICR entry records as follows:⁹⁵

Saw CVETANOVSKI at car wash, he is very paranoid, he rang 3 x times from public phone box. CVETANOVSKI has spoken to COOPER, but he (CVETANOVSKI) thinks he is being watched. HS [human source] believes COOPER said the right thing to CVETANOVSKI, he is just paranoid, and HS reassured him. HS told CVETANOVSKI has not heard from COOPER. (Obvious problem if CVETANOVSKI finds out this is not true and tells others). HS told CVETANOVSKI to adv if hears from COOPER. BICKLEY rang CVETANOVSKI twice but he wouldn't answer.

- 33.2. On 24 April 2006, Mr Cvetanovski met Ms Gobbo at her chambers, after which she conveyed detail of their discussions to Mr Peter Smith.⁹⁶ In particular, she reported to Mr Peter Smith that she had “advise[d] Cvetanovski re arrest procedures etc”.⁹⁷
34. This occurred in the context of Ms Gobbo’s efforts to generally assist Victoria Police in Operation Posse in the days following 22 April 2006. As set out in Chapter 11 of the Narrative Submissions, she did so by, inter alia:
- 34.1. keeping quiet, and not communicating to anyone what had occurred in respect of Mr Cooper’s arrest and his subsequent assistance to police⁹⁸
- 34.2. communicating with members of Victoria Police to ensure that Mr Cvetanovski did not hold any suspicions in relation to Mr Cooper⁹⁹
- 34.3. communicating with Mr Cooper in order to provide him with comfort and reassurance, in order that he would be encouraged to continue to co-operate with and assist police.¹⁰⁰
35. On 25 April 2006, Mr Cvetanovski was arrested.¹⁰¹ Upon his arrest, he requested to confer with Ms Gobbo, which was facilitated by Victoria Police.¹⁰² Ms Gobbo attended on Mr Cvetanovski and advised¹⁰³ him to remain silent and answer ‘no comment’ to all police questions.¹⁰⁴ On that evening, Mr

⁹⁴ Exhibit RC0281 ICR3838 (028), 23 April 2006, 262, VPL.2000.0003.1848.

⁹⁵ Exhibit RC0281 ICR3838 (028), 23 April 2006, 262, VPL.2000.0003.1848.

⁹⁶ Exhibit RC0281 ICR3838 (028), 24 April 2006, 265-266, VPL.2000.0003.1851 and VPL.2000.0003.1852.

⁹⁷ Exhibit RC0281 ICR3838 (028), 24 April 2006, 266, VPL.2000.0003.1852.

⁹⁸ Transcript of Inspector Dale Flynn, 1 October 2019, 6882, TRN.2019.10.01.01 [not yet published].

⁹⁹ Exhibit RC0394 Mr Sandy White diary, 23 April 2006, 52-54, VPL.2000.0001.0677 @.0728-0730; Transcript of Inspector Dale Flynn, 1 October 2019, 6882-6887, 6891-6894, TRN.2019.10.01.01 [not yet published]; Exhibit RC0281 ICR3838 (028), 23 April 2006, 261-262, VPL.2000.0003.1847-.1848.

¹⁰⁰ Transcript of Inspector Dale Flynn, 1 October 2019, 6875-6876, 6889, 6891, TRN.2019.10.01.01 [not yet published].

¹⁰¹ Exhibit RC0726 Statement of Detective Sergeant Craig Hayes, 25 July 2019, 6 [38], VPL.0014.0044.0001 @.0006.

¹⁰² Exhibit RC0538 Statement of Inspector Dale Flynn, 12 June 2019, 11 [61], VPL.0014.0042.0001 @.0011.

¹⁰³ Exhibit RC1911 Letter of Mr Zlate Cvetanovski to Hon. Murray Kellam AO, 27 February 2015, Exhibit JRC-4 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, COR.1000.0003.0122, quoted in Exhibit RC1391 *AB & EF v CD* [2017] VSC 350 (19 June 2017), 116-9 [402], COR.1000.0001.0002 @.0117-.0119.

¹⁰⁴ See Exhibit RC1911 Letter of Mr Zlate Cvetanovski to Hon. Murray Kellam AO, 27 February 2015, Exhibit JRC-4 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, COR.1000.0003.0122, quoted in Exhibit RC1391 *AB & EF v CD* [2017] VSC 350 (19 June 2017), 116-9 [402], COR.1000.0001.0002 @.0117-.0119; See also Submission 054 Zlate Cvetanovski, 2 [13], SUB.0054.0001.0001.

Cvetanovski gave “no comment” records of interview.¹⁰⁵ He was then released pending enquiries.¹⁰⁶ A more detailed account of the circumstances of Mr Cvetanovski’s arrest, and the relevant conduct of Ms Gobbo and members of Victoria Police, is set out in Chapter 10 of the Narrative Submissions.

Relevant Conduct Between 25 April 2006 and 15 April 2008 (Date of Charge in the Posse Case)

36. In the period following Mr Cvetanovski’s arrest on 25 April 2006, Ms Gobbo continued to maintain close contact with him. Members of Victoria Police also continued to engage with Ms Gobbo (in her capacity as a human source) in relation to Mr Cvetanovski. For example, according to the ICRs:
 - 36.1. On 1 May 2006, the ICRs note that Mr Cvetanovski rang Ms Gobbo “with more questions”.¹⁰⁷
 - 36.2. On 3 May 2006, the ICRs note that Mr Cvetanovski attended Ms Gobbo’s office “asking if he will be charged”.¹⁰⁸
 - 36.3. On 15 May 2006, Mr Peter Smith advised Ms Gobbo that Mr Cvetanovski was “not to be arrested at this time”, based on information he had received from Mr O’Brien. The ICR entry notes that Mr O’Brien gave Mr Peter Smith permission to convey that intelligence to Ms Gobbo.¹⁰⁹
 - 36.4. Later that same day, 15 May 2006, Ms Gobbo again met with Mr Cvetanovski, after which she conveyed details of their discussion to Mr Peter Smith.¹¹⁰
 - 36.5. On 22 May 2006, Ms Gobbo told Mr Peter Smith she had spoken at length with Detective Sergeant Jim Coghlan in relation to affidavits relating to restraining orders against Mr Cvetanovski, and there being confidential affidavits on the court file.¹¹¹
 - 36.6. On 24 May 2006¹¹² and 27 May 2006,¹¹³ Ms Gobbo had further meetings with Mr Cvetanovski. On each occasion, after the meetings, she conveyed the content of their discussions to her handlers.¹¹⁴
 - 36.7. On 30 May 2006, Ms Gobbo told her handler, Mr Green, that Mr Cvetanovski had provided her with his confiscation papers.¹¹⁵
 - 36.8. On 10 June 2006, Ms Gobbo told Mr Green that Mr Cooper had contacted her very angry at Mr Cvetanovski in relation to his lack of

¹⁰⁵ Exhibit RC0560 Inspector Dale Flynn diary, 26 April 2006, 287, VPL.0010.0007.0209 @.0221; Exhibit RC1381 Detective Sergeant Paul Rowe diary, 26 April 2006, 5, VPL.0010.0003.0002 @.0121.

¹⁰⁶ Exhibit RC0726 Statement of Detective Sergeant Craig Hayes, 25 July 2019, 6 [38], VPL.0014.0044.0001 @.0006.

¹⁰⁷ Exhibit RC0281 ICR3838 (030), 1 May 2006, 278, VPL.2000.0003.1864.

¹⁰⁸ Exhibit RC0281 ICR3838 (030), 3 May 2006, 281, VPL.2000.0003.1867.

¹⁰⁹ Exhibit RC0281 ICR3838 (031), 15 May 2006, 298, VPL.2000.0003.1884.

¹¹⁰ Exhibit RC0281 ICR3838 (031), 15 May 2006, 299, VPL.2000.0003.1885.

¹¹¹ Exhibit RC0281 ICR3838 (032), 22 May 2006, 305, VPL.2000.0003.1891.

¹¹² Exhibit RC0281 ICR3838 (032), 22 May 2006, 308, VPL.2000.0003.1894.

¹¹³ Exhibit RC0281 ICR3838 (033), 27 May 2006, 311, VPL.2000.0003.1897.

¹¹⁴ Exhibit RC0281 ICR3838 (032), 22 May 2006, 308, VPL.2000.0003.1894; Exhibit RC0281 ICR3838 (033), 27 May 2006, 311, VPL.2000.0003.1897.

¹¹⁵ Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898.

financial support, and that Mr Cooper wanted Ms Gobbo to contact Mr Cvetanovski and tell him not to contact him further.¹¹⁶

- 36.9. On 11 June 2006, Ms Gobbo told Mr Green that Mr Cvetanovski had visited Mr Cooper in custody, and that a message should be provided to Mr Flynn that Mr Cooper wanted to amend some of his statements about Mr Cvetanovski.¹¹⁷
- 36.10. On 12 June 2006, Ms Gobbo told Mr Green that Mr Cooper wanted Mr Cvetanovski off his visitors list as he had cost him money, and Mr Cooper believed that Mr Cvetanovski was responsible for his arrest.¹¹⁸
- 36.11. On 23 June 2006, Ms Gobbo expressed concern to Mr Peter Smith about Mr Cooper and indicated she would visit that weekend. Ms Gobbo also suggested that Mr Cvetanovski, who was planning to visit Mr Cooper, be prevented from doing so. Ms Gobbo's controller, Mr Sandy White, was notified and arrangements were then made with Detective Inspector Ryan and Detective Acting Senior Sergeant Kelly of Purana to have Mr Cvetanovski's visit disallowed. Later, further concern was raised by Ms Gobbo about Mr Cvetanovski sending in his wife and she was disallowed as well.¹¹⁹
37. Ms Gobbo's association with Mr Cvetanovski continued through to 15 April 2008, when he was charged in the Posse Case. During this period, she continued to provide information in relation to him to Victoria Police, including:
 - 37.1. further identifying details of his motor vehicles¹²⁰
 - 37.2. details of the venues he frequented¹²¹
 - 37.3. updates as to his telephone numbers¹²²
 - 37.4. details of a coercive hearing summons served upon him ¹²³
 - 37.5. details of his financial and business affairs¹²⁴
 - 37.6. information about persons with whom he was said to be associating.¹²⁵

¹¹⁶ Exhibit RC0281 ICR3838 (034), 10 June 2006, 326, VPL.2000.0003.1912.

¹¹⁷ Exhibit RC0281 ICR3838 (035), 11 June 2006, 327, VPL.2000.0003.1913.

¹¹⁸ Exhibit RC0281 ICR 3838 (035), 12 June 2006, 328, VPL.2000.0003.1914.

¹²⁰ Exhibit RC0281 ICR 3838 (033), 28 May 2006, 311, VPL.2000.0003.1897; Exhibit RC0281 ICR 3838 (063), 26 January 2007, 615, VPL.2000.0003.2201; Exhibit RC0283 Information Report IRSID730, 28 May 2006, 1, VPL.2000.0003.8709.

¹²¹ Exhibit RC0281 ICR 3838 (039), 25 July 2006, 369, VPL.2000.0003.1955.

¹²² Exhibit RC0281 ICR 3838 (044), 8 September 2006, 418, VPL.2000.0003.2004; Exhibit RC0283 Information Report IRSID845, 8 September 2006, 1, VPL.2000.0003.8871; Exhibit RC0281 ICR 3838 (063), 22 January 2007, 610, VPL.2000.0003.2196; Exhibit RC0281 ICR 2958 (046), 21 November 2008, 711, VPL.2000.0003.1451.

¹²³ Exhibit RC0281 ICR 3838 (041), 14 August 2006, 392, VPL.2000.0003.1978.

¹²⁴ Exhibit RC0281 ICR 3838 (051), 27 October 2006, 526, VPL.2000.0003.2112; Exhibit RC0281 ICR 3838 (052), 10 November 2006, 550, VPL.2000.0003.2136; Exhibit RC0281 ICR 3838 (063), 26 January 2007, 615, VPL.2000.0003.2201; Exhibit RC0283 Information Report IRSID797, 20 August 2006, 1, VPL.2000.0003.8814.

¹²⁵ Exhibit RC0281 ICR 3838 (033), 30 May 2006, 312, VPL.2000.0003.1898; Exhibit RC0281 ICR 3838 (042), 20 August 2006, 401, VPL.2000.0003.1987; Exhibit RC0281 ICR 3838 (063), 26 January 2007, 615, VPL.2000.0003.2201; Exhibit RC0281 ICR 3838 (064), 30 January 2007, 619, VPL.2000.0003.2205; Exhibit RC0281 ICR 3838 (064), 23 March 2007, 728, VPL.2000.0003.2314; See also Exhibit RC0283 Information Report IRSID797, 20 August 2006, 1, VPL.2000.0003.8814; Exhibit RC0283 Information Report IRSID734, 30 May 2006, 1, VPL.2000.0003.8714.

38. At this time, Ms Gobbo also provided her handlers with information adverse to Mr Cvetanovski's interests which she had obtained by virtue of her relationship with Mr Cooper. For example, on 20 August 2006, she gave police specific information relating to Mr Cvetanovski's possession of substances and activities in relation to the manufacture of drugs, which she had learnt from Mr Cooper.¹²⁶ Separately, in June 2007, she reported to her handlers that Mr Cvetanovski had "moved out of home" and was "living with [a] female in breach of his bail".¹²⁷
39. Further, on 3 September 2006, following a visit to Mr Cooper in prison, Ms Gobbo told her handlers that he was "ready to set Steve [Cvetanovski] up with Police".¹²⁸ On 15 October 2006, she expressed her view to police that Mr Cvetanovski would be "in the process of cooking today using the information provided by Cooper".¹²⁹
40. On 30 October 2006, Ms Gobbo met with her handlers for the purpose of allowing her to peruse briefs of evidence against a number of persons, in relation to Operation Posse.¹³⁰ During the meeting, having perused the briefs, Ms Gobbo advised police on the state of a brief of evidence against Mr Cooper, and commented that Mr Cvetanovski, among others, was "still to be charged".¹³¹ According to the ICRs, she advised police that he was "clearly identified ... will be able to argue re bail that [he] knew and did not flee jurisdiction".¹³² The ICRs record that she also commented "CVET – first proof there is evidence against him".¹³³ Ms Gobbo's commentary and advice was passed on by the Source Development Unit to Mr Flynn verbally.¹³⁴ Under cross-examination before the Commission, Mr Flynn accepted that, with the benefit of hindsight, his receipt of such information from Ms Gobbo in the circumstances described above, was "rather extraordinary".¹³⁵
41. In addition, it appears that, during this time, Ms Gobbo was actively suggesting to Victoria Police that [REDACTED]. In late November 2006, Ms Gobbo told police that Mr Cvetanovski's wife had "burst into tears claiming that her marriage was stuffed", and suggested that [REDACTED].¹³⁶ She made similar suggestions in March 2007¹³⁷ and December 2007.¹³⁸

¹²⁶ See Exhibit RC0281 ICR 3838 (042), 20 August 2006, 401, VPL.2000.0003.1987; Exhibit RC0283 Information Report IRSID797, 20 August 2006, 1, VPL.2000.0003.8814.

¹²⁷ Exhibit RC0281 ICR 3838 (082), 5 June 2007, 880, VPL.2000.0003.2466.

¹²⁸ Exhibit RC0281 ICR 3838 (044), 3 September 2006, 414, VPL.2000.0003.2000.

¹²⁹ Exhibit RC0281 ICR 3838 (048), 15 October 2006, 482, VPL.2000.0003.2068.

¹³⁰ Exhibit RC0281 ICR 3838 (051), 30 October 2006, 528, VPL.2000.0003.2114; See also Transcript of Inspector Dale Flynn, 2 October 2019, 7089-7090, RCMPI.0159.0001.0006.

¹³¹ Exhibit RC0281 ICR 3838 (051), 30 October 2006, 532-533, VPL.2000.0003.2118-VPL.2000.0003.2119; See also Transcript of Inspector Dale Flynn, 2 October 2019, 7091, RCMPI.0159.0001.0006.

¹³² Exhibit RC0281 ICR 3838 (051), 30 October 2006, 533, VPL.2000.0003.2119.

¹³³ Exhibit RC0281 ICR 3838 (051), 30 October 2006, 533, VPL.2000.0003.2119.

¹³⁴ See Exhibit RC0281 ICR 3838 (051), 30 October 2006, 533, VPL.2000.0003.2119; Transcript of Inspector Dale Flynn, 2 October 2019, 7091-7092, RCMPI.0159.0001.0006.

¹³⁵ Transcript of Inspector Dale Flynn, 2 October 2019, 7094, RCMPI.0159.0001.0006.

[REDACTED]
[REDACTED]
[REDACTED]

42. Subsequently, on 30 January 2008, Ms Gobbo met her handlers and told them, inter alia, that Mr Cvetanovski “should have been charged”, in an apparent reference to her view of the evidence obtained in Operation Posse.¹³⁹

Relevant Conduct Upon and Following Mr Cvetanovski’s Arrest and Charge on 15 April 2008

43. Upon his arrest on 15 April 2008, Mr Cvetanovski contacted Ms Gobbo.¹⁴⁰ Whilst she appears to have been cognisant of a “possible conflict” in acting for him at that time, she was nevertheless prepared to confer with him in the custody centre, the following day, to “go through his options”.¹⁴¹ It seems, however, that that conference did not eventuate.¹⁴²
44. On 21 April 2008, it appears that Ms Gobbo decided that she would not appear for Mr Cvetanovski in his imminent bail application, because, according to the ICRs, “owing to all publicity re gangland she want[ed] nothing to do with it”.¹⁴³ Ms Gobbo lamented that she “lost \$2,000” by not appearing.¹⁴⁴ The following day, 22 April 2008, Mr Cvetanovski apparently “begg[ed] her to do the bail app”.¹⁴⁵ She told him she could not do it.¹⁴⁶ A few days later, Mr Cvetanovski was granted bail.¹⁴⁷
45. Mr Cvetanovski continued to be the subject of communications between Ms Gobbo and her handlers throughout 2008.¹⁴⁸ The final reference to Ms Gobbo providing information about him to Victoria Police is on 21 November 2008, when she reportedly told handlers that “Cvetanovski sent texts wanting to access restrained money to pay for [her] & Richter re his defence”.¹⁴⁹ She also, on that day, informed police of his new telephone number.¹⁵⁰

The Trials in the Posse Case

In 2011, Mr Cvetanovski faced two trials before the County Court in relation to the Posse Case. The first trial took place between 28 March 2011 and 9 May 2011, when the jury was discharged without verdict. The second trial (which was a retrial) took place between 6 June 2011 and 8 July 2011, at the end of which Mr Cvetanovski was found guilty. A detailed account of those trials, and

¹³⁹ Exhibit RC0281 ICR 2958 (001), 30 January 2008, 17, VPL.2000.0003.0757; see also Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White, Peter Smith and Wolf, 30 January 2008, 161-162, VPL.0005.0115.0958 @.1118-.1119.

¹⁴⁰ Exhibit RC0281 ICR 2958 (014), 15 April 2008, 165, VPL.2000.0003.0905.

¹⁴¹ Exhibit RC0281 ICR 2958 (014), 15 April 2008, 166, VPL.2000.0003.0906.

¹⁴² Exhibit RC0281 ICR 2958 (014), 16 April 2008, 169, VPL.2000.0003.0909.

¹⁴³ Exhibit RC0281 ICR 2958 (015), 21 April 2008, 202, VPL.2000.0003.0942.

¹⁴⁴ Exhibit RC0281 ICR 2958 (015), 21 April 2008, 202, VPL.2000.0003.0942.

¹⁴⁵ Exhibit RC0281 ICR 2958 (015), 22 April 2008, 205, VPL.2000.0003.0945.

¹⁴⁶ Exhibit RC0281 ICR 2958 (015), 22 April 2008, 205, VPL.2000.0003.0945.

¹⁴⁷ Exhibit RC0281 ICR 2958 (016), 23 April 2008, 211, VPL.2000.0003.0951; Exhibit RC0281 ICR 2958 (016), 26 April 2008, 229, VPL.2000.0003.0969.

¹⁴⁸ Exhibit RC0281 ICR 2958 (016), 26 April 2008, 229, VPL.2000.0003.0969; Exhibit RC0281 ICR 2958 (017), 30 April 2008, 244, 248, 250, VPL.2000.0003.0984, VPL.2000.0003.0988, VPL.2000.0003.0990; Exhibit RC0281 ICR 2958 (020), 20 May 2008, 325, VPL.2000.0003.1065; Exhibit RC0281 ICR 2958 (023), 8 June 2008, 401, VPL.2000.0003.1141; Exhibit RC0281 ICR 2958 (023), 12 June 2008, 422, VPL.2000.0003.1162; Exhibit RC0281 ICR 2958 (024), 17 June 2008, 453, VPL.2000.0003.1193; Exhibit RC0281 ICR 2958 (025), 24 June 2008, 475, VPL.2000.0003.1215; Exhibit RC0281 ICR 2958 (030), 4 August 2008, 537, VPL.2000.0003.1277; Exhibit RC0281 ICR 2958 (041), 29 September 2008, 646, VPL.2000.0003.1386.

¹⁴⁹ Exhibit RC0281 ICR 2958 (046), 21 November 2008, 711, VPL.2000.0003.1451.

¹⁵⁰ Exhibit RC0281 ICR 2958 (046), 21 November 2008, 711, VPL.2000.0003.1451.

the disclosure issues and conduct of members of Victoria Police which arose in relation to them, is set out in Chapter 20 of the Narrative Submissions.

Ms Gobbo's Conduct in relation to the Waugh Case

Prior to Charge on 8 March 2007

46. As set out above, between early 2006 and Mr Cvetanovski's arrest on 8 March 2007, Mr Cvetanovski was frequently the subject of communications between Ms Gobbo and Victoria Police. Of particular relevance to the Waugh Case is that Ms Gobbo provided Victoria Police with information concerning his telephone numbers¹⁵¹ and his financial affairs.¹⁵²
47. In particular, it is apparent that information provided by Ms Gobbo was relied upon to obtain a number of telephone intercept warrants targeting telephones used by Mr Cvetanovski.¹⁵³ The circumstances concerning one warrant are particularly significant, and may be summarised as follows:
- 47.1. On 8 September 2006, Ms Gobbo informed one of her handlers, Mr Green, that Mr Cvetanovski's new telephone number was [REDACTED].¹⁵⁴
- 47.2. That information was then published in an IR.¹⁵⁵
- 47.3. Subsequently, that information was expressly relied upon (and by reference to the source of the information as "Informer 21803838" on 8 September 2006) as part of an affidavit of Detective Senior Sergeant Russell Fletcher, dated 15 December 2006, in support of an application for a telephone intercept warrant, targeting Mr Cvetanovski's telephone, [REDACTED].¹⁵⁶

¹⁵¹ Exhibit RC0281 ICR 3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; Exhibit RC0283 Information Report IRSID375, 17 February 2006, 1, VPL.2000.0003.8491; Exhibit RC0281 ICR 3838 (019), 21 February 2006, 161, VPL.2000.0003.1747; Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; Exhibit RC0281 ICR 2958 (046), 21 November 2008, 711, VPL.2000.0003.1451.

¹⁵² Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; Exhibit RC0281 ICR3838 (017), 30 January 2006, 138, VPL.2000.0003.1724; Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; Exhibit RC0281 ICR3838 (020), 24 February 2006, 166, VPL.2000.0003.1752; Exhibit RC0281 ICR3838 (028), 18 April 2006, 250; VPL.2000.0003.1836; Also see Exhibit RC0283 Information Report IRSID387, 21 February 2006, 1, VPL.2000.0003.8501; Exhibit RC0283 Information Report IRSID407, 24 February 2006, 1, VPL.2000.0003.8519; Exhibit RC0283 Information Report IRSID361, 24 January 2006, 1, VPL.2000.0003.8477.

¹⁵³ See, eg: Un-tendered Warrant D02871-00, 25 September 2006, VPL.2100.0009.0026; Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 22 September 2006, 2 [6]-[7], VPL.2100.0004.0053 @.0054; Un-tendered Warrant D02871-01, 18 December 2006, VPL.2100.0009.0029; Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 15 December 2006, 9 [35], VPL.2100.0004.0067 @.0075; Un-tendered Warrant D02923-00, 18 December 2006, VPL.2100.0009.0044; Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 15 December 2006, 10 [35], VPL.2100.0004.0087 @.0096; Un-tendered Warrant D03248-00, 11 February 2008, VPL.2100.0009.0056; Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, unsworn, 11 February 2006, 10 [32], VPL.0099.0159.0178 @.0187.

¹⁵⁴ Exhibit RC0281 ICR 3838 (044), 8 September 2006, 418, VPL.2000.0003.2004.

¹⁵⁵ See Exhibit RC0283 Information Report IRSID845, 8 September 2006, 1, VPL.2000.0003.8871.

¹⁵⁶ See Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 15 December 2006, 9 [35] VPL.2100.0004.0067 @.0075.

- 47.4. As a result, on 18 December 2006, Victoria Police obtained a warrant (D02871-01) under the *Telecommunications (Interception and Access) Act 1979*, targeting Mr Cvetanovski's telephone service.¹⁵⁷
- 47.5. Documents produced by the Office of Public Prosecutions demonstrate that the evidence obtained by way of that warrant was relied upon against Mr Cvetanovski in the prosecution of the Waugh Case.¹⁵⁸
48. In light of the foregoing, it may be argued that the evidence obtained as a result of warrant (D02871-01), relied upon in the prosecution of Mr Cvetanovski in the Waugh Case, may have been obtained in consequence of improper or illegal conduct (based on the use of Ms Gobbo as a human source in obtaining the warrant in circumstances where she was acting for Mr Cvetanovski), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Cvetanovski may have been deprived of any opportunity to object to the admissibility of this evidence.
49. Further, it is noted that information obtained from Ms Gobbo appears to have been relied upon as part of numerous other affidavits, in support of numerous other warrants in relation to the Waugh Case.¹⁵⁹ Warrants obtained in relation to the Posse Case also appear to have been relevant to Operation Waugh.¹⁶⁰

During the Proceedings

50. On 12 December 2007, Mr Cvetanovski and his solicitor attended Ms Gobbo's chambers "to discuss" the Waugh Case, which was listed for a joint committal hearing the following week.¹⁶¹ Following the conference, Ms Gobbo told her handlers that Mr Cvetanovski "hasn't got the money", so she would not be representing him.¹⁶²
51. On 16 December 2007, Ms Gobbo expressed the view to police that [REDACTED]
[REDACTED]
[REDACTED].¹⁶³ She had made similar suggestions, including in

¹⁵⁷ See Un-tendered Warrant D02871-01, 18 December 2006, VPL.2100.0009.0029.

¹⁵⁸ See Un-tendered Crown Summary for Case Conference, *R v Alexandra Cvetanovski & Zlate Cvetanovski*, 2008, 3, 5-7, OPP.0004.0001.5649 @.5651, .5653-.5655; See Summary of Prosecution Opening on the Hearing of the Plea, *R v Cvetanovski*, 16 February 2012, [40], RCMP.0010.0002.0004 @.0559. The telephone calls were also referred to in the course of the prosecution final address at trial and the judge's charge: see Transcript of Proceedings, *R v Cvetanovski*, 782, 856, 863, RCMP.0010.0002.0003 @.0476, .0540, .0547.

¹⁵⁹ See, eg: Un-tendered Warrant VP0957, 16 January 2007, VPL.2100.0009.0101; and Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 16 January 2007, 10 [36], VPL.2100.0004.0134 @.0143; Un-tendered Warrant VP1072, 20 February 2008, VPL.2100.0009.0104; Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn 19 February 2008, 11 [32], VPL.2100.0004.0156 @.0166; Un-tendered Warrant SW59/07, 6 March 2007, VPL.2100.0017.0010; Un-tendered Affidavit of Detective Inspector James (Jim) O'Brien, sworn 5 March 2007 7 [46], VPL.2100.0017.0001 @.0007; Un-tendered Warrant SW60/07, 6 March 2007, VPL.2100.0017.0012; Un-tendered Warrant SW61/07, 6 March 2007, VPL.2100.0017.0014; Un-tendered Warrant SW62/07, 6 March 2007, VPL.2100.0017.0016; Un-tendered Affidavit of Detective Inspector James (Jim) O'Brien, sworn 7 March 2007, 7 [46], VPL.2100.0019.0001 @.0007; Un-tendered Warrant SW69/07, 7 March 2007, VPL.2100.0019.0013; Un-tendered Affidavit of Detective Senior Sergeant Alan Paxton, sworn 19 March 2007, 7 [46], VPL.2100.0018.0001 @.0007; Un-tendered Warrant SW86/07 20 March 2007 VPL.2100.0018.0012.

¹⁶⁰ See above at [27].

¹⁶¹ Exhibit RC0281 ICR 3838 (115), 12 December 2007, 1521, VPL.2000.0003.3107.

¹⁶² Exhibit RC0281 ICR 3838 (115), 12 December 2007, 1522, VPL.2000.0003.3108.

¹⁶³ Exhibit RC0281 ICR 3838 (115), 16 December 2007, 1527, VPL.2000.0003.3113.

November 2006,¹⁶⁴ March 2007,¹⁶⁵ and June 2007.¹⁶⁶ During this period, she also told police of matters personal to Mr and Mrs Cvetanovski.¹⁶⁷ On 17 December 2007, Ms Gobbo appeared at the committal hearing in the Waugh Case, which was a joint hearing in relation to both Mr and Mrs Cvetanovski.¹⁶⁸

Submission of Mr Cvetanovski to the Commission

52. Mr Cvetanovski has submitted that the Posse Case was affected by “an elaborate conspiracy orchestrated by Nicola Gobbo and Mr Cooper and perhaps individuals from Victoria Police ... to secure [his] conviction for their mutual benefit and reward”, and that the prosecution of him amounted to “an abuse of process”.¹⁶⁹ Further, Mr Cvetanovski stated:¹⁷⁰

If I had known of Ms Gobbo’s dual role prior to being arrested and charged I would have sought to explore the circumstances that led to the provision of key evidence against me and the disclosure would provide the opportunity to argue the veracity of all the evidence against me and argue its exclusion.

Other Relevant Material

Ms Gobbo’s Evidence in relation to Mr Cvetanovski

53. While, in her evidence before the Commission, Ms Gobbo was not questioned about any issues in direct relation to the cases of Mr Cvetanovski, she has previously given relevant evidence about the Posse Case before the Supreme Court in the *AB v CD* proceedings. In particular, it is notable that, in her evidence in those proceedings, Ms Gobbo accepted that the information she gave to police about the Strathmore laboratory where Mr Cooper was cooking drugs also enabled Mr Cvetanovski’s arrest.¹⁷¹ She also accepted that the information she provided to police about the Strathmore laboratory was instrumental in convicting Mr Cvetanovski.¹⁷²

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

¹⁶⁸ See above at [19]-[24].

¹⁶⁹ Submission 054, Zlate Cvetanovski, 3 [20], SUB.0054.0001.0001

¹⁷⁰ Submission 054, Zlate Cvetanovski, 3 [19], SUB.0054.0001.0001

¹⁷¹ This was how Ms Gobbo’s evidence was characterised by Ginnane J in Un-tendered *AB & EF v CD* [2017] VSC 350 (Redacted), 117 [400], COR.1000.0001.0002 @.0116, citing Exhibit RC1177 Transcript of Proceedings (Redacted), *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 324, COR.1000.0003.0366 @103.

¹⁷² This was how Ms Gobbo’s evidence was characterised by Ginnane J in Un-tendered *AB & EF v CD* [2017] VSC 350 (Redacted), 120 [405], COR.1000.0001.0002 @.0119, citing Exhibit RC1177 Transcript of Proceedings (Redacted), *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 28 February 2017), 323-4, COR.1000.0003.0366 @102, 103.

Review of Former Director of Public Prosecutions, Mr John Champion SC (as he then was) in relation to Mr Cvetanovski

54. On 26 July 2016, in light of the investigation undertaken by IBAC,¹⁷³ the then Director of Public Prosecutions (DPP), Mr John Champion SC (as he then was), produced a confidential memorandum on the prosecution of Mr Cvetanovski, in relation to the Posse Case.¹⁷⁴ In the memorandum, Mr Champion opined that “the possibility of miscarriage exists” based on the conduct of Ms Gobbo and Victoria Police.¹⁷⁵ In particular, he found that Ms Gobbo had engaged in “most serious conflicts of interest in representing [Mr Cvetanovski] in that way that she did.”¹⁷⁶ He therefore concluded that he was required to disclose the information concerning Ms Gobbo to Mr Cvetanovski.¹⁷⁷ Mr Champion also observed that “had [Cvetanovski] known the true role of [Ms Gobbo], it is very likely he would have sought to explore the circumstances that led to the provision of the key evidence against him ... [and] he would have been able to exercise an informed choice as to whether to argue the evidence of Cooper should have been excluded from the trial.”¹⁷⁸

Submissions under Terms of Reference 1 and 2 in relation to Mr Cvetanovski

55. It is submitted that it is open to the Commissioner to find that the four cases of Mr Cvetanovski may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
56. The Posse Case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, at Chapter 11. As noted above, these submissions should also be read in conjunction with the Narrative Submissions, Chapters 10 and 20 which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cvetanovski’s proceedings.
57. The extent to which the four cases of Mr Cvetanovski may have been affected can be measured by virtue of the following matters.

¹⁷³ Exhibit RC0008 Statement of Assistant Commissioner Neil Paterson, Annexure 61 Report concerning Victoria Police handling of Human Source code name 3838 (Kellam Report), 1 April 2014, VPL.0007.0001.1400.

¹⁷⁴ Un-tendered Confidential Memorandum on the Prosecution of Zlate Cvetanovski (Redacted), 29 July 2016, Exhibit JRC-8 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, COR.1000.0003.0126.

¹⁷⁵ Exhibit RC1914 Confidential Memorandum on the Prosecution of Zlate Cvetanovski (Redacted), 29 July 2016, Exhibit JRC-8 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, 13, COR.1000.0003.0126 @.0013.

¹⁷⁶ Exhibit RC1914 Confidential Memorandum on the Prosecution of Zlate Cvetanovski (Redacted), 29 July 2016, Exhibit JRC-8 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, 12, COR.1000.0003.0126 @.0012.

¹⁷⁷ Exhibit RC1914 Confidential Memorandum on the Prosecution of Zlate Cvetanovski (Redacted), 29 July 2016, Exhibit JRC-8 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, 13, COR.1000.0003.0126 @.0013.

¹⁷⁸ Exhibit RC1914 Confidential Memorandum on the Prosecution of Zlate Cvetanovski (Redacted), 29 July 2016, Exhibit JRC-8 to Confidential Affidavit of Mr John R Champion SC DPP sworn 2 August 2016, 13, COR.1000.0003.0126 @.0013; See also Un-tendered *AB & EF v CD* [2017] VSC 350 (Redacted), 117 [401], COR.1000.0001.0002 @.0117.

Conduct of Ms Gobbo

58. First, Category 1A¹⁷⁹ applies in relation to all four cases in that, between approximately 2005 and 2009,¹⁸⁰ Ms Gobbo acted for Mr Cvetanovski while she was a human source,¹⁸¹ and did not disclose same to him.¹⁸²
59. Secondly, Category 1B¹⁸³ applies in relation to all four cases that, between January 2006 and November 2008,¹⁸⁴ which was before and/or during the period that Ms Gobbo acted for Mr Cvetanovski in relation to each case, Ms Gobbo provided information in relation to him to members of Victoria Police. Further, in relation to the Posse Case, Ms Gobbo assisted (or attempted to assist) in his prosecution and did not disclose same to him.¹⁸⁵
60. Thirdly, Category 2A¹⁸⁶ applies in that evidence relied upon by the prosecution in the Posse case (namely the evidence of Mr Cooper,¹⁸⁷ [REDACTED] and evidence relied upon in the Waugh Case (namely the product of telephone intercept warrant D02871-01),¹⁸⁹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁹⁰
61. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁹¹ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁹²
62. Fourthly, Category 2B¹⁹³ applies in that Ms Gobbo had knowledge of the circumstances founding the above [60] in respect of the evidence of Mr Cooper in the Posse Case and failed to disclose same to her client, Mr Cvetanovski, thereby depriving him of the ability to object to its admission.
63. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁹⁴ Further, in certain

¹⁷⁹ See Legal Principles Submissions at [249].

¹⁸⁰ See above analysis at [19]-[24].

¹⁸¹ See Legal Principles Submissions at [20].

¹⁸² See Legal Principles Submissions at [239].

¹⁸³ See Legal Principles Submissions at [249].

¹⁸⁴ See above analysis at [25], [33]-[45].

¹⁸⁵ See above analysis at [30]-[31], [33]-[36], [39]-[42].

¹⁸⁶ See Legal Principles Submissions at [249].

¹⁸⁷ See above analysis at [5], [30]-[31].

¹⁸⁸ See above analysis at [5] and [32].

¹⁸⁹ See above analysis at [11], [47]-[48].

¹⁹⁰ See Legal Principles Submissions at [196]-[222].

¹⁹¹ See Legal Principles Submissions at [210].

¹⁹² See Legal Principles Submissions at [212]-[213].

¹⁹³ See Legal Principles Submissions at [249].

¹⁹⁴ See Legal Principles Submissions at [320]-[329] and [307]-[309].

instances identified above,¹⁹⁵ Ms Gobbo's conduct may constitute a breach of legal professional privilege and or confidence.¹⁹⁶

64. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

65. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁹⁷
- 65.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Cvetanovski;
 - 65.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Cvetanovski, appropriate disclosure was made; or alternatively
 - 65.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
66. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [65.1] were taken, and accordingly there was the potential for the right of Mr Cvetanovski to a fair trial to have been interfered with.
67. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Cvetanovski and/or his legal representatives.
68. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁹⁸

¹⁹⁵ See above analysis, esp at [33.2] and [36].

¹⁹⁶ See Legal Principles Submissions at [310]-[319] and [301]-[306].

¹⁹⁷ See Legal Principles Submissions at [384] and [452]-[457].

¹⁹⁸ See Legal Principles Submissions at [380]-[385].

69. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁹⁹
70. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.²⁰⁰
71. Category 3A²⁰¹ applies in relation to all four cases in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
72. Category 3B²⁰² applies in relation to all four cases in that before and/or during the period Ms Gobbo acted for Mr Cvetanovski, she provided information in relation to him to members of Victoria Police and, in relation to the Posse Case, she assisted the prosecution of the accused,²⁰³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
73. Category 4A²⁰⁴ applies in the Posse Case and the Waugh Case that, as noted above at [60], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
74. Category 4B²⁰⁵ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
75. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁹⁹ See Legal Principles Submissions at [351], [362]-[373].

²⁰⁰ See Legal Principles Submissions at [351], [374].

²⁰¹ See Legal Principles Submissions at [465].

²⁰² See Legal Principles Submissions at [465].

²⁰³ See above analysis at [59].

²⁰⁴ See Legal Principles Submissions at [465].

²⁰⁵ See Legal Principles Submissions at [465].

CASE STUDY: MYER DAGHER

The Relevant Cases of Mr Dagher

1. The two relevant cases of Mr Myer Dagher concerns his convictions before the County Court in April 2009 (indictable case)¹ and his convictions before the Sunshine Magistrates' Court in April 2007 (summary case).²

The Indictable Case

2. On 25 August 2006, police executed a search warrant at the address of Mr Dagher's partner, Zeina Haddad, and located quantities of various drugs, scales and other items associated with drug trafficking activities.³ The Crown alleged that Mr Dagher drove his vehicle towards a police officer in an attempt to evade his arrest. A pursuit ensued, resulting in the eventual arrest of Mr Dagher on that date.⁴ Two co-accused, Zeina Haddad and Michael Haddad, were also arrested and charged.
3. The prosecution case relied on DNA evidence obtained from items seized at the address,⁵ and the evidence of ██████████.⁶
4. Following committal hearings on 19 September 2007 and 9 November 2007, Mr Dagher was committed to stand trial in relation to nine charges.⁷
5. On 31 March 2009, Mr Dagher entered a plea of guilty to:
 - 5.1. three counts of possession of drugs of dependence (namely; cocaine, methylamphetamine and cannabis);
 - 5.2. one count of assault of a police officer;
 - 5.3. one count of recklessly engaging in conduct endangering serious injury;
 - 5.4. one count of possession of ammunition; and

¹ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 547 [46], [49], OPP.0095.0001.0011 @ .0063; Un-tendered Victoria Police Criminal History Report, Myer Joseph Dagher, 16 December 2019, VPL.0099.0193.1286.

² Un-tendered Victoria Police Criminal History Report, Myer Joseph Dagher, 16 December 2019, VPL.0099.0193.1286.

³ Un-tendered Summary of prosecution opening, *R v Myer Dagher and Haddad*, 2008, 41 – 42, OPP.0095.0001.0011 @ .0044-45; Un-tendered Summary of evidence, 2009, *R v Myer Dagher and Haddad*, OPP.0095.0001.0011 @ .0028.

⁴ Un-tendered Summary of prosecution opening, *R v Myer Dagher and Haddad*, 2008, 45, OPP.0095.0001.0011 @ .0048.

⁵ Un-tendered Summary of prosecution opening, *R v Myer Dagher and Haddad*, 2008, 44, OPP.0095.0001.0011 @ .0047.

⁶ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, OPP.0095.0001.0011 @ .0050.

⁷ Un-tendered Appeal Summary of Proceedings, *DPP v Mayer Dagher*, 13 August 2010, 3, OPP.0095.0001.0011 @ .0072.

- 5.5. one count of dishonestly handling stolen goods.⁸
6. On 1 April 2009, Mr Dagher was arraigned before a jury and entered a plea of not guilty to one count of trafficking in not less than a large commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA).⁹ On 8 April 2009, the jury found him guilty of that count.¹⁰
7. A plea hearing was conducted on 15 April 2009.¹¹
8. On 20 April 2009, Mr Dagher was sentenced to a total effective sentence of nine years and nine months' imprisonment, with non-parole period of six years' imprisonment.¹²
9. Mr Dagher filed an application for leave to appeal against conviction and sentence, which was refused on 10 May 2011.¹³

The Summary Case

10. The summary case addressed in this case study arose for consideration as part of Stage 4 in the methodology of Counsel Assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 4 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their summary case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
11. The summary case of Mr Dagher concerns his conviction before the Sunshine Magistrates' Court on 3 April 2007 in relation to two charges of obtaining property by deception and one charge of failing to answer bail.¹⁴
12. Mr Dagher received an aggregate fine of \$500, with conviction, in relation to the two charges of obtaining property by deception. He was convicted and discharged in relation to the charge of failing to answer bail.¹⁵

⁸ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 535 [3], [5], 536 [6] OPP.0095.0001.0011 @ .0051-52; Un-tendered Presentment No. C0605332.1, *R v Dagher and Haddad*, 2008, OPP.0095.0001.0011 @ .0023; Un-tendered Presentment No. U02047681, *R v Dagher*, 2009, OPP.0095.0001.0011 @ .0004.

⁹ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 535 [1] OPP.0095.0001.0011 @ .0051; Un-tendered Presentment No. C0605332.1, *R v Dagher and Haddad*, 2008, OPP.0095.0001.0011 @ .0023.

¹⁰ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 535 [1] OPP.0095.0001.0011 @ .0051.

¹¹ Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 536 [8] OPP.0095.0001.0011 @ .0052.

¹² Un-tendered Reasons for Sentence, *R v Dagher and Haddad* [2012] VCC, 547 [46], [49], OPP.0095.0001.0011 @ .0063; Un-tendered Victoria Police Criminal History Report, Myer Joseph Dagher, 16 December 2019, VPL.0099.0193.1286.

¹³ Un-tendered, *Mayer Dagher v The Queen* [2011] VSCA 119, 18 [50], OPP.0095.0001.0011 @ .0131.

¹⁴ Un-tendered Victoria Police Criminal History Report, Myer Joseph Dagher, 16 December 2019, VPL.0099.0193.1286.

¹⁵ Un-tendered Victoria Police Criminal History Report, Myer Joseph Dagher, 16 December 2019, VPL.0099.0193.1286.

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Dagher

13. It is submitted that, based on the following circumstances, it is open for the Commission to infer that Ms Gobbo provided legal representation to Mr Dagher in relation to the indictable case between at least 20 March 2007 and 27 September 2007:
 - 13.1. on 20 March 2007, Ms Gobbo told her handlers that she received a copy of Mr Dagher's hand up brief;¹⁶
 - 13.2. on 26 July 2007, she told her handlers she wanted to see Mr Dagher to discuss his upcoming committal and to deal with any issues that might arise whilst she was away;¹⁷
 - 13.3. on 18 September 2007, Ms Gobbo advised her handlers that Mr Dagher's committal was the following day and said she had been trying to arrange for him to attend to pick up his brief;¹⁸ and
 - 13.4. on 29 September 2007, Ms Gobbo advised that Mr Dagher had attended at her office a couple of days prior (on 27 September 2007). She said that she returned Mr Dagher's hand up brief and 'had a general chat about his committal.'¹⁹
14. Based on the material reviewed, there is nothing to suggest that Ms Gobbo appeared in court on behalf of Mr Dagher or submitted invoices for fees relating to the indictable case.
15. In relation to the summary case, on 3 April 2007, Ms Gobbo appeared on behalf of Mr Dagher at the Sunshine Magistrates' Court at his sentencing hearing.²⁰ She charged fees in relation to this appearance.²¹

The Conduct of Ms Gobbo as a Human Source in relation to Mr Dagher

16. Ms Gobbo provided information concerning Mr Dagher prior to and during her representation of him, between 4 August 2006 and 18 September 2007.²² The information provided during that period included:

¹⁶ Exhibit RC0281 ICR3838 (071), 20 March 2007, 723, VPL.2000.0003.2309.

¹⁷ Exhibit RC0281 ICR3838 (092), 26 July 2007, 1065, VPL.2000.0003.2651.

¹⁸ Exhibit RC0281 ICR3838 (100), 18 September 2007, 1229, VPL.2000.0003.2815.

¹⁹ Exhibit RC0281 ICR3838 (102), 29 September 2007, 1247, VPL.2000.0003.2833.

²⁰ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Gobbo, 11 July 2002, 19, MCV.0001.0001.0001 @ .0017; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 29 November 1999, 3, MIN.5000.7000.0103 @ .0105; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 7 March 2019, 33, GMH.0001.0001.0002 @ .0033.

²¹ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Gobbo, 11 July 2002, 19, MCV.0001.0001.0001 @ .0017; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 29 November 1999, 3, MIN.5000.7000.0103 @ .0105; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 7 March 2019, 33, GMH.0001.0001.0002 @ .0033.

²² Exhibit RC0281 ICR3838 (040), 4 August 2006, 383, VPL.2000.0003.1969; Exhibit RC0281 ICR3838 (100), 18 September 2007, 1229, VPL.2000.0003.2815.

- 16.1. personal details, including Mr Dagher's nickname,²³ phone number,²⁴ his bail address (at his mother's house),²⁵ and employment details²⁶
- 16.2. identification of Mr Dagher from a photograph²⁷
- 16.3. the fact Ms Gobbo had either communicated or met with Mr Dagher, or intended to do so²⁸
- 16.4. the fact Mr Dagher was the boyfriend of Zeina Haddad,²⁹ and provision of Ms Haddad's phone number³⁰
- 16.5. the name of the legal representative of Zeina Haddad and Michael Haddad, and the fact he had 'demanded \$5,000 cash' from Mr Dagher to represent them³¹
- 16.6. the circumstances of the offending, including items located by police and her opinion that Mr Dagher's DNA would be on bags and packaging³²
- 16.7. the circumstances of Mr Dagher's arrest³³
- 16.8. his relationship with known associates,³⁴ including Rob Karam and Bill Karam;³⁵
- 16.9. information concerning his finances;³⁶

²³ Exhibit RC0281 ICR3838 (043), 26 August 2006, 407, VPL.2000.0003.1993; Exhibit RC0281 ICR3838 (057), 11 December 2006, 582, VPL.2000.0003.2168.

²⁴ Exhibit RC0281 ICR3838 (062), 15 January 2007, 604, VPL.2000.0003.2190; Exhibit RC0281 ICR3838 (065), 5 February 2007, 626, VPL.2000.0003.2212; Exhibit RC0281 ICR3838 (073), 3 April 2007, 765, VPL.2000.0003.2351; Exhibit RC0281 ICR3838 (079), 18 May 2007, 839, VPL.2000.0003.2425; Exhibit RC0281 ICR3838 (085), 23 June 2007, 831, VPL.2000.0003.2517.

²⁵ Exhibit RC0281 ICR3838 (085), 27 June 2007, 943, VPL.2000.0003.2529.

²⁶ Exhibit RC0281 ICR3838 (058), 18 December 2006, 589, VPL.2000.0003.2175; Exhibit RC0281 ICR3838 (071), 20 March 2007, 723, VPL.2000.0003.2309.

²⁷ Exhibit RC0281 ICR3838 (040), 4 August 2006, 383, VPL.2000.0003.1969.

²⁸ Exhibit RC0281 ICR3838 (042), 25 August 2006, 406, VPL.2000.0003.1992; Exhibit RC0281 ICR3838 (043), 31 August 2006, 411, VPL.2000.0003.1997; Exhibit RC0281 ICR3838 (045), 13 September 2006, 423, VPL.2000.0003.2009; Exhibit RC0281 ICR3838 (051), 30 October 2006, 530, VPL.2000.0003.2116; Exhibit RC0281 ICR3838 (052), 5 November 2006, 541, VPL.2000.0003.2127; Exhibit RC0281 ICR3838 (063), 25 January 2007, 613, VPL.2000.0003.2199; Exhibit RC0281 ICR3838 (064), 30 January 2007, 620, VPL.2000.0003.2206; Exhibit RC0281 ICR3838 (065), 12 February 2007, 633, VPL.2000.0003.2219; Exhibit RC0281 ICR3838 (070), 13 March 2007, 695, VPL.2000.0003.2281; Exhibit RC0281 ICR3838 (072), 29 March 2007, 742, VPL.2000.0003.2328; Exhibit RC0281 ICR3838 (073), 2 April 2007, 760, VPL.2000.0003.2346.

²⁹ Exhibit RC0281 ICR3838 (042), 25 August 2006, 406, VPL.2000.0003.1992; Exhibit RC0281 ICR3838 (085), 27 June 2007, 943, VPL.2000.0003.2529.

³⁰ Exhibit RC0281 ICR3838 (043), 27 August 2006, 408, VPL.2000.0003.1994.

³¹ Exhibit RC0281 ICR3838 (043), 26 August 2006, 407, VPL.2000.0003.1993.

³² Exhibit RC0281 ICR3838 (042), 27 August 2006, 406, VPL.2000.0003.1992.

³³ Exhibit RC0281 ICR3838 (043), 28 August 2006, 408, VPL.2000.0003.1994.

³⁴ Exhibit RC0281 ICR3838 (062), 19 January 2007, 609, VPL.2000.0003.2195; Exhibit RC0281 ICR3838 (063), 25 January 2007, 613, VPL.2000.0003.2199; Exhibit RC0281 ICR3838 (065), 12 February 2007, 633, VPL.2000.0003.2219.

³⁵ Exhibit RC0281 ICR 3838 (042), 25 August 2006, 406, VPL.2000.0003.1992; Exhibit RC0281 ICR3838 (043), 26 August 2006, 407, VPL.2000.0003.1993; Exhibit RC0281 ICR3838 (051), 27 October 2006, 526, VPL.2000.0003.2112; Exhibit RC0281 ICR3838 (064), 30 January 2007, 620, VPL.2000.0003.2206; Exhibit RC0281 ICR3838 (069), 3 June 2007, 678, VPL.2000.0003.2264; Exhibit RC0281 ICR3838 (071), 20 March 2007, 723, VPL.2000.0003.2309; Exhibit RC0281 ICR3838 (081), 30 May 2007, 869, VPL.2000.0003.2455; Exhibit RC0281 ICR3838 (089), 11 July 2007, 1003, VPL.2000.0003.2589.

³⁶ Exhibit RC0281 ICR3838 (054), 26 November 2006, 566, VPL.2000.0003.2152; Exhibit RC0281 ICR3838 (100), 18 September 2007, 1229, VPL.2000.0003.2815.

- 16.10. information concerning court hearings, including the dates of hearings,³⁷ outcome of hearings,³⁸ and the fact that Mr Dagher was released on bail³⁹
- 16.11. information concerning Mr Dagher's brief of evidence,⁴⁰ including the fact Mr Dagher wanted to know about a particular person 'nominated in the brief of evidence' and that he mentioned in his record of interview that he wanted to speak to Ms Gobbo⁴¹
- 16.12. the fact that Mr Dagher was 'considering making [a] false statement to assist in the defence of his upcoming court case'⁴²
- 16.13. the fact that Mr Dagher had apparently arranged for the assault on a possible prosecution witness [REDACTED]
- 16.14. that Mr Dagher was obtaining a statement from his future brother in law⁴⁴
- 16.15. information concerning defence tactics (that Mr Dagher intended to tell the court about an amount of amphetamine in the back of the car)⁴⁵
- 16.16. further alleged misconduct being committed by Mr Dagher⁴⁶
- 16.17. her opinion that a known associate (Mr Arnold) 'would know a lot' about Mr Dagher⁴⁷
- 16.18. information concerning Mr Dagher's apparent knowledge of matters concerning the killing of Michael Daou,⁴⁸
- 16.19. information concerning an apparent importation associated with Mr Mannella and Mr Karam, including the phone number for the consignee for the importation, the name of the freight company, and the fact Mr

³⁷ Exhibit RC0281 ICR3838 (065), 12 February 2007, 633, VPL.2000.0003.2219; Exhibit RC0281 ICR3838 (065), 30 March 2007, 746, VPL.2000.0003.2332; Exhibit RC0281 ICR3838 (073), 2 April 2007, 762, VPL.2000.0003.2348; Exhibit RC0281 ICR3838 (100), 18 September 2007, 1229, VPL.2000.0003.2815.

³⁸ Exhibit RC0281 ICR3838 (073), 3 April 2007, 762, VPL.2000.0003.2348.

³⁹ Exhibit RC0281 ICR3838 (051), 27 October 2006, 526, VPL.2000.0003.2112; Exhibit RC0281 ICR3838 (051), 30 October 2006, 530, VPL.2000.0003.2116.

⁴⁰ Exhibit RC0281 ICR3838 (071), 23 March 2006, 729, VPL.2000.0003.2315.

⁴¹ Exhibit RC0281 ICR3838 (071), 23 March 2006, 728, VPL.2000.0003.2314.

⁴² Exhibit RC0281 ICR3838 (051), 31 October 2006, 533, VPL.2000.0003.2119.

⁴³ Exhibit RC0281 ICR3838 (068), 26 February 2007, 658 VPL.2000.0003.2244; Exhibit RC0281 ICR3838 (068), 2 March 2007, 666, VPL.2000.0003.2252.

⁴⁴ Exhibit RC0281 ICR3838 (076), 24 April 2007, 809, VPL.2000.0003.2395.

⁴⁵ Exhibit RC0281 ICR3838 (080), 20 May 2007, 848, VPL.2000.0003.2434.

⁴⁶ Exhibit RC0281 ICR3838 (056), 10 December 2006, 579, VPL.2000.0003.2165; Exhibit RC0281 ICR3838 (059), 26 December 2006, 595, VPL.2000.0003.2181; Exhibit RC0281 ICR3838 (061), 8 January 2007, 599, VPL.2000.0003.2185; Exhibit RC0281 ICR3838 (061), 9 January 2007, 601, VPL.2000.0003.2187; Exhibit RC0281 ICR3838 (069), 6 March 2007, 678, VPL.2000.0003.2264; Exhibit RC0281 ICR3838 (075), 17 April 2007, 795, VPL.2000.0003.2381; Exhibit RC0281 ICR3838 (079), 18 May 2007, 839, VPL.2000.0003.2425.

⁴⁷ Exhibit RC0281 ICR3838 (061), 9 January 2007, 600, VPL.2000.0003.2186.

⁴⁸ Exhibit RC0281 ICR3838 (057), 11 December 2006, 682, VPL.2000.0003.2168; Exhibit RC0281 ICR3838 (061), 9 January 2007, 600, VPL.2000.0003.2186; Exhibit RC0281 ICR3838 (061), 11 January 2007, 602, VPL.2000.0003.2188; Exhibit RC0281 ICR3838 (064), 30 January 2007, 620, VPL.2000.0003.2206.

Dagher provided her with a phone and instructions to pass onto Mr Mannella.⁴⁹

Submissions under Terms of Reference 1 and 2 in relation to Mr Dagher

17. It is submitted that it is open to the Commissioner to find that the two cases of Mr Dagher may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
18. The extent to which the cases of Mr Dagher may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

19. First, Category 1A⁵⁰ applies in relation to both cases in that, between March 2007 and September 2007,⁵¹ Ms Gobbo acted for Mr Dagher while she was a human source,⁵² and did not disclose same to him.⁵³
20. Secondly, Category 1B⁵⁴ applies in relation to both cases in that, between August 2006 and September 2007, which was before and during the period that Ms Gobbo acted for Mr Dagher in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police.⁵⁵
21. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁶
22. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁴⁹ Note: The ICR entry records that '3838 reminded that this is unacceptable for 3838 to involved in such activity knowingly passing on messages and phone to enable MENNALLA and KARAM to complete their importation. 3838 told that there is [REDACTED] for these circumstances. Explained that possible consequences to 3838 as a result of this activity. 3838 instructed not to be involved in the importation. 3838 understands the instruction and the reason for such an instruction. 3838 stated that the DAGHER told 3838 that the phone would not get 3838 into trouble – 3838 should no better than that. That would not stop 3838 being a suspect or charged if transaction monitored by investigators': Exhibit RC0281 ICR3838 (080), 24 May 2007, 853, VPL.2000.0003.2439.

⁵⁰ See Legal Principles Submissions at [249].

⁵¹ See above analysis at [13]-[15].

⁵² See Legal Principles Submissions at [20].

⁵³ Legal Principles Submissions at [239].

⁵⁴ See Legal Principles Submissions at [249].

⁵⁵ See above analysis at [16].

⁵⁶ See Legal Principles Submissions at [249].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

23. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁷
 - 23.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Dagher;
 - 23.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Dagher, appropriate disclosure was made; or alternatively
 - 23.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
24. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [23.1] were taken, and accordingly there was the potential for the right of Mr Dagher to a fair trial to have been interfered with.
25. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Dagher and/or his legal representatives.
26. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁸
27. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁹
28. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁶⁰
29. Category 3A⁶¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁵⁷ See Legal Principles Submissions at [384] and [452]-[457].

⁵⁸ See Legal Principles Submissions at [380]-[385].

⁵⁹ See Legal Principles Submissions at [351], [362]-[373].

⁶⁰ See Legal Principles Submissions at [351], [374].

⁶¹ See Legal Principles Submissions at [465].

30. Category 3B⁶² applies in that, between August 2006 and September 2007, which was before and during the period that Ms Gobbo acted for Mr Dagher in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police,⁶³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
31. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶² See Legal Principles Submissions at [465].

⁶³ See above analysis at [16].

CASE STUDY: MR DAWES (A PSEUDONYM)

The Relevant Case of Mr Dawes

1. The one relevant case of Mr Dawes concerns his convictions before the County Court in 2008, which arose from Operations Fenks and Rakus.¹
2. Operations Fenks and Rakus were dual investigations into the trafficking of ecstasy, cocaine, amphetamines and pseudoephedrine, commenced by the Major Drug Investigation Division commenced in January 2005.²
3. On 8 June 2005, Mr Dawes' vehicle and premises were searched by police, revealing the quantities of 3,4-Methylenedioxymethamphetamine (MDMA) and methamphetamine, and resulting in Mr Dawes' arrest.³
4. The prosecution alleged that Mr Dawes collected 5,000 ecstasy tablets from another on that date and had a discussion with that person about a price for the on-sale of the tablets.⁴ The prosecution case relied upon telephone intercepts and surveillance evidence.⁵
5. In addition, Mr Dawes was charged for offending committed in February 2004. The prosecution alleged that Mr Dawes opened a bank account using a false driver's licence and birth certificate and then used the account to make deposits and withdrawals, thereby obtaining a financial advantage.⁶
6. Mr Dawes was committed to stand trial in the County Court on 29 May 2007 in relation to both sets of offending.⁷
7. On 25 February 2008, Mr Dawes was arraigned and entered a plea of guilty to:

¹ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [59], OPP.0051.0001.0004 at .0047; Un-tendered Criminal History Report: Mr Dawes, 16 December 2019, 2, VPL.0099.0193.1541 @ .1542.

² Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [6], OPP.0051.0001.0004 at .0035; Un-tendered Prosecution opening for plea hearing, *The Queen v Wallace Weider-Rodrigues-Rios, Mr Dawes, Tannar Stevens & Michael Tzitis*, 3 [1], OPP.0051.0001.0004 @ .0021.

³ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [7], [10] OPP.0051.0001.0004 @ .0035; Un-tendered Prosecution opening for plea hearing, *The Queen v Wallace Weider-Rodrigues-Rios, Mr Dawes, Tannar Stevens & Michael Tzitis*, 9–10 [29]–[33], OPP.0051.0001.0004 @ .0027-8.

⁴ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [7]–[8] OPP.0051.0001.0004 @ .0035; Un-tendered Prosecution opening for plea hearing, *The Queen v Wallace Weider-Rodrigues-Rios, Mr Dawes, Tannar Stevens & Michael Tzitis*, 8–9 [24]–[28], OPP.0051.0001.0004 @ .0026-7.

⁵ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [8] OPP.0051.0001.0004 @ .0035.

⁶ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [13]–[14] OPP.0051.0001.0004 @ .0036; Un-tendered Prosecution opening for plea hearing, *The Queen v Wallace Weider-Rodrigues-Rios, Mr Dawes, Tannar Stevens & Michael Tzitis*, 10[35], OPP.0051.0001.0004 @ .0028.

⁷ Un-tendered Summary of Proceedings, *The Queen v Mr Dawes*, 8 January 2010, 2, OPP.0051.0001.0004 @ .0052.

- 7.1. one count of trafficking in not less than a large commercial quantity of MDMA;
 - 7.2. one count of possession of methylamphetamine;
 - 7.3. one count of using false documents; and
 - 7.4. one count of obtaining a financial advantage by deception.⁸
8. On 28 April 2008, Mr Dawes was sentenced to a total effective sentence of six years and six months' imprisonment, with non-parole period of three years' imprisonment.⁹
 9. Mr Dawes filed an application for leave to appeal against sentence. On 23 April 2010, the appeal was allowed, and he was re-sentenced on essentially the same terms as his original sentence.¹⁰

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Dawes

10. Based on the material reviewed, Ms Gobbo provided legal representation to Mr Dawes between September 2006 and February 2008.
11. Ms Gobbo appeared in court on behalf of Mr Dawes on the following occasions:
 - 11.1. on 29 September 2006, for a committal mention;¹¹
 - 11.2. on 19 December 2006, for a committal mention;¹² and
 - 11.3. on 25 February 2008, at the County Court for a plea hearing.¹³

⁸ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [1]–[4], OPP.0051.0001.0004 @ .0034; Un-tendered Prosecution opening for plea hearing, *The Queen v Wallace Weider-Rodrigues-Rios, Mr Dawes, Tannar Stevens & Michael Tzitisidis*, 2, OPP.0051.0001.0004 @ .0020; Un-tendered Summary of Proceedings, *The Queen v Mr Dawes*, 8 January 2010, 3, OPP.0051.0001.0004 @ .0053; Un-tendered Presentment no: C0504703.1, *R v Mr Dawes*, 2006, COR.1026.0001.0005.

⁹ Un-tendered Reasons for Sentence, *R v Mr Dawes, Paul* [2008] VCC 0457, [59], OPP.0051.0001.0004 at .0047; Criminal History Report, Mr Dawes, 16 December 2019, 2 VPL.0099.0193.1541 @ .1542.

¹⁰ Un-tendered Reasons for Sentence, *Mr Dawes v The Queen* [2010] VSCA 92, [18], OPP.0051.0001.0004 @ .0063; Un-tendered Notice of Result of Appeal, *The Queen v Mr Dawes*, 23 April 2010, OPP.0051.0001.0004 @ .0049-50; Un-tendered Criminal History Report, Mr Dawes, 16 December 2019, 2 VPL.0099.0193.1541 @ .1542.

¹¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 September 2006, 59, OPP.0001.0004.0025 @ .0083; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 20 October 2006, 100, MIN.5000.7000.0001 @ .0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 30 October 2006, 33, GMH.0001.0001.0008 @ .0033.

¹² Exhibit RC1568 Ms Gobbo fee book 01, 21 December 2006, 102, MIN.5000.7000.0001 @ .0102, MIN.5000.7000.0001 @ .0102; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 21 December 2006, 2, GMH.0001.0001.0008 @ .0002; Un-tendered Summary of Proceedings, *The Queen v Mr Dawes*, 8 January 2010, 2, OPP.0051.0001.0004 @ .0052.

¹³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 February 2008, 59, OPP.0001.0004.0025 @ .0083; Exhibit RC1568 Ms Gobbo fee book 02, 28 February 2008, 115, MIN.5000.7000.0103 @ .0117; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 07 March 2019, 18, GMH.0001.0001.0002 @ .0018; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 29 February 2008, 52, GMH.0001.0001.0005 @ .0052.

12. Ms Gobbo charged fees in relation to the aforementioned appearances.¹⁴ In addition, Ms Gobbo charged fees for perusal of Mr Dawes' brief, conferring with Mr Dawes, provision of advice and drafting a defence reply.¹⁵
13. The plea hearing of Mr Dawes and his co-accused was heard over three days, indicating that it is likely that Ms Gobbo continued to provide legal representation to Mr Dawes until at least 27 February 2008.¹⁶

The Conduct of Ms Gobbo as a Human Source in relation to Mr Dawes

14. The conduct of Ms Gobbo as a human source in relation to Mr Dawes is discussed in the following paragraphs.
15. Ms Gobbo provided information to Victoria Police concerning Mr Dawes prior to and during her representation of him, between 15 July 2006 and 27 February 2008.¹⁷ The information provided during that period included:
 - 15.1. information concerning Mr Dawes' relationship with Mr David Waters¹⁸
 - 15.2. that Mr Dawes had been referred to her by Mr David Waters and Mr Glen Saunders (former members of police) for representation¹⁹
 - 15.3. the nature of the charges against Mr Dawes²⁰
 - 15.4. that a meeting with Ms Gobbo and Mr Dawes had been cancelled in relation to payment of legal fees²¹
 - 15.5. the name of Mr Dawes' solicitor²²
 - 15.6. the fact that she had communicated with Mr Dawes²³

¹⁴ Exhibit RC1568 Ms Gobbo fee book 01, 20 October 2006, 100, MIN.5000.7000.0001 @ .0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 30 October 2006, 33, GMH.0001.0001.0008 @ .0033; Exhibit RC1568 Ms Gobbo fee book 01, 21 December 2006, 102, MIN.5000.7000.0001 @ .0102, MIN.5000.7000.0001 @ .0102; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 21 December 2006, 2, GMH.0001.0001.0008 @ .0002; Exhibit RC1568 Ms Gobbo fee book 02, 28 February 2008, 115, MIN.5000.7000.0103 @ .0117; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 29 February 2008, 52, GMH.0001.0001.0005 @ .0052; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 07 March 2019, 18, 28, 37GMH.0001.0001.0002 @ .0018, .0028, .0037.

¹⁵ Exhibit RC1568 Ms Gobbo fee book 01, 20 October 2006, 100, MIN.5000.7000.0001 @ .0100; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 30 October 2006, 33, GMH.0001.0001.0008 @ .0033; Exhibit RC1568 Ms Gobbo fee book 02, 30 July 2007, 7, MIN.5000.7000.0103 @ .0109; Exhibit RC1569 Meldrum & Hyland, 'Invoice for fees due to Ms Gobbo', 30 July 2007, 71, GMH.0001.0001.0006 @ .0071.

¹⁶ Un-tendered Summary of Proceedings, *The Queen v Mr Dawes*, 8 January 2010, 3, 5, OPP.0051.0001.0004 @ .0053, .0055.

¹⁷ Exhibit RC0281 ICR3838 (038), 15 July 2006, 359, RCMPI.0050.0001.0001 @ .1945; Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, RCMPI.0051.0001.0001 @ .0807.

¹⁸ Exhibit RC0560 Inspector Dale Flynn diary, 1 September 2006, 100, VPL.001 0.0007.0001 @ .0100; Transcript of Inspector Dale Flynn, 2 October 2019, 7086.

¹⁹ Exhibit RC0281 ICR3838 (038), 15 July 2006, 359 RCMPI.0050.0001.0001 @ .1945; Exhibit RC0281 ICR3838 (044), 5 September 2006, 415, RCMPI.0050.0001.0001 @ .2001; Exhibit RC0281 ICR3838 (045), 13 September 2006, 422, RCMPI.0050.0001.0001 @ .2008.

²⁰ Exhibit RC0281 ICR3838 (038), 15 July 2006, 359, RCMPI.0050.0001.0001 @ .1945: 'drug trafficker'; Exhibit RC0281 ICR3838 (044), 5 September 2006, 415, RCMPI.0050.0001.0001 @ .2001: 'ecstasy trafficker'.

²¹ Exhibit RC0281 ICR3838 (044), 5 September 2006, 416, RCMPI.0050.0001.0001 @ .2002.

²² Exhibit RC0281 ICR3838 (045), 13 September 2006, 422, RCMPI.0050.0001.0001 @ .2008.

²³ Exhibit RC0281 ICR3838 (045), 13 September 2006, 422, RCMPI.0050.0001.0001 @ .2008.

- 15.7. that she had sent a coded message to Mr Dawes' solicitor (Warren Peacock) which mentioned Mr Dawes, in order to get Mr Waters to contact her²⁴
- 15.8. the fact that Mr Waters had contacted her wanting to know about Mr Dawes' plea²⁵
- 15.9. the fact that Mr Dawes' case would 'go to committal, not plea'.²⁶
16. Ms Gobbo continued to provide information concerning Mr Dawes on at least three further occasions; on 12 March 2008, 17 March 2008 and 29 April 2008.²⁷

Submissions under Terms of Reference 1 and 2 in relation to Mr Dawes

17. It is submitted that it is open to the Commissioner to find that the case of Mr Dawes may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
18. The extent to which the case of Mr Dawes may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

19. First, Category 1A²⁸ applies in that, between September 2006 and February 2008,²⁹ Ms Gobbo acted for Mr Dawes while she was a human source,³⁰ and did not disclose same to him.³¹
20. Secondly, Category 1B³² applies in that, between July 2006 and February 2008, which was before and during the period that Ms Gobbo acted for Mr Dawes in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.³³
21. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³⁴
22. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at

²⁴ Exhibit RC0281 ICR3838 (114), 6 December 2007, 1511, RCMPPI.0050.0001.0001 @ .3097.

²⁵ Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, RCMPPI.0051.0001.0001 @ .0807.

²⁶ Exhibit RC0560 Inspector Dale Flynn diary, 1 September 2006, 100, VPL.001 0.0007.0001 @ .0100; Transcript of Inspector Dale Flynn, 2 October 2019, 7086, TRN.2019.10.02.01.C.

²⁷ Exhibit RC0281 ICR2958 (008), 12 March 2008, 93, RCMPPI.0051.0001.0001 @ .0833; Exhibit RC0281 ICR2958 (017), 29 April 2008, 241, RCMPPI.0051.0001.0001 @ .0981; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Fox and Wolf, 17 March 2008, 51, VPL.0005.0104.1175 @ .1225.

²⁸ See Legal Principles Submissions at [249].

²⁹ See above analysis at [11]–[13].

³⁰ See Legal Principles Submissions at [249].

³¹ See Legal Principles Submissions at [249].

³² See Legal Principles Submissions at [249].

³³ See above analysis at [15].

³⁴ See Legal Principles Submissions at [320]–[329] and [307]–[309].

preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

23. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁵
 - 23.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Dawes;
 - 23.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Dawes, appropriate disclosure was made; or alternatively
 - 23.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
24. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [23.1] were taken, and accordingly there was the potential for the right of Mr Dawes to a fair trial to have been interfered with.
25. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Dawes and/or his legal representatives.
26. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³⁶
27. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁷

³⁵ See Legal Principles Submissions at [384] and [452]-[457].

³⁶ See Legal Principles Submissions at [380]-[385].

³⁷ See Legal Principles Submissions at [351], [362]-[373].

28. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁸
29. Category 3A³⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. Category 3B⁴⁰ applies in that, between July 2006 and February 2008, which was before and during the period that Ms Gobbo acted for Mr Dawes in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁴¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
31. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁸ See Legal Principles Submissions at [351], [374].

³⁹ See Legal Principles Submissions at [465].

⁴⁰ See Legal Principles Submissions at [465].

⁴¹ See above analysis at [15].

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT CURRENTLY PUBLISHED

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CASE STUDY NOT CURRENTLY PUBLISHED

CASE STUDY: JACQUES EL-HAGE

The Relevant Case of Jacques El-Hage

1. The one relevant case of Mr Jacques El-Hage arose from Operation Matchless,¹ and concerned his plea of guilty and sentence before the Supreme Court on 20 September 2011 in relation to one charge of trafficking in a commercial quantity of methylamphetamine between 1 September 2002 and 31 March 2003 (the case).²
2. The case concerned Mr El-Hage's involvement in a clandestine laboratory at Rye, which produced methylamphetamine.³ In particular, it was alleged that Mr El-Hage arranged for the supply of necessary chemicals to the manufacturers, and then arranged the delivery of the finished product.⁴ It was alleged that he received payment for his involvement in the form of a portion of the finished product.⁵ His role was characterised as one of "brokering".⁶
3. On 11 April 2003, Mr El-Hage was arrested in relation the offending, following the execution of a search warrant at his home.⁷ He was, however, not charged at that time.⁸ Some years later, in mid-July 2008,⁹ after Mr Cooper had co-operated with police and implicated Mr El-Hage in the offending, he was again arrested and then charged.¹⁰
4. The informant in the matter was Mr Flynn.¹¹ The case against Mr El-Hage included reliance upon the evidence of Mr Cooper, [REDACTED], and Mr Thomas.¹²

¹ See the Narrative Submissions at Chapter 11.

² Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [1], OPP.0043.0006.0006 @ .0125; Un-tendered Presentment No. C0806384.2, *R v El-Hage*, 2011, OPP.0043.0006.0006 @ .0007-.0010.

³ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [4]-[5], OPP.0043.0006.0006 @ .0125.

⁴ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [6], OPP.0043.0006.0006 @ .0125.

⁵ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [6], OPP.0043.0006.0006 @ .0125.

⁶ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [6], OPP.0043.0006.0006 @ .0125.

⁷ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [4], 2 [7] OPP.0043.0006.0006 @ .0125-26. [Cf. Anonymous Submission 037, at 3, suggests that he was arrested on 11 April 2006, but that appears to be an error, see para [2] on that page of submission].

⁸ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [4], OPP.0043.0006.0006 @ .0125.

⁹ There is inconsistency in the evidence as to the precise date on which Mr El-Hage was charged and arrested for the Operation Matchless offending. The ICRs suggest that the date was 18 July 2008 (see Exhibit RC0281 ICR2958 (028), 18 July 2008, 495, VPL.2000.0003.1235). In his evidence, on 3 October 2019, 7185-6, Mr Flynn suggested 21 or 23 July 2008. Anonymous Submission 037 suggests 23 July 2008 (Anonymous Submission 037, 5 [11]-[13]); The sentencing judge stated that it was 23 July 2008 (Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 4 [27], OPP.0043.0006.0006 @ .0128).

¹⁰ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 1 [4], 4 [27], OPP.0043.0006.0006 @ .0125, .0128.

¹¹ Transcript of Inspector Dale Flynn, 3 October 2019, 7187, TRN.2019.10.03.01.

¹² Un-tendered Presentment No. C0806384.2, *R v El-Hage*, 2011, OPP.0043.0006.0006 @ .0007-10; See also un-tendered Annexure A, Electronic and Surveillance Related Evidence in Relation to Milad

5. In June 2009, a contested committal proceeding was conducted, at the end of which Mr El-Hage was committed to stand trial.¹³ Eventually, in May 2011, prior to trial, Mr El-Hage indicated his preparedness to plead guilty.¹⁴ On 20 September 2011, following an earlier plea hearing, Mr El-Hage was sentenced in the Supreme Court to four years' imprisonment, with a non-parole period of two years.¹⁵ In September 2012, Mr El-Hage successfully appealed against the sentence in the Court of Appeal.¹⁶ The appeal did not concern Ms Gobbo. In allowing the appeal, the Court reduced Mr El-Hage's non-parole period to one year.¹⁷

Ms Gobbo's Legal Representation of Jacques El-Hage

6. The evidence before the Commission indicates that Ms Gobbo appeared for or advised Mr El-Hage in relation to the case on, at least, the following occasions:
 - 6.1. On 11 April 2003, Ms Gobbo attended upon Mr El-Hage at the St Kilda Road Police Complex, following his first arrest.¹⁸
 - 6.2. On 23 July 2008, after Mr El-Hage was again arrested and then charged, Ms Gobbo appeared on his behalf in a successful bail application, before the Melbourne Magistrates' Court.¹⁹
 - 6.3. On 10 September 2008, Ms Gobbo appeared on behalf of Mr El-Hage at a committal mention before the Melbourne Magistrates' Court.²⁰
 - 6.4. On 13 October 2008, Ms Gobbo rendered fees in relation to Mr El-Hage's matter for a "[b]rief to draft a Form 10A & appear at Committal Mention incl. conferences & perusal of brief."²¹
 - 6.5. On 17 October 2008, Ms Gobbo rendered fees in relation to Mr El-Hage's matter for a "brief to appear."²²

Mokbel, December 2019 version, OPP.0043.0006.0006 @ .0056; See also re Mr Cooper: Transcript of Inspector Dale Flynn, 20 September 2019, 6668-9, TRN.2019.09.20.01, describing Cooper as "instrumental" in the case; See Transcript of Inspector Dale Flynn, 4 October 2019, 7239, TRN.2019.10.04.01 describing Messrs Cooper and Thomas as "key witnesses".

¹³ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 6 [33], OPP.0043.0006.0006 @ .0130.

¹⁴ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 6 [33], OPP.0043.0006.0006 @ .0130.

¹⁵ Un-tendered Reasons for Sentence, *R v El-Hage* [2011] VSC 452, 10 [53], OPP.0043.0006.0006 @ .0134.

¹⁶ Un-tendered *El-Hage v The Queen* [2012] VSCA 309.

¹⁷ Un-tendered *El-Hage v The Queen* [2012] VSCA 309, 1 [3].

¹⁸ Anonymous Submission 037, 5.

¹⁹ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 25 July 2008, 12, GMH.0001.0001.0002 @ .0012; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 23 July 2008, 21, MCV.0001.0001.0001 @ .00019; Un-tendered Summary of Charges, *R v Mokbel, El-Hage and Kurnaz*, OPP.0043.0006.0006 @ .0011; Exhibit RC0281 ICR2958 (029), 20 July 2008, 500, VPL.2000.0003.1240; Exhibit RC0281 ICR2958 (029), 23 July 2008, 507, VPL.2000.0003.1247.

²⁰ Un-tendered Victoria Police Notice of Committal Hearing, 10 September 2008, VPL.0203.0001.0059; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 10 September 2008, 21, MCV.0001.0001.0001 @ .00019; Exhibit RC1568 Ms Nicola Gobbo fee book, 02, 13 September 2008, 23, MIN.5000.7000.0103 @ .0125.

²¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 13 September 2008, 23, MIN.5000.7000.0103 @ .0125.

²² Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 6 November 2008, 6, GMH.0001.0001.0002 @ .0006; Exhibit RC1568 Ms Nicola Gobbo fee book, 02, 13 September 2008, 23, MIN.5000.7000.0103 @ .0125.

7. Furthermore, it was submitted to the Commission that following Mr El-Hage's release on bail on 23 July 2008, Ms Gobbo continued to provide Mr El-Hage with legal advice about his matter.²³
8. By way of background, it was submitted to the Commission that Ms Gobbo was first introduced to Mr El-Hage in a social setting in approximately 1997 or 1998.²⁴ Ms Gobbo also acted as a lawyer for Mr El-Hage in relation to another unrelated matter in April 2004.²⁵ In addition, it appears that between 2006 and 2008, Ms Gobbo maintained an ongoing professional relationship with Mr El-Hage, providing him with advice from time to time about other legal issues he was then facing. For example:
 - 8.1. on 21 April 2008, Ms Gobbo explained to her handlers that "Jacque [sic] will want to catch up because he has a pending court case to talk about";²⁶ and
 - 8.2. on 29 April 2008, Ms Gobbo provided advice to Mr El-Hage in relation to a police interview, which appears to have concerned an unrelated matter.²⁷
9. It appears that, towards the end of 2008, the professional and social relationship between Ms Gobbo and Mr El-Hage gradually declined.²⁸
10. On the basis of the foregoing, it appears that Ms Gobbo represented Mr El-Hage in relation to the case from at least 23 July 2008 to 17 October 2008.

The Conduct of Ms Gobbo as a Human Source in relation to Mr El-Hage

Prior to charge in mid-July 2008

11. Material before the Commission indicated that Ms Gobbo provided information to Victoria Police about Mr El-Hage from as early as September 2005, very soon after her registration as a human source.²⁹ From that time through to Mr El-Hage being charged on 23 July 2008, Ms Gobbo is recorded as having provided extensive information about him to Victoria Police.³⁰ In particular, such information included:
 - 11.1. information about Mr El-Hage's relationships and interactions with alleged criminal associates, including:

²³ Anonymous Submission 037, 6 [14].

²⁴ Anonymous Submission 037, 2.

²⁵ On 19 April 2004, Ms Gobbo appeared on behalf of Mr El-Hage at Dandenong Magistrates' Court. See Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Tax invoices, 20 April 2004, 45, GMH.0001.0001.0013 @ .0045; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 19 April 2004, 16, MCV.0001.0001.0001 @ .00014; Anonymous Submission 037, 5 [6]-[8].

²⁶ Exhibit RC0281 ICR2958 (015), 21 April 2008, 197, VPL.2000.0003.0937.

²⁷ Exhibit RC0291 ICR2958 (017), 29 April 2008, 241, VPL.2000.0003.0981.

²⁸ The final reference to Mr El-Hage in the ICRs is Exhibit RC0281 ICR2958 (047) 28 November 2008, 718-9, VPL.2000.0003.1458-9; Anonymous Submission 037, 6 [18]-[20].

²⁹ Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White.

³⁰ See generally Un-tendered Summary of ICR Extracts, Jacques El-Hage, VPL.4229.0001.0001.

- 11.1.1. members of the Mokbel family, especially Mr Horthy Mokbel³¹
- 11.1.2. Mr Cooper³²
- 11.1.3. Mr Zlate Cvetanovski³³
- 11.1.4. other persons³⁴
- 11.2. information suggesting Mr El-Hage was involved in drug trafficking activities,³⁵ some of which was passed on to investigators of Victoria Police³⁶
- 11.3. information about his telephone number³⁷
- 11.4. information about his personal life.³⁸
12. Throughout this time, Ms Gobbo and Mr El-Hage also appear to have maintained a relatively close social relationship. In particular, Ms Gobbo frequently attended dinner with Mr El-Hage.³⁹ Whilst the dinners may have

³¹ Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602; Exhibit RC0281 ICR3838 (016) 18 January 2006, 125, VPL.2000.0003.1711; Exhibit RC0281(016), 19 January 2006, 127, VPL.2000.0003.1713; Exhibit RC0281 ICR3838, 29 March 2006 (024), 216, VPL.2000.0003.1802; Exhibit RC0281 ICR3838 (031), 9 May 2006, 292, VPL.2000.0003.1878; RC0281 ICR3838 (019), 22 February 2006, 162, VPL.2000.0003.1748; RC0281 ICR3838 (035), 17 June 2006, 333, VPL.2000.0003.1919; Exhibit RC0281 ICR3838 (036), 22 June 2006, 340, VPL.2000.0003.1926; Exhibit RC0281 ICR3838 (057), 12 December 2006, 583, VPL.2000.0003.2169; Exhibit RC0281 ICR3838 (064), 29 January 2007, 619, VPL.2000.0003.2205; Exhibit RC0281 ICR3838 (70), 14 March 2007, 705, VPL.2000.0003.2291; Exhibit RC0281 ICR3838 (115), 10 December 2007, 1519, VPL.2000.0003.3105; Exhibit RC0281 ICR2958 (010), 19 March 2008, 109, VPL.2000.0003.0849.

³² Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602.

³³ Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737.

³⁴ Exhibit RC0281 ICR3838 (040), 4 August 2006, 381-2, VPL.2000.0003.1967-1968; Exhibit RC0281 ICR3838 (054), 28 November 2006, 567, VPL.2000.0003.2153; Exhibit RC0281 ICR3838 (057), 12 December 2006, 583, VPL.2000.0003.2169; Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527; Exhibit RC0281 ICR3838 (88), 4 July 2007, 985-986, VPL.2000.0003.2571-2; Exhibit RC0281 ICR3838 (094), 14 August 2007, 1086, VPL.2000.0003.2672; Exhibit RC0281 ICR2958 (010), 19 March 2008, 109, VPL.2000.0003.0849.

³⁵ Exhibit RC0281 ICR3838 (019), 22 February 2006, 162, VPL.2000.0003.1748, "Horthy and Jaques El Hajj out trafficking tonight"; Exhibit RC0281 ICR3838 (040), 3 August 2006, 381, VPL.2000.0003.1967, "Seeing Jacques EL HAGE at Waterfront w. his cocaine business guys (DDI O'BRIEN adv. immediately re above re SCSU on EL HAGE) (Controller SANDY WHITE adv)"; Exhibit RC0281 ICR3838 (065), 9 February 2007, 630, VPL.2000.0003.2216; Exhibit RC0281 ICR3838 (070), 12 March 2007, 692, VPL.2000.0003.2278; Exhibit RC0281 ICR3838 (076), 24 April 2007, 808, VPL.2000.0003.2394; Exhibit RC0281 ICR3838 (078), 9 May 2007, 831, VPL.2000.0003.2417; Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527; Exhibit RC0281 ICR3838 (088), 4 July 2007, 985-986, VPL.2000.0003.2571-2; Exhibit RC0281 ICR3838 (094), 14 August 2007, 1086, VPL.2000.0003.2672.

³⁶ Transcript of Inspector Dale Flynn, 2 October 2019, 7092-3, TRN.2019/10.02.01. It appears, however, that Victoria Police's interest in Mr El-Hage were mostly in relation to the Operation Matchless offending.

³⁷ Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (040), 4 August 2006, 381 VPL.2000.0003.1967.

³⁸ Exhibit RC0281 ICR3838 (040), 4 August 2006, 381-2, VPL.2000.0003.1967-8.

³⁹ Exhibit RC0281 ICR3838 (040), 4 August 2006, 382, VPL.2000.0003.1968; Exhibit RC0281 ICR3838 (049), 18 October 2006, 498, 501, VPL.2000.0003.2084, VPL.2000.0003.2087; Exhibit RC0281 ICR3838 (054), 28 November 2006, 567, VPL.2000.0003.2153; Exhibit RC0281 ICR3838 (070), 14 March 2007, 706, VPL.2000.0003.2292, Exhibit RC0281 ICR3838 (075), 18 April 2007, 798, VPL.2000.0003.2384; Exhibit RC0281 ICR3838 (085), 26 June 2007, 940, VPL.2000.0003.2526; Exhibit RC0281 ICR3838 (088), 4 July 2007, 985, VPL.2000.0003.2571; Exhibit RC0281 ICR3838 (092), 23 July 2007, 1052, VPL.2000.0003.2638; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1133, VPL.2000.0003.2719; Exhibit RC0281 ICR3838 (097), 27 August 2007, 1158, VPL.2000.0003.2744; Exhibit RC0281 ICR3838 (101), 19 September 2007, 1232, VPL.2000.0003.2818; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1338, VPL.2000.0003.2924; Exhibit RC0281 ICR3838 (109), 7 November 2007, 1370, VPL.2000.0003.2956; Exhibit RC0281 ICR3838 (110), 12 November 2007, 1391, VPL.2000.0003.2977; Anonymous Submission 037, 4 [5]; Exhibit RC0281 ICR2958 (017) ICR 2958, 28 April 2008, 238, VPL.2000.0003.0978 regarding Mr El-Hage knowledge of Ms Gobbo's place of residence, having dropped her at home in the past.

generally been of a social nature, it is clear that on occasion there was also a professional element to the meetings. For example:

- 12.1. On 14 March 2007, the Informer Contact Reports (ICRs) record that Ms Gobbo attended a dinner with Mr El-Hage and others, as Mr El-Hage was reportedly “very concerned” that he would be charged in relation to the “Rye Lab”, and “want[ed] to discuss possible options” with Ms Gobbo.⁴⁰ When the dinner had finished, Ms Gobbo reported what had occurred to her handlers, including that Mr El-Hage had expressed “concern [that] he is about to be arrested for the Rye Lab ... [and he] wanted advice so he is be prepared for what might happen.”⁴¹
- 12.2. On 16 April 2008, ICRs record Ms Gobbo’s account of a dinner she attended with Mr El-Hage and Mr Alastair Grigor, who appears to have been Mr El-Hage’s solicitor at the time.⁴² Ms Gobbo would later be instructed by Mr Grigor to act on Mr El-Hage’s behalf following his arrest in July 2008.⁴³
- 12.3. Similarly, on 4 June 2008, the ICRs record that Ms Gobbo and Mr Grigor together “had a coffee” with Mr El-Hage.⁴⁴
13. During this period, Ms Gobbo also appeared to have been actively interested in undertaking specific intelligence gathering for Victoria Police in relation to Mr El-Hage. In particular, on 18 October 2006, the ICRs record:⁴⁵

“3838 asked if Purana or SDU would like 3838 to have dinner with EL HAGE. 3838 told that neither SDU or [sic] Purana wish to tasked [sic] in relation to EL HAGE at this time.”

14. In addition, Ms Gobbo is recorded to have provided Victoria Police with advice in relation to Mr El-Hage including:
 - 14.1. On 30 October 2006, Ms Gobbo met with her handlers to peruse briefs of evidence against a number of persons, in relation to ongoing investigations at the time.⁴⁶ During the meeting, having perused the briefs, Ms Gobbo advised police on the state of a brief of evidence against Mr Cooper, and commented that Mr El-Hage, among others, was “still to be charged”.⁴⁷ According to the ICRs, she advised police that he was “clearly identified ... will be able to argue re bail that they knew and did not flee jurisdiction”.⁴⁸ Ms Gobbo’s commentary and advice was passed on by the Source Development Unit (SDU) to Mr Flynn verbally.⁴⁹ Mr Flynn acknowledged in his evidence to the Commission that Ms Gobbo was suggesting that, if Mr El-Hage and others were not charged soon, they would be able to argue in due

⁴⁰ Exhibit RC0281 ICR3838 (070), 14 March 2007, 705, VPL.2000.0003.2291.

⁴¹ Exhibit RC0281 ICR3838 (070), 14 March 2007, 706-707, VPL.2000.0003.2292-3.

⁴² Exhibit RC0281 ICR2958 (014), 16 April 2008, 173-174, VPL.2000.0003.0913-4; Exhibit RC0281 ICR2958 (014), 14 April 2008, 162, VPL.2000.0003.0902.

⁴³ See above at [7]-[8]

⁴⁴ Exhibit RC0281 ICR2958 (022), 4 June 2008, 385, VPL.2000.0003.1125.

⁴⁵ Exhibit RC0281 ICR3838 (049), 18 October 2006, 496-497, VPL.2000.0003.2082-3.

⁴⁶ Exhibit RC0281 ICR3838 (051), 30 October 2006, 528, VPL.2000.0003.2114; Transcript of Inspector Dale Flynn, 2 October 2019, 7089-90, TRN.2019.10.02.01.

⁴⁷ Exhibit RC0281 ICR3838 (051), 30 October 2006, 532-533, VPL.2000.0003.2118-9; Transcript of Inspector Dale Flynn, 2 October 2019, 7091, TRN.2019.10.02.01.

⁴⁸ Exhibit RC0281 ICR3838 (051), 30 October 2006, 533, VPL.2000.0003.2119.

⁴⁹ Exhibit RC0281 ICR3838 (051), 30 October 2006, 533, VPL.2000.0003.2119; Transcript of Inspector Dale Flynn, 2 October 2019, 7091-92, TRN.2019.10.02.01.

course, in favour of a grant of bail and to address any concern of a flight risk, that they were earlier aware of the prospect of being charged and yet did not flee the jurisdiction.⁵⁰ He accepted that, with the benefit of hindsight, his receipt of such information from Ms Gobbo in the circumstances described above, was “rather extraordinary”.⁵¹

- 14.2. On 30 January 2008, Ms Gobbo advised her handlers Mr Sandy White and Peter Smith that, in her view: “There was enough on the ... old hand-up brief to charge [Mr El-Hage] with [Cooper].”⁵² She asked them, “Why wouldn’t you charge him?”⁵³
15. Moreover, at times, Ms Gobbo and the SDU discussed her interactions with Mr El-Hage. For example, on 30 April 2008, prior to Ms Gobbo attending a dinner with Mr El-Hage, the ICRs record Ms Gobbo and the SDU having jointly planned the “dinner strategy”, as follows:⁵⁴

SDU Management:

...

Talk about dinner strategy.

She will get feedback of Jacque EL HAGE meeting with Purana

*Then launch into her angry spiel and announce that Mokbel*s are wiped and to pass on message that she wants nothing more to do with them owing to the way she is being treated.*

*Re-iterated with Jacque that she needs to finish on very angry note and leave the table giving Jacque no doubt as to her resolve and resentment to the Mokbel*s and Bayeh.*

Understood. She will.

16. Further, in the lead up to Mr El-Hage’s arrest and charge in mid-July 2008, Ms Gobbo appears to have been utilised by Victoria Police to obtain specific intelligence about his “movements”.⁵⁵ In particular, on 19 June 2008, the ICRs record that Mr Dale Flynn, then a detective of the Purana Taskforce, requested the SDU to obtain “any intell [sic] on movements of El-Hage” in anticipation of his impending arrest.⁵⁶ Later that evening, Mr Peter Smith asked Ms Gobbo “re movements of El Hage”, and noted that Ms Gobbo’s response was that she “believes wife left him, has [REDACTED] who got o [sic] [REDACTED] [REDACTED] on the other side of town.”⁵⁷ The following morning, on 20 June 2008, Mr Peter Smith

⁵⁰ Transcript of Inspector Dale Flynn, 2 October 2019, 7091, TRN.2019.10.02.01.

⁵¹ Transcript of Inspector Dale Flynn, 2 October 2019, 7094, TRN.2019.10.02.01.

⁵² Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 30 January 2008, 161-162, VPL.0005.0115.0958 @ .1118-9; Exhibit RC0281 ICR2958 (001), 30 January 2008, 17, VPL.2000.0003.0757.

⁵³ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 30 January 2008, 161-162, VPL.0005.0115.0958 @ .1118-9; Exhibit RC0281 ICR2958 (001), 30 January 2008, 17, VPL.2000.0003.0757.

⁵⁴ Exhibit RC0281 ICR2958 (017), 30 April 2008, 243, VPL.2000.0003.0983.

⁵⁵ Exhibit RC0281 ICR2958 (025), 19 – 20 June 2008, 467-468, VPL.2000.0003.1207-8.

⁵⁶ Exhibit RC0281 ICR2958 (025), 19 June 2008, 467 VPL.2000.0003.1207; Transcript of Inspector Dale Flynn, 3 October 2019, 7184-5, TRN.2019.10.03.01.

⁵⁷ Exhibit RC0281 ICR2958 (025), 19 June 2008, 467, VPL.2000.0003.1207.

provided the update to Mr Flynn, noting “Adv Flynn re El Hage & [REDACTED] kids/wife left.”⁵⁸

Upon and Following Charge in Mid-July 2008

17. On 18 July 2008, at or around the time of Mr El-Hage’s arrest,⁵⁹ Ms Gobbo appears to have expressed her frustration to the SDU for not having been “called and briefed re the arrest of Jacques El-Hage”.⁶⁰ She told police that she had been “approached to do the bail application which [she] could not get out of”.⁶¹
18. The next day, on 19 July 2008, in apparent reference to the circumstances surrounding Mr El-Hage, Ms Gobbo is recorded as having “accus[ed] handler of causing [her] to be put into an unethical situation where [she] is forced to represent someone who has been charged as a result of information provided by [her]”.⁶²
19. On 20 July 2008, Ms Gobbo reported to her handlers that she had been “on the phone for 2 hours with [Mr El-Hage] re bail, the charges, what he will do, bail issues, concerns etc.”⁶³
20. On 21 July 2008, Ms Gobbo is recorded as having informed her handler, Mr Wolf, that she had spent 2 hours explaining to Mr El-Hage that she had a conflict of interest in representing him, because she had previously represented Cooper.
21. On the same day, the ICRs record that Ms Gobbo told her handlers that she would telephone Mr Flynn regarding Mr El-Hage’s “bail matter to work out [an] appropriate date”.⁶⁴ In his evidence before the Commission, Mr Flynn confirmed that such conversations did take place between him and Ms Gobbo.⁶⁵ Mr Flynn said that, in those conversations, he was dealing with Ms Gobbo in her capacity as Mr El-Hage’s legal representative.⁶⁶ He acknowledged that he was aware at the time of the fact that she was also acting as a human source for Victoria Police in relation to Mr El-Hage.⁶⁷ Whilst Mr Flynn conceded that the circumstances were “complex”, he maintained that “the conflict of her involvement with Mr El-Hage and others was a matter for her”.⁶⁸
22. On 23 July 2008, Ms Gobbo conducted a bail application on behalf of Mr El-Hage before the Magistrates’ Court at Melbourne.⁶⁹ On that afternoon,

⁵⁸ Exhibit RC0281 ICR2958 (025), 20 June 2008, 468, VPL.2000.0003.1208. Transcript of Inspector Dale Flynn, 3 October 2019, 7184-5, TRN.2019.10.03.01.

⁵⁹ See above at [7]-[8].

⁶⁰ Exhibit RC0281 ICR2958 (028), 18 July 2008, 495, VPL.2000.0003.1235.

⁶¹ Exhibit RC0281 ICR2958 (028), 18 July 2008, 495, VPL.2000.0003.1235.

⁶² Exhibit RC0281 ICR2958 (028), 18 July 2008, 496, VPL.2000.0003.1236.

⁶³ Exhibit RC0281 ICR2958 (029), 20 July 2008, 500, VPL.2000.0003.1240.

⁶⁴ Exhibit RC0281 ICR2958 (029), 21 July 2008, 503, VPL.2000.0003.1243.

⁶⁵ Transcript of Inspector Dale Flynn, 3 October 2019, 7185-6, TRN.2019.10.03.01.

⁶⁶ Transcript of Inspector Dale Flynn, 3 October 2019, 7186, TRN.2019.10.03.01.

⁶⁷ Transcript of Inspector Dale Flynn, 3 October 2019, 7186-7, TRN.2019.10.03.01.

⁶⁸ Transcript of Inspector Dale Flynn, 3 October 2019, 7187, TRN.2019.10.03.01.

⁶⁹ Exhibit RC1569 Meldrum & Hyland Barristers’ Clerk Ms Nicola Gobbo Statement of Account, 25 July 2008, 12 GMH.0001.0001.0002 @ .0012; Exhibit RC1841 Magistrates’ Court of Victoria Record Persons represented by Ms Nicola Gobbo, 23 July 2008, 21, MCV.0001.0001.0001 @ .00019; Un-tendered Summary of Charges, R v Mokbel, El-Hage and Kurnaz, OPP.0043.0006.0006 @ .0011; Exhibit RC0281 ICR2958 (029), 20 July 2008, 500, VPL.2000.0003.1240; Exhibit RC0281 ICR2958 (029), 23 July 2008, 507, VPL.2000.0003.1247.

immediately following the hearing, Ms Gobbo reported the outcome to her handlers. The ICRs record as follows:⁷⁰

- “RS mentioned that had finished with Jacques EL HAJE at court and had secretly obtained all of the phone numbers from his phone
 - asked RS for them, RS replied would give them to handler later
 - RS admiring Dale FLYNN and that the bail application went smoothly”.
23. On 4 August 2008, Ms Gobbo provided her handlers with a list of several dozen telephone contacts and numbers, which she had covertly obtained from Mr El-Hage’s phone whilst representing him at this bail application.⁷¹
24. On 21 August 2008, Ms Gobbo expressed to her handlers her “dislike” for Mr El-Hage, and appeared to convey instructions she had received from him.⁷² The ICRs record that Ms Gobbo reported: “[Mr El-Hage] thinks he made no money out of drug trafficking so he has not done anything wrong.”⁷³ She went on to advise and represent Mr El-Hage in October 2008, as set out above.⁷⁴
25. In June 2009, committal proceedings took place in relation to the case, during which Mr Flynn gave evidence as the informant.⁷⁵ At no point during his evidence did Mr Flynn reveal or disclose the true circumstances of Ms Gobbo’s relevant conduct as a human source.⁷⁶ Even when he was specifically pressed under cross-examination at the committal hearing as to the circumstances of Mr Cooper’s arrest and his agreeing to co-operate with police, Mr Flynn failed to reveal or disclose the role of Ms Gobbo and the relevant members of police in those events.⁷⁷

Relevant Conduct in relation to Mr Cooper

26. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr El-Hage’s matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 26.1. the discovery of the offending the subject of Operation Posse;
 - 26.2. Mr Cooper being arrested in Operation Posse;
 - 26.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and

⁷⁰ Exhibit RC0281 ICR2958 (029), 23 July 2008, 507, VPL.2000.0003.1247.

⁷¹ Exhibit RC0281 ICR2958 (030), 4 August 2008, 533, 537-8, VPL.2000.0003.1273, 1277-8; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Wolf, Sandy White, and Green, 4 August 2008, 228 – 234, VPL.0100.0239.0001 @ .0228 - .0234.

⁷² Exhibit RC0281 ICR2958 (034), 21 August 2008, 562, VPL.2000.0003.1302.

⁷³ Exhibit RC0281 ICR2958 (034), 21 August 2008, 562, VPL.2000.0003.1302.

⁷⁴ See above at paragraph [7]. Exhibit RC1568 Ms Nicola Gobbo fee book 02, 14 October 2008, 23 (MIN.5000.7000.0103 @ .0125; Exhibit RC1569 Meldrum & Hyland Barristers’ Clerk Ms Nicola Gobbo Statement of Account, 6 November 2008, 6, GMH.0001.0001.0002 @ .0006.

⁷⁵ Transcript of Inspector Dale Flynn, 3 October 2019, 7178-82, TRN.2019.10.03.01.

⁷⁶ Transcript of Inspector Dale Flynn, 3 October 2019, 7178-82, TRN.2019.10.03.01.

⁷⁷ Transcript of Inspector Dale Flynn, 3 October 2019, 7178-82, TRN.2019.10.03.01; See the Narrative Submissions at Chapter 11.

undertaking to give evidence in subsequent prosecutions; and (it follows)

- 26.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr El-Hage (among others).
27. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr El-Hage, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr El-Hage may have been deprived of any opportunity to object to the admissibility of this evidence.
28. Further, as set out in the Case Study of [REDACTED] at paragraphs 8 to 10, it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr El-Hage, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

Relevant Conduct in relation to Mr Thomas

29. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is also relevant to an assessment of Mr El-Hage's matter. As set out in the Narrative Submissions at Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct may have led Mr Thomas to his decision to assist and co-operate with authorities. As with Mr Cooper, such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr El-Hage, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr El-Hage may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions to the Commission regarding Mr El-Hage

30. It was submitted to the Commission that:
- 30.1. in the relevant period,⁷⁸ Mr El-Hage had "disclosed details of his activities and those of his associates to Ms Gobbo in the context of believing that information to be retained by her as confidential and not to be disclosed";⁷⁹

⁷⁸ Anonymous Submission 037, 2, which appears to define the relevant period as 1997 to 2006. It is unclear why the relevant period is confined to 2006 when Mr El-Hage was represented by Ms Gobbo in 2008. Further, it is noted that page 3 contains a heading "Background of the Relevant Period between 1998 – 2008".

⁷⁹ Anonymous Submission 037, 6 [7].

- 30.2. the prosecution case against him in the Operation Matchless matter relied heavily on the evidence of Messrs Cooper, a [REDACTED] and Thomas;⁸⁰ and
- 30.3. when he decided to plead guilty to the charge, he was not aware that the statements of those witnesses were “procured by Victoria Police with the assistance of Gobbo”.⁸¹
31. Further, it was submitted to the Commission that if aware “of the fact and circumstances of Ms Gobbo’s involvement with Messrs Cooper, and Thomas and Victoria Police,” Mr El-Hage would:
 - 31.1. not have engaged Ms Gobbo to represent him;
 - 31.2. not have pleaded guilty to charges based on the evidence of Messrs Cooper and Thomas; and
 - 31.3. have challenged the admissibility of the evidence of Messrs Cooper and Thomas.⁸²
32. Further, it is asserted that he may have sought a permanent stay of the criminal proceedings on the basis he could not receive a fair trial given the breach of the duty of confidentiality and legal professional privilege by Ms Gobbo.

Submissions under Terms of Reference 1 and 2 in relation to Mr El-Hage

33. It is submitted that it is open to the Commissioner to find that the case of Mr El-Hage may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
34. This case is linked to the cases of Mr Thomas and Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, Chapters 7 (concerning Mr Thomas) and 11 (concerning Mr Cooper).
35. These submissions should be read in conjunction with the Narrative Submissions, Chapters 13 and 17, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr El-Hage.
36. The extent to which the case of Mr El-Hage may have been affected can be measured by virtue of the following matters.

⁸⁰ Anonymous Submission 037, 7 [25]-[27].

⁸¹ Anonymous Submission 037, 9 [33].

⁸² Anonymous Submission 037, 9 [34].

Conduct of Ms Gobbo

37. First, Category 1A⁸³ applies in that, between around 23 July 2008 and 17 October 2008,⁸⁴ Ms Gobbo acted for Mr El-Hage while she was a human source,⁸⁵ and did not disclose same to him.⁸⁶
38. Secondly, Category 1B⁸⁷ applies in that, Ms Gobbo provided information in relation to Mr El-Hage to members of Victoria Police, prior to⁸⁸ and during⁸⁹ the period in which she acted for Mr El-Hage, and did not disclose same to him.
39. Thirdly, Category 2A⁹⁰ applies in that evidence relied upon by the prosecution in the case against Mr El-Hage, namely the evidence of Mr Cooper,⁹¹ ██████████ ██████████,⁹² and Mr Thomas,⁹³ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹⁴
40. Fourthly, Category 2B⁹⁵ applies in that Ms Gobbo had knowledge of the circumstances founding the foregoing [39] and failed to disclose same to her client, Mr El-Hage, thereby depriving him of the ability to object to the admission of that evidence.
41. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁹⁶ Further, in certain instances identified above,⁹⁷ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁹⁸
42. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁸³ See Legal Principles Submissions at [249].

⁸⁴ See above analysis at [10].

⁸⁵ See Legal Principles Submissions at [20].

⁸⁶ See Legal Principles Submissions at [239].

⁸⁷ See Legal Principles Submissions at [249].

⁸⁸ See above analysis at [11]-[16].

⁸⁹ See above analysis at [18]-[24].

⁹⁰ See Legal Principles Submissions at [249].

⁹¹ See above analysis at [4] and [26]-[27].

⁹² See above analysis at [4] and [28].

⁹³ See above analysis at [4] and [29].

⁹⁴ See Legal Principles Submissions at [196]-[222].

⁹⁵ See Legal Principles Submissions at [249].

⁹⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁹⁷ See, eg, above analysis at [22]-[24].

⁹⁸ See Legal Principles Submissions at [310]-[319] and [301]-[306].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

43. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁹
 - 43.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr El-Hage;
 - 43.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr El-Hage, appropriate disclosure was made; or alternatively
 - 43.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
44. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [43.1] were taken, and accordingly there was the potential for the right of Mr El-Hage to a fair trial to have been interfered with.
45. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr El-Hage and/or his legal representatives.
46. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁰⁰
47. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁰¹
48. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁰²
49. Category 3A¹⁰³ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁹⁹ See Legal Principles Submissions at [384] and [452]-[457].

¹⁰⁰ See Legal Principles Submissions at [380]-[385].

¹⁰¹ See Legal Principles Submissions at [351], [362]-[373].

¹⁰² See Legal Principles Submissions at [351], [374].

¹⁰³ See Legal Principles Submissions at [465].

50. Category 3B¹⁰⁴ applies in that, Ms Gobbo provided information in relation to Mr El-Hage to members of Victoria Police, prior to¹⁰⁵ and during¹⁰⁶ the period in which she acted for him, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
51. Category 4A¹⁰⁷ applies in that, as noted above at [50], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
52. Category 4B¹⁰⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
53. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁰⁴ See Legal Principles Submissions at [465].

¹⁰⁵ See above analysis at [11]-[16]

¹⁰⁶ See above analysis at [18]-[24]

¹⁰⁷ See Legal Principles Submissions at [465].

¹⁰⁸ See Legal Principles Submissions at [465].

CASE STUDY: MR ELK (A PSEUDONYM); CHAFIC ISSA; DAVID TRICARICO

1. During 2006 and 2007, Purana Taskforce commenced an investigation, codenamed 'Operation Magnum', into an enterprise involving the large-scale manufacture and distribution of methylamphetamine.¹
2. On 5 June 2007, the investigation culminated in the arrest of at least nine persons associated with the enterprise, including Mr Antonios (Tony) Mokbel who was arrested and charged in Greece.²
3. The prosecution case was that Mr Tony Mokbel was the principal of the enterprise, which involved the participation of many individuals known as "the company".³ It was alleged that Mr Tony Mokbel arranged for methylamphetamine to be manufactured and delivered to Mr Joseph Mansour and Mr Bartholomew Rizzo, who then on sold it.⁴
4. The investigation was instigated by, and depended on, the evidence of a registered human source whose intelligence led to the implementation of telephone intercepts and covert audio recordings against members of "the company". The registered human source also made statements against Mr Tony Mokbel and other co-accused, and provided police with [REDACTED].⁵
5. The cases pertaining to the following three co-accused associated with Operation Magnum will be addressed below:
 - 5.1. Mr David Tricarico
 - 5.2. Mr Elk
 - 5.3. Mr Chafic Issa.

¹ Un-tendered Summary of Prosecution Opening, *R v Antonios Sajih Mokbel, Mr Elk and David Tricarico*, 26 August 2010, 156 [110], OPP.0043.0005.0003 @.0156.

² Un-tendered Brief Summary, Summary of Circumstances, undated, 1, OPP.0043.0005.0003 @.0017; Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 5 [17], OPP.0043.0005.0003 @.0309; Un-tendered Supreme Court of Appeal, Applicant's Written Case, *R v David Tricarico*, 2011, 2 [5], OPP.0043.0005.0003 @.0326.

³ Un-tendered Brief Summary, Summary of Circumstances, undated, 1, OPP.0043.0005.0003 @.0017.

⁴ Un-tendered Sentence, *R v Antonios Sajih Mokbel*, [2012] VSC 255, 7 [34] – 9 [43], RCMP.0010.0002.0002 @ .0277-.0279; Un-tendered Prosecution Opening (Facts) on Plea in relation to Operation Magnum, *R v Antonios Sajih Mokbel*, 21 May 2012, 4 - 5 [16], RCMP.0010.0002.0002 @.0017-.0018.

⁵ Un-tendered Statement of registered human source, 25 April 2007, VPL.0201.0001.0350 [REDACTED] refers [REDACTED], apparently maintained [REDACTED] Un-tendered Reasons for Sentence, *R v Antonios Sajih Mokbel*, [2012] VSC 255, 7 [35] – 8 [36], RCMP.0010.0002.0002 @ .0277-.0278.

MR ELK (A PSEUDONYM)

The Relevant Cases of Mr Elk

6. The prosecution case was Mr Elk and Mr Issa working closely together and assisted each other in the manufacturing process. It was alleged that Mr Elk received and converted the P2P to methylamphetamine, and Mr Issa delivered the finished product to others and collected cash earnings associated with the enterprise.⁶
7. On 4 October 2010, Mr Elk was arraigned and pleaded guilty to:
 - 7.1. one count of attempting to pervert the course of justice;⁷
 - 7.2. one count of trafficking in a large commercial quantity of methylamphetamine;
 - 7.3. one count of knowingly dealing with proceeds of crime;
 - 7.4. one count of possession of cannabis; and
 - 7.5. three counts of possession of category A longarm firearms.⁸
8. A contested plea hearing was conducted in June 2011.⁹
9. On 5 September 2011, Mr Elk was sentenced to a total effective sentence of 11 years' imprisonment, with a non-parole period of eight years' imprisonment.¹⁰
10. Mr Elk made applications for leave to appeal against sentence to the Victorian Court of Appeal and to the High Court of Australia, which were both ultimately dismissed.¹¹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Elk

11. On 16 January 2008, Ms Gobbo charged fees for a 'brief to advise, peruse material (20 volumes) and draft chronology' in relation to the matters of Mr Elk and Mr Issa.¹² There is nothing to suggest that she continued to provide representation to Mr Elk following submission of this invoice.

⁶ Un-tendered Summary of Prosecution Opening, *R v Antonios Sajih Mokbel, Mr Elk and David Tricarico*, 26 August 2010, 157-158 [14], OPP.0043.0005.0003 @.0157-.0158.

⁷ Note: this offence concerned Mr Elk's role in assisting Mr Antonios Mokbel to leave Australia whilst on bail during the course of his trial.

⁸ *R v Mr Elk* [2011] VSC 423, [1].

⁹ *R v Mr Elk* [2011] VSC 423, [4].

¹⁰ *R v Mr Elk* [2011] VSC 423, [39]; Un-tendered Victoria Police Criminal History Report, Mr Elk, 2, VPL.0099.0193.1639 @.1640.

¹¹ Un-tendered Supreme Court of Appeal Judgment, *Mr Elk v The Queen*, [2012] VSCA 160, 1, OPP.0043.0005.0003 @.0375; *Mr Elk v The Queen* [2013] HCA 31, [38]; Un-tendered Victoria Police Criminal History Report, Mr Elk, 1, VPL.0099.0193.1639 @.1639.

¹² Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 7 March 2019, 71, GMH.0001.0001.0005 @ .0071.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Elk

12. Ms Gobbo provided information to Victoria Police concerning Mr Elk during her representation of him, on at least one occasion. On 15 January 2008, she advised that she was preparing a chronology for Mr Alistair Grigor in relation to Mr Issa and Mr Elk.¹³
13. Ms Gobbo provided information to police concerning Mr Elk following her representation, on at least the following three occasions,¹⁴ however it is not submitted that she later represented Mr Elk.

Submissions under Terms of Reference 1 and 2 in relation to Mr Elk

14. It is submitted that it is open to the Commissioner to find that the case of Mr Elk may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. The extent to which the case of Mr Elk may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

16. First, Category 1A¹⁵ applies in that, around January 2008,¹⁶ Ms Gobbo acted for Mr Elk while she was a human source,¹⁷ and did not disclose same to him.¹⁸
17. Secondly, Category 1B¹⁹ applies in that, in January 2008, which was during the period that Ms Gobbo acted for Mr Elk in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.²⁰
18. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²¹
19. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the

¹³ Exhibit RC0281 ICR3838 (119), 15 January 2008, 1575, VPL.2000.0003.3161.

¹⁴ Exhibit RC0281 ICR3838 (119), 18 January 2008, 1579, VPL.2000.0003.3165; Exhibit RC0281 ICR2958 (001), 31 January 2008, 19, VPL.2000.0003.0759; Exhibit RC0281 ICR2958 (013), 11 April 2008, 152, VPL.2000.0003.0892.

¹⁵ See Legal Principles Submissions at [249].

¹⁶ See above analysis at [11].

¹⁷ See Legal Principles Submissions at [20].

¹⁸ See Legal Principles Submissions at [239].

¹⁹ See Legal Principles Submissions at [249].

²⁰ See above analysis at [12].

²¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

20. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²²
 - 20.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Elk;
 - 20.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Elk, appropriate disclosure was made; or alternatively
 - 20.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
21. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [20.1] were taken, and accordingly there was the potential for the right of Mr Elk to a fair trial to have been interfered with.
22. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Elk and/or his legal representatives.
23. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²³
24. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁴
25. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁵
26. Category 3A²⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of

²² See Legal Principles Submissions at [384] and [452]-[457].

²³ See Legal Principles Submissions at [380]-[385].

²⁴ See Legal Principles Submissions at [351], [362]-[373].

²⁵ See Legal Principles Submissions at [351], [374].

²⁶ See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

27. Category 3B²⁷ applies in that, in January 2008, which was during the period that Ms Gobbo acted for Mr Elk in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁸ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
28. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁷ See Legal Principles Submissions at [465].

²⁸ See above analysis at [12].

CHAFIC ISSA

The Relevant Cases of Mr Issa

29. The prosecution case against Mr Issa is outlined at [6] above.
30. Mr Issa entered a plea of guilty to:
 - 30.1. one count of attempting to pervert the course of justice;
 - 30.2. one count of trafficking a large commercial quantity of methylamphetamine;
 - 30.3. one count of knowingly dealing with proceeds of crime; and
 - 30.4. one count of possession of cannabis.²⁹
31. Plea hearings were conducted on 21 August 2009 and 2 September 2009.³⁰
32. On 24 November 2009, Mr Issa was sentenced to a total effective sentence of 12 years and six months' imprisonment, with a non-parole period of eight years and six months.³¹
33. Mr Issa made applications for leave to appeal against sentence to the Victorian Court of Appeal and to the High Court of Australia, which were both ultimately dismissed.³²

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Issa

34. As outlined at para [11], on 16 January 2008, Ms Gobbo charged fees for a brief to provide advice and draft a chronology concerning Mr Issa's case.³³ There is nothing to suggest she continued to provide representation to Mr Issa following submission of this invoice.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Issa

35. Ms Gobbo provided information to Victoria Police concerning Mr Issa during her representation of him, on at least the following two occasions:

²⁹ *The Queen v Chafic Issa* [2009] VSC 633, [1].

³⁰ *The Queen v Chafic Issa* [2009] VSC 633.

³¹ *The Queen v Chafic Issa* [2009] VSC 633, [48]; Un-tendered Victoria Police Criminal History Report, Chafic Issa, 2, VPL.0099.0193.2552 @.2553.

³² Un-tendered Supreme Court of Appeal Judgment, *Issa v The Queen*, [2012] VSCA 160, 1, OPP.0043.0005.0003 @.0375; *Mr Elk v The Queen* [2013] HCA 31, [38]; Un-tendered Victoria Police Criminal History Report, Chafic Issa, 1, VPL.0099.0193.2552 @.2552.

³³ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 7 March 2019, 71, GMH.0001.0001.0005 @ .0071.

- 35.1. On 13 January 2008, Ms Gobbo told her handler that Mr Mokbel had asked who she was acting for in relation to Operation Magnum. She told her handler she was acting for 'Isser and Eliza FINN'.³⁴
- 35.2. On 15 January 2008, as described at [12] above, Ms Gobbo told her handler that she was preparing a chronology for Mr Grigor in relation to Mr Issa and Mr Elk.³⁵
36. Ms Gobbo provided information to police concerning Mr Issa following her representation on at least one occasion. On 31 January 2008, Ms Gobbo provided information concerning the possible funding of Mr Issa and Mr Elk' court cases,³⁶ however it is not submitted that Ms Gobbo later represented Mr Issa.

Submissions under Terms of Reference 1 and 2 in relation to Mr Issa

37. It is submitted that it is open to the Commissioner to find that the case of Mr Issa may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
38. The extent to which the case of Mr Issa may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

39. First, Category 1A³⁷ applies in that, around January 2008,³⁸ Ms Gobbo acted for Mr Issa while she was a human source,³⁹ and did not disclose same to him.⁴⁰
40. Secondly, Category 1B⁴¹ applies in that, in January 2008, which was during the period that Ms Gobbo acted for Mr Issa in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁴²
41. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴³
42. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the

³⁴ Exhibit RC0281 ICR3838 (119), 13 January 2008, 1568, VPL.2000.0003.3154.

³⁵ Exhibit RC0281 ICR3838 (119), 15 January 2008, 1575, VPL.2000.0003.3161.

³⁶ Exhibit RC0281 ICR2958 (001), 31 January 2008, 19, VPL.2000.0003.0759.

³⁷ See Legal Principles Submissions at [249].

³⁸ See above analysis at [34].

³⁹ See Legal Principles Submissions at [20].

⁴⁰ See Legal Principles Submissions at [239].

⁴¹ See Legal Principles Submissions at [249].

⁴² See above analysis at [35].

⁴³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

43. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁴
 - 43.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Issa;
 - 43.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Issa, appropriate disclosure was made; or alternatively
 - 43.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
44. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [43.1] were taken, and accordingly there was the potential for the right of Mr Issa to a fair trial to have been interfered with.
45. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Issa and/or his legal representatives.
46. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁵
47. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴⁶
48. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁴⁷
49. Category 3A⁴⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of

⁴⁴ See Legal Principles Submissions at [384] and [452]-[457].

⁴⁵ See Legal Principles Submissions at [380]-[385].

⁴⁶ See Legal Principles Submissions at [351], [362]-[373].

⁴⁷ See Legal Principles Submissions at [351], [374].

⁴⁸ See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

50. Category 3B⁴⁹ applies in that, in January 2008, which was during the period that Ms Gobbo acted for Mr Issa in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
51. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁹ See Legal Principles Submissions at [465].

⁵⁰ See above analysis at [35].

DAVID TRICARICO

The Relevant Cases of Mr Tricarico

52. The prosecution case was that Mr Tricarico was responsible for chemically converting Phenyl acetic Acid to phenyl-2-propane (P2P), a major precursor chemical used in the manufacture of methylamphetamine, and subsequently delivering the P2P to others.⁵¹ It was alleged that Mr Tricarico became involved in the enterprise upon the death of his father, Max Ferola, who was an associate of Mr Mokbel.⁵² The sentencing judge acknowledged that Mr Tricarico was not part of “the company”, but that his activities concerned the manufacture and supply of P2P to “the company”.⁵³
53. On 20 September 2010, Mr Tricarico was arraigned and entered a plea of guilty to one count of trafficking not less than a large commercial quantity of P2P.⁵⁴
54. Plea hearings were conducted on 13 December 2010 and 14 December 2010.⁵⁵
55. On 1 March 2011, Mr Tricarico was convicted and sentenced to five years’ imprisonment, with a non-parole period of three years’ imprisonment.⁵⁶
56. Mr Tricarico made an application for leave to appeal against sentence, which was ultimately dismissed by the Victorian Court of Appeal on 30 July 2012.⁵⁷

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo’s Legal Representation of Mr Tricarico

57. Whilst it is apparent that Ms Gobbo was familiar with Mr Tricarico’s family and had met Mr Tricarico prior to his arrest on 5 June 2007, based on the material reviewed by Counsel Assisting, it is not entirely clear as to when Ms Gobbo first became acquainted with him. On 30 April 2007, Ms Gobbo mentioned Mr Tricarico to her handler in the context of providing information concerning Mr

⁵¹ Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 4 – 5 [15], OPP.0043.0005.0003 @.0308-.0309.

⁵² Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 3 [13], OPP.0043.0005.0003 @.0307.

⁵³ Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 3 [13], OPP.0043.0005.0003 @.0307.

⁵⁴ Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 1 [1], OPP.0043.0005.0003 @.0305; Un-tendered Presentment No. C0705786, *R v David Tricarico*, 20 September 2010, 1, OPP.0043.0005.0003 @.0010.

⁵⁵ Un-tendered Supreme Court Appeal, Registrar’s Neutral Summary, *David Tricarico v The Queen*, 1, OPP.0043.0005.0003 @.0320; Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, OPP.0043.0005.0003 @.0304.

⁵⁶ Un-tendered Reasons for Sentence, *R v David Tricarico*, [2011] VSC 53, 10 [33], OPP.0043.0005.0003 @.0314; Un-tendered Supreme Court Appeal, Registrar’s Neutral Summary, *David Tricarico v The Queen*, 1, OPP.0043.0005.0003 @.0320; Un-tendered Victoria Police Criminal History Report, David Tricarico, VPL.0099.0193.5127.

⁵⁷ Un-tendered Supreme Court of Appeal Judgment, *David Tricarico v The Queen*, [2012] VSCA 160, 1, OPP.0043.0005.0003 @.0375; Un-tendered Victoria Police Criminal History Report, David Tricarico, VPL.0099.0193.5127.

Tricarico's family members.⁵⁸ Further, during a meeting with handlers on 5 June 2007, Ms Gobbo indicated that she had only met Mr Tricarico on two prior occasions; being at the hospital on the night of his father's death and at his father's funeral.⁵⁹

58. Based on the material reviewed, there is nothing to suggest that Ms Gobbo appeared in court on behalf of Mr Tricarico, charged him any fees for any representation provided, or visited him in custody in a professional capacity.
59. However, during the course of a meeting with her handlers on 5 June 2007, Ms Gobbo received a telephone call from a relative of Mr Tricarico, advising her that Mr Tricarico had been arrested.⁶⁰ It is apparent that Ms Gobbo then spoke to Mr Tricarico over the phone and, based on the following circumstances, it is submitted that it can be inferred she provided legal advice and representation to him:
 - 59.1. At approximately 9:26pm on 5 June 2007, Ms Gobbo received a call from Mark Ferola, a relative of Mr Tricarico, advising that Mr Tricarico had been arrested. She was advised that Purana investigators had executed a warrant at his address. Ms Gobbo told Mr Ferola that she would speak to the arresting officer, Dale Flynn.⁶¹
 - 59.2. At approximately 9:40pm, Ms Gobbo received a called from Mr Tricarico.⁶² According to the audio recording of the meeting, Ms Gobbo asked where the warrant had been issued, whether Mr Tricarico had been provided with any details as to what he had been arrested for and what he was likely to be charged with, and over what period the offending was alleged to have occurred. Ms Gobbo advised Mr Tricarico not to say anything to police until he was at the St Kilda Road police station for his interview. She told him to get the police to call her immediately upon being cautioned and advised as to his rights.⁶³ Immediately after concluding this call, Ms Gobbo told her handlers that she intended to tell Mr Tricarico 'to co-operate if it is in his interests to do so'.⁶⁴
 - 59.3. At approximately 9:46pm, Ms Gobbo again spoke to Mr Ferola concerning Mr Tricarico's arrest. She then advised her handler that Mr Ferola had been in the same house with Mr Tricarico celebrating a family function.⁶⁵
 - 59.4. At approximately 11:12pm, Ms Gobbo's handlers advised her that Mr Mokbel had been arrested and that 23 raids were being conducted. She was told by her handler that the preference was that she does not represent any of the persons arrested as a result of the raids. Ms

⁵⁸ Exhibit RC0281 ICR3838 (077), 30 April 2007, 818, VPL.2000.0003.2404.

⁵⁹ Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 229, VPL.0005.0137.0351 @.0579.

⁶⁰ Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 215, VPL.0005.0137.0351 @.0565; Exhibit RC0281 ICR3838 (082), 5 June 2007, 878, VPL.2000.0003.2464.

⁶¹ Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 215, VPL.0005.0137.0351 @.0565; Exhibit RC0281 ICR3838 (082), 5 June 2007, 878, VPL.2000.0003.2464.

⁶² Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 228, VPL.0005.0137.0351 @.0578.

⁶³ Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 228, VPL.0005.0137.0351 @.0578.

⁶⁴ Exhibit RC0281 ICR3838 (082), 5 June 2007, 878, VPL.2000.0003.2464.

⁶⁵ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879, VPL.2000.0003.2465.

Gobbo stated that she could not guarantee 'not speaking to certain people' and noted that she had already spoken to Mr Tricarico.⁶⁶

- 59.5. At approximately 12:11am on 6 June 2007, Ms Gobbo received another call from Mr Ferola, who was at the St Kilda Road police station.⁶⁷
- 59.6. At approximately 12:40am on 6 June 2007, it is recorded that Ms Gobbo received a phone call from a Purana investigator and discussed what charges were pending for Mr Tricarico. The relevant Informer Contact Report (ICR) entry records that Ms Gobbo then spoke to Mr Tricarico and provided 'legal advice' to him.⁶⁸

The Conduct of Ms Gobbo as a Human Source in relation to Mr Tricarico

60. Based on the information reviewed by Counsel Assisting, it appears that Ms Gobbo provided information concerning Mr Tricarico to Victoria Police prior to and during her representation of him, on at least the following two occasions:
 - 60.1. On 30 April 2007, she referred to Mr Tricarico and his siblings as being the children of Mr Ferola, and stated that she believed 'them all to be clean skins'.⁶⁹
 - 60.2. On 5 June 2007, as mentioned at para [59], during a meeting with her handlers, Ms Gobbo received a call from Mr Tricarico advising that he had been arrested. She then relayed to her handlers that a warrant was being executed at his home, that she told him to contact her prior to being interviewed, and that she intended to tell Mr Tricarico 'to cooperate if it is in his interests to do so',⁷⁰ which she said is the advice she would give to anyone in his position.⁷¹
61. Ms Gobbo continued to provide information to police concerning Mr Tricarico following her representation, between 6 June 2007 and 12 April 2008. The information provided by Ms Gobbo during this period included:
 - 61.1. the name of the solicitor to whom he had been referred,⁷² and later the fact that he had changed solicitors⁷³
 - 61.2. information concerning his court proceedings, including that he intended to make an application for bail,⁷⁴ and later the fact that he had been granted bail⁷⁵

⁶⁶ Exhibit RC0281 ICR3838 (082), 5 June 2007, 881, VPL.2000.0003.2467.

⁶⁷ Exhibit RC0281 ICR3838 (082), 5 June 2007, 882, VPL.2000.0003.2468.

⁶⁸ Exhibit RC0281 ICR3838 (082), 5 June 2007, 882, VPL.2000.0003.2468.

⁶⁹ Exhibit RC0281 ICR3838 (077), 30 April 2007, 818, VPL.2000.0003.2404.

⁷⁰ Exhibit RC0281 ICR3838 (082), 5 June 2007, 878, VPL.2000.0003.2464.

⁷¹ Exhibit RC0282 Transcript of meeting between Anderson, Fox and Nicola Gobbo, 5 June 2007, 230, VPL.0005.0137.0351 @.0580.

⁷² Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2469.

⁷³ Exhibit RC0281 ICR3838 (094), 14 August 2007, 1090, VPL.2000.0003.2676; Exhibit RC0281 ICR2958 (013), 12 April 2008, 154, VPL.2000.0003.0894.

⁷⁴ Exhibit RC0281 ICR3838 (083), 13 June 2007, 892, VPL.2000.0003.2478.

⁷⁵ Exhibit RC0281 ICR2958 (013), 12 April 2008, 154, VPL.2000.0003.0894.

- 61.3. the fact that other known associates were stating [REDACTED]
[REDACTED]⁶
- 61.4. the fact that, according to Mr Ketch, a property which was restrained and connected to Mr Tricarico, had been previously sold and belonged to Tony Mokbel.⁷⁷

Submissions under Terms of Reference 1 and 2 in relation to Mr Tricarico

62. It is submitted that it is open to the Commissioner to find that the case of Mr Tricarico may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
63. The extent to which the case of Mr Tricarico may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

64. First, Category 1A⁷⁸ applies in that, in June 2007,⁷⁹ Ms Gobbo acted for Mr Tricarico while she was a human source,⁸⁰ and did not disclose same to him.⁸¹
65. Secondly, Category 1B⁸² applies in that, between April 2007 and June 2007, which was before and during the period that Ms Gobbo acted for Mr Tricarico in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁸³
66. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁸⁴
67. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁷⁶ Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527.

⁷⁷ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1057, VPL.2000.0003.2643; Exhibit RC0281 ICR3838 (118), 7 January 2008, 1556, VPL.2000.0003.3142.

⁷⁸ See Legal Principles Submissions at [249].

⁷⁹ See above analysis at [59].

⁸⁰ See Legal Principles Submissions at [20].

⁸¹ See Legal Principles Submissions at [239].

⁸² See Legal Principles Submissions at [249].

⁸³ See above analysis at [59]-[60].

⁸⁴ See Legal Principles Submissions at [320]-[329] and [307]-[309].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

68. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸⁵
- 68.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Tricarico;
 - 68.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Tricarico, appropriate disclosure was made; or alternatively
 - 68.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
69. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [68.1] were taken, and accordingly there was the potential for the right of Mr Tricarico to a fair trial to have been interfered with.
70. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Tricarico and/or his legal representatives.
71. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸⁶
72. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸⁷
73. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁸⁸
74. Category 3A⁸⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁸⁵ See Legal Principles Submissions at [384] and [452]-[457].

⁸⁶ See Legal Principles Submissions at [380]-[385].

⁸⁷ See Legal Principles Submissions at [351], [362]-[373].

⁸⁸ See Legal Principles Submissions at [351], [374].

⁸⁹ See Legal Principles Submissions at [465].

75. Category 3B⁹⁰ applies in that, between April 2007 and June 2007, which was before and during the period that Ms Gobbo acted for Mr Tricarico in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁹¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
76. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁰ See Legal Principles Submissions at [465].

⁹¹ See above analysis at [59]-[60].

CASE STUDY: MR ELLSWORTH (A PSEUDONYM)

The Relevant Case of Mr Ellsworth

1. The one relevant case of Mr Ellsworth concerns his pleas of guilty and sentence before the County Court in 2007 for:
 - 1.1. one charge of perjury; and
 - 1.2. one charge of obtaining a financial advantage by deception.¹
2. The offending occurred in April 2004.² In 2006, committal proceedings took place.³ Mr Ellsworth pleaded guilty at the earliest opportunity.⁴
3. In short, the case against Mr Ellsworth was that he had falsely declared a statutory declaration in an effort to avoid liability for a speeding fine.⁵ That alleged conduct was the basis for both charges.⁶
4. In December 2006 and March 2007, plea hearings were conducted before the County Court.⁷ On 27 March 2007, Mr Ellsworth was sentenced in the County Court, without conviction, to serve a Community-Based Order of 12 months.⁸

Ms Gobbo's Legal Representation of Mr Ellsworth

5. Between June 2006 and September 2006, Ms Gobbo acted for Mr Ellsworth on several occasions. Specifically, evidence before the Commission indicates that:

¹ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 46 [20], RCMP1.0127.0001.0005 @.0046; Un-tendered Presentment No. U01328812, *R v Mr Ellsworth*, 2006, 6, RCMP1.0127.0001.0005 @. 0006.

² Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 47 [22], RCMP1.0127.0001.0005 @.0047; Un-tendered Presentment No. U01328812, *R v Mr Ellsworth*, 2006, 4, RCMP1.0127.0001.0005 @0004.

³ This can be inferred based on the evidence addressed below.

⁴ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 48 [28], RCMP1.0127.0001.0005 @.0048}

⁵ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 47 [22], RCMP1.0127.0001.0005 @.0047; Un-tendered Crown Opening (revised), 1 December 2006, RCMP1.0127.0001.0005 @.0035-.0042.

⁶ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 47 [22], RCMP1.0127.0001.0005 @.0047; Un-tendered Crown Opening (revised), 1 December 2006, RCMP1.0127.0001.0005 @0035-.0042.

⁷ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, RCMP1.0127.0001.0005 @.0047-.0055; Un-tendered Crown Opening (revised), 1 December 2006, RCMP1.0127.0001.0005 @.0035-.0042. It is noted that the sentencing reasons appears to record "1 December 2007" year in error, cf. date of Crown Opening.

⁸ Un-tendered Reasons for Sentence, *R v Mr Ellsworth*, 27 March 2007, 53 [46], RCMP1.0127.0001.0005 @.0053.

[REDACTED]
[REDACTED].¹⁶

- 7.3. On 26 April 2006, Ms Gobbo told Mr Peter Smith that she was going to see “Mr Ketch and his accountant Mr Ellsworth shortly re driving charges.”¹⁷
- 7.4. On 16 June 2006, Ms Gobbo mentioned to Mr Green that “Mr Ellsworth [faced a] perjury charge”, and commented, “[n]o more accounting for him”.¹⁸
- 7.5. On 19 June 2006, the ICRs record information provided to Mr Peter Smith by Ms Gobbo in the following terms: “Mr Ellsworth @ Mr Ellsworth 19/02/1979 ... Mr Ketch’s accountant was charged with perjury recently, informant is at Transit CIU, something to do with fraudulent affidavits re driving offences.”¹⁹
- 7.6. On 30 August 2006, as noted above, Ms Gobbo reported to Mr Green that [REDACTED], solicitor, “has ... asked [her] for advice re Mr Ellsworth perjury matter”.²⁰
8. Mr Ellsworth continued to feature in communications between Ms Gobbo and Victoria Police after her legal representation of him ceased. Notably, on 8 October 2006, she suggested to her handler, Mr Peter Smith, that another client of hers, [REDACTED], may be a candidate to assist police and to incriminate, among others, Mr Ellsworth.²¹ She reportedly told Mr Peter Smith that [REDACTED] was “fair dinkum about making statements”, and that he could “talk re ... [REDACTED]”.²²

Submissions under Terms of Reference 1 and 2 in relation to Mr Ellsworth

9. It is submitted that it is open to the Commissioner to find that the case of Mr Ellsworth may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
10. The extent to which the case of Mr Ellsworth may have been affected can be measured by virtue of the following matters.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁷ Exhibit RC0281 ICR3838 (030), 26 April 2006, 272, VPL.2000.0003.1858.

¹⁸ Exhibit RC0281 ICR3838 (035), 16 June 2006, 330, VPL.2000.0003.1916.

¹⁹ Exhibit RC0281 ICR3838, 19 June 2006, 335, VPL.2000.0003.1921; See also Exhibit RC281 ICR3838 (040), 389, VPL.2000.0003.1975.

²⁰ Exhibit RC0281 ICR3838 (043), 30 August 2006, 411, VPL.2000.0003.1997.

²¹ Exhibit RC0281 ICR3838 (047) 8 October 2006, 455 VPL.2000.0003.2041.

²² Exhibit RC0281 ICR3838 (047), 8 October 2006, 455, VPL.2000.0003.2041.

Conduct of Ms Gobbo

11. First, Category 1A²³ applies in that, between approximately June 2006 and September 2006,²⁴ Ms Gobbo acted for Mr Ellsworth in relation to the case while she was a human source,²⁵ and did not disclose same to him.²⁶
12. Secondly, Category 1B²⁷ applies in that, between 25 March 2006 and 30 August 2006, which was before and during the period that Ms Gobbo acted for Mr Ellsworth in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²⁸
13. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁹
14. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

15. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁰
 - 15.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Ellsworth;
 - 15.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Ellsworth, appropriate disclosure was made; or alternatively
 - 15.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.

²³ See Legal Principles Submissions at [249].

²⁴ See above analysis at [5].

²⁵ See Legal Principles Submissions at [20].

²⁶ See Legal Principles Submissions at [239].

²⁷ See Legal Principles Submissions at [249].

²⁸ See above analysis at [7].

²⁹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

³⁰ See Legal Principles Submissions at [384] and [452]-[457].

16. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [15.1] were taken, and accordingly there was the potential for the right of Mr Ellsworth to a fair trial to have been interfered with.
17. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Ellsworth and/or his legal representatives.
18. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³¹
19. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³²
20. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.³³
21. Category 3A³⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
22. Category 3B³⁵ applies in that, during the period Ms Gobbo acted for Mr Ellsworth, she provided information in relation to him to members of Victoria Police,³⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
23. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³¹ See Legal Principles Submissions at [380]-[385].

³² See Legal Principles Submissions at [351], [362]-[373].

³³ See Legal Principles Submissions at [351], [374].

³⁴ See Legal Principles Submissions at [465].

³⁵ See Legal Principles Submissions at [465].

³⁶ See above analysis at [7].

CASE STUDY: ALBERT EL-MOUSTAFA

The Relevant Case of Mr El-Moustafa

1. The one relevant case of Mr Albert El-Moustafa concerns his convictions before the County Court in September 2008.¹
2. On 22 May 2006, a search warrant was executed by police at a hotel room at the Sofitel in Melbourne.² Mr El-Moustafa arrived at the room whilst the warrant was being executed in possession of a backpack containing drugs and paraphernalia associated with drug trafficking.³ He was subsequently arrested and charged with drug trafficking related offences.⁴
3. At trial, Mr El-Moustafa pleaded not guilty to one count of trafficking in not less than a commercial quantity of methylamphetamine (Count 1),⁵ but pleaded guilty to one count of possession of methylamphetamine (Count 2).⁶
4. On 2 June 2008, Mr El-Moustafa was found guilty by a jury of Count 1.⁷
5. On 1 September 2008, he was sentenced to four years' imprisonment, with a non-parole period of two years and six months.⁸ He was also convicted and fined \$400.⁹

¹ Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 17 [61], OPP.0095.0001.0012 @ 107; Un-tendered Victoria Police Criminal History Report, Albert Elmoustafa, 16 December 2019, 6, VPL.0099.0193.1690 @.1695.

² Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 1-2 [6], OPP.0095.0001.0012 @ 91 and @ 92; Un-tendered Summary of Prosecution Opening, *R v Albert El-Moustafa*, 17 April 2008, 1 [1], 2 [6]-[7], 3 [8]-[10], OPP.0048.0001.0005 @.0011 and @.0012 and @.0013.

³ Un-tendered Reasons for Sentence, *The Queen v Albert El Moustafa* [2010] VSCA 40, 1 [1], OPP.0048.0001.0005 @.0094; Un-tendered Summary of Prosecution Opening, *R v Albert El-Moustafa* 17 April 2008, 1 [1], 2 [6]-[7], 3 [8]-[10], OPP.0048.0001.0005 @.0011 and @.0012 and @.0013; Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 2 [8]-[10], OPP.0095.0001.0012 @ 92.

⁴ Un-tendered Reasons for Sentence, *The Queen v Albert El Moustafa* [2010] VSCA 40, 1 [1], OPP.0048.0001.0005 @.0094; Un-tendered Summary of Prosecution Opening, *R v Albert El-Moustafa* 17 April 2008, 1 [1], 2 [6]-[7], 3 [8]-[10], OPP.0048.0001.0005 @.0011 and @.0012 and @.0013; Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 2 [8]-[10], OPP.0095.0001.0012 @ 92.

⁵ Un-tendered Presentment No.C0605154.1, *R v Albert El Moustafa*, 2008, 1, 3, OPP.0048.0001.0005 @.0003 and @.0005; Un-tendered Reasons for Sentence, *R v Albert El Moustafa* (County Court of Victoria, Judge Howie, 14 November 2008) 2-3 [11], OPP.0048.0001.0005 @.0034 and @.0035.

⁶ Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 1 [2], OPP.0095.0001.0012 @ 91; Un-tendered Reasons for Sentence, *The Queen v Albert El Moustafa* [2010] VSCA 40, 1 [1], OPP.0048.0001.0005 @.0094.

⁷ See Un-tendered Presentment No.C0605154.1, *R v Albert El Moustafa*, 2008, 1, 3, OPP.0048.0001.0005 @.0003 and @.0005; Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 1 [1], OPP.0095.0001.0012 @ 91.

⁸ Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 17 [61], OPP.0095.0001.0012 @ 107; Un-tendered Victoria Police Criminal History Report, Albert Elmoustafa, 16 December 2019, 6, VPL.0099.0193.1690 @.1695.

⁹ Un-tendered Reasons for Sentence, *R v Albert El-Moustafa* [2008] VCC 1033, 1 September 2008, 17 [62], OPP.0095.0001.0012 @ 107.

6. Mr El-Moustafa lodged an application for leave to appeal against conviction and sentence, which was dismissed on 11 March 2010.¹⁰
7. Prior to being sentenced in relation to the abovementioned matter, Mr El-Moustafa was arrested in relation to other drug trafficking related activities. However, there is no suggestion that Ms Gobbo had any involvement in relation to that unrelated matter.¹¹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr El-Moustafa

8. Based on the material reviewed by Counsel Assisting, Ms Gobbo provided legal representation to Mr El-Moustafa between at least May 2006 and June 2006.
9. Ms Gobbo appeared in court on behalf of Mr El-Moustafa on the following two occasions:
 - 9.1. on 23 May 2006, at the Melbourne Magistrates' Court for a filing hearing;¹² and
 - 9.2. on 22 June 2006, at the Melbourne Magistrates' Court for a bail application.¹³
10. There is some suggestion that the bail application took place over the course of three days, as Ms Gobbo submitted an invoice for fees for a brief to appear at Mr El-Moustafa's bail application 'incl 7/6/06, 15/6/06 & 22/6/06'.¹⁴
11. Based on the material reviewed, there is nothing to suggest that Ms Gobbo continued to provide legal representation to Mr El-Moustafa following the hearing on 22 June 2006.

¹⁰ Un-tendered Reasons for Sentence, *The Queen v Albert El Moustafa* [2010] VSCA 40, 20 [47], OPP.0048.0001.0005 @.0113; Un-tendered Victoria Police Criminal History Report, Albert Elmoustafa, 16 December 2019, 5, VPL.0099.0193.1690 @.1694.

¹¹ See Un-tendered Reasons for Sentence, *R v Albert El Moustafa* (County Court of Victoria, Judge Howie, 14 November 2008), OPP.0048.0001.0005 @.0034 to @.0041. Mr El-Moustafa was arrested on 15 February 2006 pursuant to investigations into the activities of Peter Londrigan and David Ballinger (codenamed 'Operation Paras'). On 3 October 2008, Mr El-Moustafa was arraigned and entered a plea of guilty to one count of trafficking in methylamphetamine. A plea hearing was conducted on 29 October 2008. On 14 November 2008, Mr El-Moustafa was sentenced an additional term of six months' imprisonment, fixing a new non-parole period of 3 years' imprisonment in respect of all the sentences he was required to serve at that time. However, a filing hearing was not conducted until 6 August 2007, indicating that Ms Gobbo had no involvement in relation to this unrelated matter.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 May 2006, 63, OPP.0001.0004.0025 @.0087 (matter ID: 0602549); Exhibit RC1841 Magistrates' Court of Victoria, 'Persons represented by Ms Nicola Gobbo', 23 May 2006, 18, MCV.0001.0001.0001 @.0016 (case no: T02019235).

¹³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 June 2006, 63, OPP.0001.0004.0025 @.0087 (matter ID: 0602549) (matter ID: 0602549); Exhibit RC1841 Magistrates' Court of Victoria, 'Persons represented by Ms Gobbo', 22 June 2006, 19, MCV.0001.0001.0001 @.0017 (case no: T02625348)

¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 23 June 2006, 97, MIN.5000.7000.0001 @.0097; Exhibit RC1569 Meldrum & Hyland Barrister's Clerk Nicola Gobbo Statement of Account, 30 June 2006, 45, GMH.0001.0001.0002 @.0045; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 30 June 2006, 13, GMH.0001.0001.0009 @.0013.

The Conduct of Ms Gobbo as a Human Source in relation to Mr El-Moustafa

12. Ms Gobbo provided information to Victoria Police concerning Mr El-Moustafa during her representation of him, on at least the following two occasions:
 - 12.1. On 30 May 2006, Ms Gobbo told her handler that Mr El-Moustafa had been arrested. She provided information concerning the payment of his legal fees and advised that he was a 'runner' for Antonios (Tony) Mokbel.¹⁵
 - 12.2. On 15 June 2006, Ms Gobbo advised her handler of Mr El-Moustafa's bail application and provided the name of his solicitor and further information regarding the payment of his legal fees. She provided her handler with the name of Mr El-Moustafa's supplier and information concerning the nature of the offending.¹⁶ She also stated that Mr El-Moustafa's DNA would be on a gun seized by police during the execution of a search at the motel room.¹⁷
13. Ms Gobbo provided information concerning Mr El-Moustafa on at least six further occasions, between July 2006 and June 2008.¹⁸ The disclosure report produced by Victoria Police to the Office of Public Prosecutions indicated that on 3 June 2006 Ms Gobbo told police she had advised Mr El-Moustafa to plead guilty.¹⁹ However, based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo actually provided this information to her handler on 3 June 2008.²⁰ It is not submitted that Ms Gobbo was representing Mr El-Moustafa at that later date.

Submissions under Terms of Reference 1 and 2 in relation to Mr El-Moustafa

14. It is submitted that it is open to the Commissioner to find that the case of Mr El-Moustafa may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. The extent to which the case of Mr El-Moustafa may have been affected can be measured by virtue of the following matters.

¹⁵ Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898; Exhibit RC0283 Information Report IRSID735, 30 May 2006, 1, VPL.2000.0003.8716.

¹⁶ Exhibit RC0281, ICR3838 (035), 15 June 2006, 330-31, VPL.2000.0003.1916, VPL.2000.0003.1917; Exhibit RC0283 Information Report IRSID765, 15 June 2006, 1, VPL.2000.0003.8764.

¹⁷ Exhibit RC0281, ICR3838 (035), 15 June 2006, 331, VPL.2000.0003.1917.

¹⁸ Exhibit RC0281, ICR3838 (039), 27 July 2006, 374, VPL.2000.0003.1960; Exhibit RC0281, ICR3838 (041), 13 August 2006, 392, VPL.2000.0003.1978; Exhibit RC0283 Information Report IRSID775, 12 August 2006, 1, VPL.2000.0003.8778; Exhibit RC0281, ICR3838 (042), 22 August 2006, 403, VPL.2000.0003.1989; Exhibit RC0283 Information Report IRSID803, 22 August 2006, 1, VPL.2000.0003.8823; Exhibit RC0281, ICR3838 (046), 21 September 2006, 433, VPL.2000.0003.2019; Exhibit RC0281 ICR2958 (017), 24 April 2008, 237, VPL.2000.0003.0977; Exhibit RC0281 ICR2958 (022), 3 June 2008, 381, VPL.2000.0003.1121.

¹⁹ Un-tendered Victoria Police Disclosure Assessment Report, Albert El Moustafa, 18 October 2019, 1, OPP.0093.0001.0368 @.0368.

²⁰ Exhibit RC0281 ICR2958 (022), 3 June 2008, 381, VPL.2000.0003.1121.

Conduct of Ms Gobbo

16. First, Category 1A²¹ applies in that, between May 2006 and June 2006,²² Ms Gobbo acted for Mr El-Moustafa while she was a human source,²³ and did not disclose same to him.²⁴
17. Secondly, Category 1B²⁵ applies in that, between May 2006 and June 2006, which was during the period that Ms Gobbo acted for Mr El-Moustafa in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²⁶
18. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁷ Further, in certain instances identified above,²⁸ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁹
19. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

20. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁰
 - 20.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr El-Moustafa;
 - 20.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr El-Moustafa, appropriate disclosure was made; or alternatively

²¹ See Legal Principles Submissions at [249].

²² See above analysis at [9]-[10].

²³ See Legal Principles Submissions at [20]. (definition of human source)

²⁴ See Legal Principles Submissions at [239]. (statement that she never disclosed)

²⁵ See Legal Principles Submissions at [249].

²⁶ See above analysis at [12].

²⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁸ See above analysis at [12].

²⁹ See Legal Principles Submissions at [310]-[319] and [301]-[306].

³⁰ See Legal Principles Submissions at [384] and [452]-[457].

- 20.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
21. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [20.1] were taken, and accordingly there was the potential for the right of Mr El-Moustafa to a fair trial to have been interfered with.
22. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr El-Moustafa and/or his legal representatives.
23. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³¹
24. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³²
25. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial and guilty plea.³³
26. Category 3A³⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. Category 3B³⁵ applies in that, during the period Ms Gobbo acted for Mr El-Moustafa, she provided information in relation to him to members of Victoria Police,³⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
28. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³¹ See Legal Principles Submissions at [380]-[385].

³² See Legal Principles Submissions at [351], [362]-[373].

³³ See Legal Principles Submissions at [351], [374].

³⁴ See Legal Principles Submissions at [465].

³⁵ See Legal Principles Submissions at [465].

³⁶ See above analysis at [12].

CASE STUDY: ANTHONY FEZOLLARI

The Relevant Cases of Mr Fezollari

1. The two relevant cases of Mr Anthony Fezollari concerns his convictions before the County Court in relation to:
 - 1.1. Presentment C0705681.4, arising from Operation Brucin 1 (Case 1);¹ and
 - 1.2. Presentment W02667253.2, arising from Operation Brucin 2 (Case 2).²

Case 1

2. On 15 March 2007, Mr Fezollari was arrested and charged with trafficking methylamphetamine. A number of co-accused were also arrested on the same date, pursuant to the execution of a series of search warrants.³
3. The warrants were executed pursuant to an investigation, codenamed 'Operation Brucin 1', which commenced in February 2007 and concerned the alleged manufacturing of methylamphetamine by co-accused, Peter Thurlow.⁴
4. The prosecution case relied on surveillance evidence and telephone intercepts. The prosecution alleged that Mr Thurlow was manufacturing methylamphetamine for Mr Fezollari,⁵ and that the two met on a number of occasions, including at a clandestine laboratory in Bayswater.⁶ The prosecution ultimately conceded that Mr Fezollari was not the only person interested in the product manufactured,⁷ and that his interest in the manufacture was no more than an interest in ensuring a successful production.⁸
5. Following a committal hearing on 31 October 2007, Mr Fezollari was committed to stand trial.⁹

¹ Un-tendered Presentment C0705681.4, *R v Anthony Fezollari*, 2009, 1, OPP.0043.0001.0022 @_.0029; Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Anthony Fezollari* [2010] VCC 0280, 9 April 2010, 1 [5], OPP.0043.0001.0022.0359.

² Un-tendered Presentment W02667253.2, *R v Anthony Fezollari*, 2011, 1, OPP.0043.0001.0022_0129.

³ There were six co-accused, namely: Peter Thurlow, Montrose Amiet, Stephen Reid, Daniel Quinlan, Linda Postlethwaite and Daniel Vella; Un-tendered Summary of Prosecution Opening, *R v Anthony Fezollari*, 30 March 2010, 6, OPP.0043.0001.0022_0079.

⁴ Un-tendered Summary of Prosecution Opening, *R v Anthony Fezollari*, 30 March 2010, 1 [3], OPP.0043.0001.0022 @.0074.

⁵ Un-tendered Summary of Prosecution Opening, *R v Anthony Fezollari*, 30 March 2010, 2 [7], OPP.0043.0001.0022_0075; Un-tendered Summary of Prosecution Opening, *R v Anthony Fezollari*, 30 March 2010, 3 [16], OPP.0043.0001.0022 @_0076.

⁶ Un-tendered Summary of Prosecution Opening, *R v Anthony Fezollari*, 30 March 2010, 2 [7], OPP.0043.0001.0022_0075.

⁷ Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Anthony Fezollari* [2010] VCC 0280, 9 April 2010, 1 [5], OPP.0043.0001.0022 @_0359.

⁸ Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Anthony Fezollari* [2010] VCC 0280, 9 April 2010, 1 [5], OPP.0043.0001.0022 @_0359.

⁹ Un-tendered Transcript of Proceedings, *R v Anthony Fezollari*, 12 December 2008, 7, OPP.0043.0001.0022 @_0199.

6. On 22 September 2009, he was arraigned and entered a plea of guilty to one count of trafficking methylamphetamine.¹⁰
7. A plea hearing was conducted on 9 April 2010.¹¹
8. On 12 April 2010, Mr Fezollari was sentenced to two years and six months' imprisonment, with a non-parole period of one year and three months' imprisonment.¹²

Case 2

9. On 20 September 2007, Mr Fezollari was arrested and charged with 14 offences relating to drug trafficking, drug possession and conspiracy to traffick a handgun.¹³
10. The charges were laid pursuant to an investigation, codenamed 'Operation Brucin 2', which commenced in March 2007 and concerned the manufacturing and trafficking of methylamphetamine.¹⁴ It was alleged that Mr Fezollari was in the business of trafficking methylamphetamine between March 2007 and September 2007, and was involved in both the manufacture and distribution of methylamphetamine to others.¹⁵
11. The prosecution case relied on physical surveillance evidence and telephone intercepts,¹⁶ which allegedly recorded discussions between Mr Fezollari and others concerning the manufacture and distribution of methylamphetamine.¹⁷ Significantly, two separate warrants were granted, permitting police to monitor telephone numbers attributed to Mr Fezollari. The first warrant allowed police to monitor two numbers between 27 April 2007 and 25 June 2007 (Warrant 1)¹⁸ and the second allowed police to monitor a further two numbers between 30 July 2007 and 20 September 2007 (Warrant 2).¹⁹
12. Following a committal hearing in June 2009, Mr Fezollari was committed to stand trial in relation to four offences.²⁰

¹⁰ Un-tendered Presentment C0705681.4, *R v Anthony Fezollari*, 2009, 2, OPP.0043.0001.0022 @_0030.

¹¹ Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Anthony Fezollari* [2010] VCC 0280, 9 April 2010, OPP.0043.0001.0022 @_0358.

¹² Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Anthony Fezollari* [2010] VCC 0280, 9 April 2010, 4 [13], OPP.0043.0001.0022 @_0362.

¹³ Un-tendered Police summary Operation Brucin, *R v Anthony Fezollari, Abdullah Yoldas, Ahmad Saied, Louis Giantsopoulos, Leanne McIlfrack, Chris Aspidis, undated*, 3-4, OPP.0043.0001.0022 @.0134 and @.0135.

¹⁴ There were five co-accused, namely: Abdullah Yoldas, Joseph Xuereb, Ricky Smallacombe, Ahmad Saied and Louis Giantsopoulos; Un-tendered Prosecution Summary for Plea Hearings, *DPP v Anthony Fezollari, Abdullah Yoldas, Joseph Xuereb, Ricky Smallacombe, Ahmad Saied, Louis Giantsopoulos*, 29 May 2011, OPP.0043.0001.0022_0081.

¹⁵ Un-tendered Prosecution Summary for Plea Hearings, *DPP v Anthony Fezollari, Abdullah Yoldas, Joseph Xuereb, Ricky Smallacombe, Ahmad Saied, Louis Giantsopoulos*, 29 May 2011, 3, [13], OPP.0043.0001.0022 @_0083.

¹⁶ Un-tendered Operation Brucin, *R v Anthony Fezollari*, undated, 2, OPP.0043.0001.0022_0133.

¹⁷ Un-tendered Prosecution Summary for Case Conference, *R v Anthony Fezollari*, 17 February 2010, 4 [1], OPP.0043.0001.0022 @_0226.

¹⁸ Un-tendered Warrant D03013-00, *R v Fezollari*, 27 April 2007, VPL.2100.0026.0071.

¹⁹ Un-tendered Warrant D03095-00, *R v Fezollari*, 23 July 2007, VPL.2100.0026.0074.

²⁰ Un-tendered Prosecution Summary for Case Conference, *R v Anthony Fezollari*, 17 February 2010, OPP.0043.0001.0022 @_0223.

13. On 24 March 2011, he was arraigned and entered a plea of guilty to one count of trafficking methylamphetamine and one count of trafficking in not less than a commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA).²¹
14. Plea hearings were conducted on 8 June 2011 and 24 June 2011.²²
15. On 29 June 2011, Mr Fezollari was sentenced to a total effective sentence of four years and three months' imprisonment, with a non-parole period of two years and nine months' imprisonment.²³
16. Mr Fezollari made an application for leave to appeal against sentence,²⁴ which was refused on 21 October 2011.²⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Fezollari

17. During a discussion with her handler in August 2007, Ms Gobbo advised that she had a 'long history' with Mr Fezollari, and said she had 'helped him a lot over the years.'²⁶ Based on the material reviewed by Counsel Assisting, it is not entirely clear as to when Ms Gobbo first became acquainted with Mr Fezollari. However, it appears that she provided legal representation to him regarding an unrelated matter from at least November 2004.²⁷ That representation included visiting Mr Fezollari in custody on at least ten occasions between 2 November

²¹ Un-tendered Presentment W02667253.2, *R v Anthony Fezollari*, 2011, 1, OPP.0043.0001.0022 @_0129.

²² Un-tendered Presentment W02667253.2, *R v Anthony Fezollari*, 2011, 2, OPP.0043.0001.0022 @_0130.

²³ Un-tendered Reasons for Sentence, *R v Anthony Fezollari*, 29 June 2011, 7 [24], OPP.0043.0001.0022 @.0354; Un-tendered Victoria Police Criminal History Report, *R v Anthony Fezollari*, 16 December 2019, VPL.0099.0193.1794.

²⁴ Un-tendered Application for Leave to Appeal Against Sentence, *R v Anthony Fezollari*, undated, OPP.0043.0001.0022 @_0364.

²⁵ Un-tendered Notice of Result of Appeal or Application, *R v Anthony Fezollari*, 9 December 2011, OPP.0043.0001.0022_0392; Un-tendered Application for Leave to Appeal Against Sentence, *Anthony Fezollari v R*, 21 October 2011, OPP.0043.0001.0022 @_0393.

²⁶ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.

²⁷ RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 2 November 2004, 18, CNS.0001.0003.0037 @.0054; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 2 November 2004, CNS.0001.0003.0948.

2004 and 11 September 2005,²⁸ and appearing in court on his behalf at various hearings between March 2005 and September 2005.²⁹

18. In relation to Case 1, Ms Gobbo appeared in court on behalf of Mr Fezollari on the following two occasions:
 - 18.1. on 2 April 2007, at a bail application;³⁰ and
 - 18.2. on 12 December 2008, at the County Court for a bail application.³¹
19. Ms Gobbo charged fees for those two appearances.³² In addition, on 29 November 2007, Ms Gobbo charged fees for a 'brief to ...confer at prison & advise in conferences upon release'.³³

²⁸ RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 2 November 2004, 20 February 2005, 6 March 2005, 14 March 2005, 8 April 2005, 31 May 2005, 13 June 2005, 27 June 2005, 23 August 2005, 11 September 2005, 18-22, CNS.0001.0003.0037 @.0054-.0058; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 2 November 2004, CNS.0001.0003.0948; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 20 February 2005, CNS.0001.0003.1022; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 6 March 2005, CNS.0001.0003.1028; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 14 March 2005, CNS.0001.0003.1036; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 8 April 2005, CNS.0001.0003.1056; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 20, 31 May 2005, CNS.0001.0003.1084; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 13 June 2005, CNS.0001.0003.1090; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 27 June 2005, CNS.0001.0003.1102; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 23 August 2005, CNS.0001.0003.1122; Exhibit RC1601 Archive Visit Enquiry – Prisoner 82393 Fezollari Anthony, *R v Anthony Fezollari*, 11 September 2005, CNS.0001.0003.1130.

²⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, *R v Anthony Fezollari*, 17 March 2005, 17 June 2005, 13 September 2005, 86, 88, 91, MIN.5000.7000.0001 @.0086, @.0088, @.0091; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 19 September 2005, 23 June 2006, 21 March 2005, 56, 60, 62, GMH.0001.0001.0002 @.0056, @.0060, @.0062; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, *R v Anthony Fezollari*, 23 June 2005, 21 March 2005, 7, 47, GMH.0001.0001.0011 @.0007, @.0041; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, *R v Anthony Fezollari*, 19 September 2005, 47, GMH.0001.0001.0010 @.0047.

³⁰ Note: there is some suggestion that the application may have been ultimately heard on 22 April 2007, as referred to in the invoice submitted by Ms Gobbo on 29 November 2007. Exhibit RC0273 Ms Nicola Gobbo diary, *R v Anthony Fezollari*, 10, MIN.0005.0003.0251 @.0261; Exhibit RC0281 ICR3838 (073), 2 April 2007, 760, VPL.2000.0003.2346.

³¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 12 December 2008, 68, OPP.0001.0004.0025 @.0092.

³² Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 17 December 2008, 4, GMH.0001.0001.0002 @.0004; Exhibit RC1568 Ms Nicola Gobbo fee book 02, *R v Anthony Fezollari*, 13 December 2008, 27, MIN.5000.7000.0103 @.0129; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 17 December 2008, 4, GMH.0001.0001.0002 @.0004; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 17 December 2008, 9, GMH.0001.0001.0004 @.0009; Exhibit RC1568 Ms Nicola Gobbo fee book 02, *R v Anthony Fezollari*, 29 November 2008, 12, MIN.5000.7000.0103 @.0129; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 29 November 2008, 22, GMH.0001.0001.0002 @.0022; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, *R v Anthony Fezollari*, 3 December 2008, 14, GMH.0001.0001.0006 @.0014.

³³ Exhibit RC1568 Ms Nicola Gobbo fee book 02, *R v Anthony Fezollari*, 29 November 2008, 12, MIN.5000.7000.0103 @.0114; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, *R v Anthony Fezollari*, 3 December 2008, 22, GMH.0001.0001.0002 @.0022; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, *R v Anthony Fezollari*, 3 December 2008, 14, GMH.0001.0001.0006 @.0014.

20. In relation to Case 2, it is submitted that, based on the following circumstances, it can be inferred that Ms Gobbo provided legal advice to Mr Fezollari upon his arrest on 20 September 2007 and in the days subsequent to his arrest:
 - 20.1. At approximately 9:19pm on 20 September 2007, Ms Gobbo told her handler, Mr Fox, that Mr Fezollari had been arrested by the Drug Squad and was 'in need of help'. She advised her handler that she had contacted the Drug Squad but had not been provided with much information and had not yet spoken to Mr Fezollari. She stated that she had spoken to members of Mr Fezollari's family and 'she may go down to St Kilda Rd when she gets a call.'³⁴ The relevant Informer Contact Report (ICR) entry records that Mr Fox updated the controller, but this information was not otherwise disseminated.³⁵
 - 20.2. At approximately 9:25pm, Ms Gobbo was contacted by the Drug Squad.³⁶
 - 20.3. At approximately 9:37pm, Ms Gobbo told her handler that she had spoken to Mr Fezollari and had given him 'her normal legal advice'. She then told her handler that Mr Fezollari had denied selling drugs and would be unlikely to answer any questions.³⁷ The relevant ICR entry records that this information was not disseminated as it 'relates to defence legal issues'.³⁸
 - 20.4. On 21 September 2007, Ms Gobbo told her handler that she had seen Mr Fezollari in custody.³⁹
21. Ms Gobbo continued to communicate with Mr Fezollari after visiting Mr Fezollari in custody on 21 September 2007, however, based on the following circumstances, it does not appear that those communications occurred in a professional capacity:
 - 21.1. On 2 October 2007, Ms Gobbo told her handler that Mr Fezollari had passed a message to her via his solicitor, saying that he loved her and that he wanted her visit him in custody.⁴⁰
 - 21.2. On 3 October 2007, Ms Gobbo told her handler that Mr Fezollari had contacted her and wanted her to visit him at the Metropolitan Remand Centre. She apparently told him that she was unable to visit him there that day. According to Ms Gobbo, Mr Fezollari told her that someone would visit her and give her \$50,000, but did not advise her as to the origins of the money.⁴¹ Ms Gobbo's handler, Mr Fox, warned her against accepting this money without knowing its origins.
 - 21.3. On 4 October 2007, Ms Gobbo told her handler that she had again been contacted by Mr Fezollari, who stated that he was arranging for \$100,000 to be conveyed to Ms Gobbo to be held in trust. According to Ms Gobbo, Mr Fezollari would not say what the money was for. Ms Gobbo apparently assured her handler that she would not accept the

³⁴ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1237, VPL.2000.0003.2823.

³⁵ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1237, VPL.2000.0003.2823.

³⁶ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1237, VPL.2000.0003.2823.

³⁷ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1237, VPL.2000.0003.2823.

³⁸ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1237, VPL.2000.0003.2823.

³⁹ Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁴⁰ Exhibit RC0281 ICR3838 (102), 2 October 2007, 1256, VPL.2000.0003.2842.

⁴¹ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1260, VPL.2000.0003.2846.

money 'unless she can attest to it's bona fide'.⁴² Based on the material reviewed, it is not clear as to whether this money was ever deposited into Ms Gobbo's account on behalf of Mr Fezollari.

22. In addition, material before the Commission suggests that Ms Gobbo represented Mr Fezollari at a coercive hearing in early 2008.⁴³

The Conduct of Ms Gobbo as a Human Source in relation to Mr Fezollari

23. Ms Gobbo provided information to Victoria Police concerning Mr Fezollari prior to and during her representation of him in relation to both cases, between at least 31 August 2006 and 12 December 2008. The information provided during that period included:
- 23.1. the fact that Mr Fezollari had been arrested by the Drug Squad⁴⁴
 - 23.2. information concerning Mr Fezollari's standing amongst his associates, including her opinion and that 'Fezollari is regarded as the top of the tree'⁴⁵
 - 23.3. information regarding his relationship with known associates,⁴⁶ including his relationship with Mr Arnold⁴⁷ and the fact that he had been fighting with Mr Shannon for years⁴⁸
 - 23.4. information concerning his apparent drug use⁴⁹
 - 23.5. her opinion that Mr Fezollari 'trusts her implicitly' and suggestion that she could find out information regarding Mr Fezollari if so desired by police⁵⁰
 - 23.6. Mr Fezollari's telephone number (on two occasions; 19 April 2007 and 30 July 2007);⁵¹
 - 23.7. information concerning the brief in relation to Case 1, including that the 'remand summary was very limited'⁵²
 - 23.8. information concerning defence tactics and instructions in relation to Case 2, including that Mr Fezollari 'denied selling any drugs to anyone' and 'will remain mute like he normally does'⁵³
 - 23.9. the fact that she was representing Mr Fezollari in a bail application and her advice to him in relation to same⁵⁴

⁴² Exhibit RC0281 ICR3838 (103), 4 October 2007, 1267, VPL.2000.0003.2853.

⁴³ Exhibit RC0281 ICR3838 (119), 16 January 2008, 1576, VPL.2000.0003.3162; Exhibit RC0281 ICR3838 (119), 17 January 2008, 1577, VPL.2000.0003.3163.

⁴⁴ Exhibit RC0281 ICR3838 (070), 16 March 2007, 712, VPL.2000.0003.2298.

⁴⁵ Exhibit RC0281 ICR3838 (072), 28 March 2007, 739, VPL.2000.0003.2325.

⁴⁶ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685; Exhibit RC0281 ICR3838 (095), 21 August 2007, 1122, VPL.2000.0003.2707.

⁴⁷ Exhibit RC0281 ICR3838 (077), 1 May 2007, 820, VPL.2000.0003.2406.

⁴⁸ Exhibit RC0281 ICR3838 (073), 3 April 2007, 763, VPL.2000.0003.2349.

⁴⁹ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.

⁵⁰ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.

⁵¹ Exhibit RC0281 ICR3838 (075), 19 April 2007, 802, VPL.2000.0003.2388.

⁵² Exhibit RC0281 ICR3838 (072), 28 March 2007, 739, VPL.2000.0003.2325.

⁵³ Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁵⁴ Exhibit RC0281 ICR2958 (048), 12 December 2008, 768, VPL.2000.0003.1508.

23.10. information concerning further misconduct allegedly being committed by Mr Fezollari⁵⁵

23.11. information concerning the [REDACTED]
[REDACTED].⁵⁶

Provision of Telephone Numbers attributed to Mr Fezollari

24. As outlined above at [11], the prosecution case in relation to Case 2 relied upon the product of telephone intercepts. Ms Gobbo provided Mr Fezollari's phone number to Victoria Police on two occasions during her representation of Mr Fezollari in relation to Case 1 and prior to her representation of Mr Fezollari in relation to Case 2.

25. Whilst material before the Commission suggests that the information provided by Ms Gobbo concerning the phone numbers was disseminated by Ms Gobbo's handler to members of the Homicide Squad, based on the following circumstances, there is nothing to suggest that the information provided by Ms Gobbo was specifically relied upon and resulted in the granting of the two relevant warrants:

25.1. On 19 April 2007, Ms Gobbo provided Mr Fezollari's 'new number' to her handler. The ICR entry records that the number was passed onto the Homicide Squad via [REDACTED] Peter Smith.⁵⁷ This same phone number was subject to the telephone intercept obtained under Warrant 1.⁵⁸ However, the deponent of the affidavit in support of the application for the warrant, Detective Senior Sergeant Russell Fletcher, provides evidence that the phone number was provided to police [REDACTED] on 19 April 2007 [REDACTED].⁵⁹ Based on the material reviewed by Counsel Assisting, there is nothing to suggest that this was not the case, and it appears that it is a mere coincidence that the information was obtained from the other named source on the same day that Ms Gobbo provided the phone number.

25.2. On 30 July 2007, Ms Gobbo again provided Mr Fezollari's new phone number to her handler. This same phone number was subject to a telephone intercept obtained under Warrant 2.⁶⁰ The ICR entry records that the number provided by Ms Gobbo was passed onto Detective Senior Sergeant Harrington of the Homicide Squad on 31 July 2007, but that the number was already known and was subject of a current telephone intercept.⁶¹ This is consistent with the information provided in the affidavit in support of the application for the warrant, in which the deponent swears that the number was provided to investigators by another informer on 27 June 2007.⁶²

⁵⁵ See para [29].

⁵⁶ See para [30].

⁵⁷ Exhibit RC0281 ICR3838 (075), 19 April 2007, 802, VPL.2000.0003.2388.

⁵⁸ Un-tendered Operation Brucin, *R v Anthony Fezollari*, undated, 2, OPP.0043.0001.0022_0133; Un-tendered Affidavit of Russell Scott Fletcher, 27 April 2007, 3, [16(b)(i)(1)], VPL.2100.0026.0001 @.0004.

⁵⁹ Un-tendered Affidavit of Russell Scott Fletcher, 27 April 2007, 29, [56(a)(v)(1)], VPL.2100.0026.0001 @.0029.

⁶⁰ Un-tendered Operation Brucin, *R v Anthony Fezollari*, undated, 2, OPP.0043.0001.0022_0133; Un-tendered Affidavit of Russell Scott Fletcher, 23 July 2007, 4, [18(a)(i)(1)], VPL.2100.0026.0036 @.0039.

⁶¹ Exhibit RC0281 ICR3838 (093), 30 July 2007, 1074, VPL.2000.0003.2660.

⁶² Un-tendered Affidavit of Russell Scott Fletcher, 23 July 2007, 28, [45], VPL.2100.0026.0036 @.0063.

Information relating to Evidence and Defence Tactics

26. On 28 March 2007, following Mr Fezollari's arrest in relation to Case 1, Ms Gobbo told her handler that the 'remand summary was very limited.'⁶³
27. On 20 September 2007, following Mr Fezollari's arrest in relation to Case 2, she told her handler that Mr Fezollari 'denied selling any drugs to anyone' and 'will remain mute like he normally does.'⁶⁴ During the same discussion with her handler, Ms Gobbo said that she had given Mr Fezollari 'her normal legal advice',⁶⁵ indicating that she was representing Mr Fezollari at that time. The ICR entry records that the information was 'not disseminated as information relates to defence legal issues.'⁶⁶
28. On 12 December 2008, Ms Gobbo told her handler that she was representing Mr Fezollari in a bail application on that date and that the application was contrary to her advice. She provided her opinion that the application would be refused.⁶⁷

Information relating to the Misconduct by Mr Fezollari

29. Following his arrest in relation to Case 1, Ms Gobbo provided information to her handlers regarding various criminal activities apparently being committed by Mr Fezollari, including:
 - 29.1. On 3 April 2007 Ms Gobbo told police that Mr Fezollari had 'spent \$114,000 on 25 kilos of pseudo', that '20 kilos is still hidden somewhere' and that he was looking for a 'speed cook'.⁶⁸ The ICR and IR entries record that this information was verbally disseminated (on 10 April 2007) to Detective Acting Superintendent Hawker⁶⁹ of the Major Drug Investigation Division via Mr Peter Smith.⁷⁰
 - 29.2. On 4 May 2007, Ms Gobbo told her handler that Mr Fezollari had been interviewed in relation to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - 29.3. On 8 June 2007, Ms Gobbo told her handler that Mr Fezollari was carrying a firearm, that it was 'well concealed', and that he was meeting with a co-offender in contravention of his bail conditions.⁷⁴ The ICR entry records that this information was provided to the [REDACTED]

⁶³ Exhibit RC0281 ICR3838 (072), 28 March 2007, 739, VPL.2000.0003.2325.

⁶⁴ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1238, VPL.2000.0003.2824.

⁶⁵ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1238, VPL.2000.0003.2824.

⁶⁶ Exhibit RC0281 ICR3838 (101), 20 September 2007, 1238, VPL.2000.0003.2824.

⁶⁷ Exhibit RC0281 ICR2958 (048), 12 December 2008, 768, VPL.2000.0003.1508.

⁶⁸ Exhibit RC0281 ICR3838 (073), 3 April 2007, 765, VPL.2000.0003.2351.

⁶⁹ Exhibit RC0283 SID1122, 4 April 2007, VPL.2000.0003.8318.

⁷⁰ Exhibit RC0281 ICR3838 (073), 3 April 2007, 765, VPL.2000.0003.2351.

⁷¹ Exhibit RC0281 ICR3838 (077), 4 May 2007, 824, VPL.2000.0003.2410.

⁷⁴ Exhibit RC0281 ICR3838 (082), 8 June 2007, 885, VPL.2000.0003.2471.

[REDACTED]
[REDACTED]

30.6. On 4 June 2008, Ms Gobbo told her handler that [REDACTED] had showed her [REDACTED] and expressed her concern that [REDACTED] and she did 'not want to have [REDACTED]'.⁸⁷ Ms Gobbo said that she requested [REDACTED].⁸⁸ Ms Gobbo indicated that she had apparently received agreement [REDACTED].⁸⁹

30.7. On 20 August 2008, Ms Gobbo told police again that [REDACTED]. However, on this occasion Ms Gobbo told police that [REDACTED] by a member of police whilst [REDACTED] in 2004.⁹⁰

31. Based on the material reviewed by Counsel Assisting, there is nothing to suggest that Mr Fezollari provided assistance to police in relation to any co-accused, [REDACTED]
[REDACTED]
[REDACTED]

Knowledge as to Conflict

32. Ms Gobbo appeared to have some awareness that she might be conflicted in acting on behalf of Mr Fezollari, as discussed with her handlers on the following occasions:

32.1. On 2 April 2007 she was advised [REDACTED]
[REDACTED]

32.2. On 15 August 2007, Ms Gobbo told her handler, Mr Fox, that she had just met with Mr Fezollari and discussed the allegations of [REDACTED]. Ms Gobbo told her handler that Mr Fezollari believed [REDACTED] and admitted to carrying guns.⁹² He apparently told Ms Gobbo [REDACTED]. Ms Gobbo told her handler that she could not recall the names mentioned but volunteered to ask Mr Fezollari for the names.⁹³ She then stated that Mr Fezollari was 'a wealth of information', that he 'trusts her implicitly' and that she 'could probably find stuff out about him for us if that's what we want her to do.'⁹⁴ The following day, Ms Gobbo's handler, Mr Fox, advised her not to 'actively try and engross yourself into his world' and they did not

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹² Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.
⁹³ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.
⁹⁴ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2685.

want her getting involved in 'another area' that would be likely to compromise her.⁹⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Fezollari

33. It is submitted that it is open to the Commissioner to find that the two cases of Mr Fezollari may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
34. The extent to which the cases of Mr Fezollari may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

35. First, Category 1A⁹⁶ applies in relation to both cases, in that, between April 2007 and December 2008,⁹⁷ Ms Gobbo acted for Mr Fezollari while she was a human source,⁹⁸ and did not disclose same to him.⁹⁹
36. Secondly, Category 1B¹⁰⁰ applies in relation to both cases, in that, between August 2006 and December 2008, which was before and during the period that Ms Gobbo acted for Mr Fezollari in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹⁰¹
37. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁰² Further, in certain instances identified above,¹⁰³ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.¹⁰⁴
38. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁹⁵ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1099, VPL.2000.0003.2687.

⁹⁶ See Legal Principles Submissions at [249].

⁹⁷ In relation to Case 1, see above analysis at [18]-[19]. In relation to Case 2, see above analysis at [20].

⁹⁸ See Legal Principles Submissions at [20].

⁹⁹ See Legal Principles Submissions at [239].

¹⁰⁰ See Legal Principles Submissions at [249].

¹⁰¹ In relation to Case 1, see above analysis at [23]-[32]. In relation to Case 2, see above analysis at [23.1] – [23.8], [25] – [27], [29], [30.1] – [30.4], [32].

¹⁰² See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹⁰³ In relation to Case 1, see above analysis at [23]-[32]. In relation to Case 2, see above analysis at [23.8], [27], [29.5], [30.4].

¹⁰⁴ See Legal Principles Submissions at [310]-[319] and [301]-[306].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

39. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁰⁵
 - 39.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Fezollari;
 - 39.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Fezollari, appropriate disclosure was made; or alternatively
 - 39.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
40. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [39.1] were taken, and accordingly there was the potential for the right of Mr Fezollari to a fair trial to have been interfered with.
41. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Fezollari and/or his legal representatives.
42. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁰⁶
43. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁰⁷
44. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁰⁸
45. Category 3A¹⁰⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

¹⁰⁵ See Legal Principles Submissions at [384] and [452]-[457].

¹⁰⁶ See Legal Principles Submissions at [380]-[385].

¹⁰⁷ See Legal Principles Submissions at [351], [362]-[373].

¹⁰⁸ See Legal Principles Submissions at [351], [374].

¹⁰⁹ See Legal Principles Submissions at [465].

46. Category 3B¹¹⁰ applies in that, before and during the period Ms Gobbo acted for Mr Fezollari, she provided information in relation to him to members of Victoria Police,¹¹¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
47. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹¹⁰ See Legal Principles Submissions at [465].

¹¹¹ In relation to Case 1, see above analysis at [23]-[32]. In relation to Case 2, see above analysis at [23.1] – [23.8], [25] – [27], [29], [30.1] – [30.4], [32].

CASE STUDY: MATTHEW FINN; WAYNE FINN

Operation Spake

1. Operation Spake concerned an investigation into the manufacture and trafficking of drugs by Mr Antonios (Tony) Mokbel and others at two premises, being a factory in Springvale and premises in Toolern Vale.¹
2. As a result of the investigation, a search warrant was executed on 7 November 2007 at a factory in Springvale associated with Wayne Finn and his brother, Matthew Finn.² On 14 November 2007, Wayne Finn and Matthew Finn were charged with drug offences.³
3. In relation to the Toolern Vale premises, the Crown alleged that Wayne Finn, together with Tony Mokbel, Mr Luxmore [REDACTED], manufactured methylamphetamine between January 2004 and June 2005.⁴ Wayne Finn was ultimately acquitted of charges connected to these premises.⁵
4. In relation to the Springvale premises, the Crown alleged that Wayne Finn and Matthew Finn established a clandestine laboratory and were involved in the manufacture of drugs at the premises between January 2005 and November 2007.⁶ Wayne Finn and Matthew Finn were ultimately acquitted of all counts concerning the trafficking and manufacture of drugs, but found guilty of possession of items found at the premises.⁷
5. The prosecution case relied upon surveillance evidence, as well as telephone intercepts carried out under warrant.⁸ The prosecution also relied on the evidence of Mr Cooper, [REDACTED] and Mr Bickley.⁹

¹ Un-tendered Reasons for Sentence, *Matthew Finn v The Queen & Wayne Finn v The Queen* [2011] VSCA 120, 2 [2], COR.1015.0002.0005.

² Un-tendered Application to Sever Presentment, *The Queen v Antonios Mokbel, Wayne Finn and Matthew Finn* [2011] VSC 17T, 704 [5], RCMP.0010.0005.0004 @.0704; Exhibit RC1915 Purana Taskforce Meeting Minutes, 12 November 2007, 8, VPL.0100.0142.4113 @.4120. Un-tendered Summary of Charges, *Police v Antonios Mokbel*, 7, VPL.0204.0010.0036 @.0042.

³ Un-tendered Reasons for Sentence, *Matthew Finn v The Queen & Wayne Finn v The Queen* [2011] VSCA 120, 2 [2], COR.1015.0002.0005.

⁴ *R v Finn & Finn* [2011] VSC 253, [3]; Un-reported Presentment, *The Queen v Wayne Finn and Matthew Finn*, RCMP.0010.0005.0004 @.0677.

⁵ *R v Finn & Finn* [2011] VSC 253, [1].

⁶ *R v Finn & Finn* [2011] VSC 253, [5].

⁷ *R v Finn & Finn* [2011] VSC 253, [1]; Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP.0010.0005.0004 @.0686.

⁸ *R v Finn & Finn* [2011] VSC 253, [9], [10].

⁹ Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2-3, OPP.0056.0001.0001 @.0002-.0003; Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP.0010.0005.0004 @.0686- 688.

MATTHEW FINN

The Relevant Case of Matthew Finn

6. As mentioned above, on 17 May 2011, Wayne Finn and Matthew Finn were arraigned and their joint trial commenced.¹⁰
7. On 3 June 2011, the jury acquitted Matthew Finn of seven counts of drug offences.¹¹ On 10 June 2011, he entered a plea of guilty to one count of possession of an unregistered general category handgun (Count 11).¹²
8. On 15 June 2011, Matthew Finn was convicted and fined 30 penalty units, being \$3,583.50.¹³

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Matthew Finn

9. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Matthew Finn during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Matthew Finn

10. As outlined at [38] of Wayne Finn's case study, Ms Gobbo provided information to police concerning Wayne Finn and Matthew Finn,¹⁴ but there is nothing to suggest she represented them and had a duty to disclose her informing.

¹⁰ Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0686.

¹¹ *R v Finn & Finn* [2011] VSC 253, [2]; Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0686.

¹² *R v Finn & Finn* [2011] VSC 253, [2], Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0686; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 1, OPP.0056.0001.0001.

¹³ *R v Finn & Finn* [2011] VSC 253, [51]; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Matthew John Finn, 16 December 2019, 1, VPL.0099.0193.1808.

¹⁴ Exhibit RC0281, ICR3838 109, 7 November 2007, 1368, VPL.2000.0003.2954; Exhibit RC0281 ICR3838 (112), 24 November 2007, 1451, VPL.2000.0003.3037; Exhibit RC0281 ICR3838 (118), 12 December 2007, 1564, VPL.2000.0003.3150; Exhibit RC0281 ICR3838 (119), 18 January 2008, 1578, VPL.2000.0003.3164; Exhibit RC0281 ICR 2958 (004), 19 February 2008, 50, VPL.2000.0003.0790; Exhibit RC0281 ICR2958 (004), 21 February 2008, 55, VPL.2000.0003.3258; Exhibit RC0281 ICR2958 (047), 25 November 2008, 714, VPL.2000.0003.1454; Exhibit RC0281 ICR2958 (049), 17 December 2008, 786, VPL.2000.0003.1526.

11. However, as outlined above, the prosecution case against Matthew Finn relied upon the evidence of Mr Bickley,¹⁵ Mr Cooper¹⁶ [REDACTED].¹⁷

Relevant Conduct in relation to Mr Cooper

12. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Matthew Finn's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 12.1. the discovery of the offending the subject of Operation Posse;
 - 12.2. Mr Cooper being arrested in Operation Posse;
 - 12.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 12.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Matthew Finn (among others).
13. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Matthew Finn, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Matthew Finn may have been deprived of any opportunity to object to the admissibility of this evidence.
14. Further, as set out in the case study of [REDACTED], it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Matthew Finn, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

Relevant Conduct in relation to Mr Bickley

15. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Mr Matthew Finn's matter. For the reasons set out in the Case Study in relation to Mr Bickley, it is submitted

¹⁵ Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0688; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 2, OPP.0056.0001.0001.

¹⁶ Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0686; Un-tendered Victoria Police, 'Annexure 2', 6, VPL.0099.0030.0028 @.0033; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 1, OPP.0056.0001.0001.

¹⁷ Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP1.0010.0005.0004 @.0687; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 2, OPP.0056.0001.0001.

that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.

16. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.
17. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Mr Matthew Finn, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Matthew Finn may have been deprived of any opportunity to object to the admissibility of this evidence.
18. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁸ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁹

Submissions under Terms of Reference 1 and 2 in relation to Matthew Finn

19. It is submitted that it is open to the Commissioner to find that the case of Matthew Finn may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
20. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
21. The extent to which the case of Matthew Finn may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

22. Thirdly, Category 2A²⁰ applies in that evidence relied upon by the prosecution in Matthew Finn's case, namely the evidence of Mr Bickley,²¹ Mr Cooper²² [REDACTED],²³ may have been obtained in consequence of an

¹⁸ See Legal Principles Submissions at [210].

¹⁹ See Legal Principles Submissions at [212]-[213].

²⁰ See Legal Principles Submissions at [249].

²¹ See above analysis at [11] and [15]-[17].

²² See above analysis at [11] and [12]-[13].

²³ See above analysis at [11] and [14].

impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²⁴

23. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

24. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁵
 - 24.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Matthew Finn;
 - 24.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Matthew Finn, appropriate disclosure was made; or alternatively
 - 24.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
25. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [24.1] were taken, and accordingly there was the potential for the right of Matthew Finn to a fair trial to have been interfered with.
26. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Matthew Finn and/or his legal representatives.
27. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁶
28. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁷
29. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁸

²⁴ See Legal Principles Submissions at [196]-[222].

²⁵ See Legal Principles Submissions at [384] and [452]-[457].

²⁶ See Legal Principles Submissions at [384] and [452]-[457].

²⁷ See Legal Principles Submissions at [351], [362]-[373].

²⁸ See Legal Principles Submissions at [351], [374].

30. Category 4A²⁹ applies in that, as noted above at [22], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
31. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice

²⁹ See Legal Principles Submissions at [465].

WAYNE FINN

The Relevant Case of Wayne Finn

32. Committal proceedings for both Wayne Finn and Matthew Finn took place in March 2009.³⁰
33. On 17 May 2011, Wayne Finn and Matthew Finn were arraigned and their joint trial commenced.³¹
34. On 3 June 2011, the jury acquitted Wayne Finn of five counts and found him guilty of:
 - 34.1. one count of possession of precursor chemicals without authorisation or other lawful excuse, namely formaldehyde (Count 7);
 - 34.2. one count of possession of precursor chemicals without authorisation or other lawful excuse, namely ammonia (Count 8); and
 - 34.3. one count of possession of phenyl-2-propanone (Count 11).³²
35. On 15 June 2011, Wayne Finn was sentenced to a total effective sentence of three years' imprisonment, with a non-parole period of 21 months.³³
36. Wayne Finn filed applications for leave to appeal against conviction and sentence, which were dismissed by the Victorian Court of Appeal on 16 March 2012³⁴ and on 30 July 2012 respectively.³⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Wayne Finn

37. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Wayne Finn during the relevant period.

³⁰ Un-tendered Victoria Police, 'Annexure 2', 6, VPL.0099.0030.0028 @.0033.

³¹ Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP.0010.0005.0004 @.0686.

³² *R v Finn & Finn* [2011] VSC 253, [1]; Un-tendered Presentment No. C0706005.3, *The Queen v Wayne Finn and Matthew Finn*, RCMP.0010.0005.0004 @.0686; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001.

³³ *R v Finn & Finn* [2011] VSC 253, [45]-[48]; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Wayne Finn, 16 December 2019, 1, {VPL.0099.0193.1812}.

³⁴ *Wayne Patrick Finn v The Queen* [2012] VSCA 46, [39].

³⁵ Un-tendered Judgment, *Wayne Patrick Finn v The Queen* [2012] VSCA 160, 377, OPP.0043.0005.0003.

The Conduct of Ms Gobbo as a Human Source in relation to Wayne Finn

38. Although Ms Gobbo provided information to police concerning Wayne Finn and Matthew Finn between at least 7 November 2007 and 17 December 2008,³⁶ there is nothing to suggest she provided any legal representation to them.

Relevant Conduct in relation to Mr Cooper

39. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Wayne Finn's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 39.1. the discovery of the offending the subject of Operation Posse;
 - 39.2. Mr Cooper being arrested in Operation Posse;
 - 39.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 39.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Wayne Finn (among others).
40. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Wayne Finn, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Wayne Finn may have been deprived of any opportunity to object to the admissibility of this evidence.
41. Further, as set out in the case study of [REDACTED] it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Wayne Finn, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

Relevant Conduct in relation to Mr Bickley

42. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Mr Wayne Finn's matter. For the reasons set out in the case study in relation to Mr Bickley, it is submitted

³⁶ Exhibit RC0281 ICR 3838 (109), 7 November 2007, 1368-1369, VPL.2000.0003.2954-2955; Exhibit RC0281 ICR3838 (112), 24 November 2007, 1451, VPL.2000.0003.3037; Exhibit RC0281 ICR3838 (118), 12 December 2007, 1564, VPL.2000.0003.3150; Exhibit RC0281 ICR3838 (119), 18 January 2008, 1578, VPL.2000.0003.3164; Exhibit RC0281 ICR2958 (004), 19 February 2008, 50, VPL.2000.0003.0790; Exhibit RC0281 ICR2958 (004), 21 February 2008, 55, VPL.2000.0003.0795; Exhibit RC0281 ICR 2958 (047), 25 November 2008, 714, VPL.2000.0003.1454; Exhibit RC0281 ICR2958 (049), 17 December 2008, 786, VPL.2000.0003.1526.

that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.

43. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.
44. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Mr Wayne Finn, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Wayne Finn may have been deprived of any opportunity to object to the admissibility of this evidence.
45. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,³⁷ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.³⁸

Submissions under Terms of Reference 1 and 2 in relation to Wayne Finn

46. It is submitted that it is open to the Commissioner to find that the case of Wayne Finn may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
47. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions at Chapter 11.
48. The extent to which the case of Wayne Finn may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

49. Category 2A³⁹ applies in that evidence relied upon by the prosecution in Wayne Finn's case, namely the evidence of Mr Bickley,⁴⁰ Mr Cooper⁴¹ and [REDACTED],⁴² may have been obtained in consequence of an impropriety or

³⁷ See Legal Principles Submissions at [210].

³⁸ See Legal Principles Submissions at [212]-[213].

³⁹ See Legal Principles Submissions at [249].

⁴⁰ See above analysis at [5] and [42]-[44].

⁴¹ See above analysis at [5] and [39]-[40].

⁴² See above analysis at [5] and [41].

illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴³

50. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

51. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁴
 - 51.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Wayne Finn;
 - 51.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Wayne Finn, appropriate disclosure was made; or alternatively
 - 51.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
52. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [51.1] were taken, and accordingly there was the potential for the right of Wayne Finn to a fair trial to have been interfered with.
53. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Wayne Finn and/or his legal representatives.
54. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁵
55. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴⁶
56. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁴⁷

⁴³ See Legal Principles Submissions at [196]-[222].

⁴⁴ See Legal Principles Submissions at [384] and [452]-[457].

⁴⁵ See Legal Principles Submissions at [384] and [452]-[457].

⁴⁶ See Legal Principles Submissions at [351], [362]-[373].

⁴⁷ See Legal Principles Submissions at [351], [374].

57. Category 4A⁴⁸ applies in that, as noted above at [49], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
58. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁸ See Legal Principles Submissions at [465].

CASE STUDY: SOLICITOR 2 (A PSEUDONYM)

The Relevant Case of Solicitor 2

1. The one relevant case of Solicitor 2 concerns her conviction before the Supreme Court in November 2005 for contempt of court.¹
2. On 26 September 2005, Solicitor 2 was served with a subpoena, requiring her to give evidence in the trial of Mr Gregory and Evangelos Goussis on behalf of the Crown.² The trial, being heard by his Honour Justice Teague, concerned the murder of Solicitor 2's defacto partner, Sean Vincent (who was also known as Lewis Caine),³ which had been investigated by the Purana Taskforce.
3. At the time the subpoena was served upon Solicitor 2:
 - 3.1. she was the solicitor instructing Con Heliotis QC in the trial of Carl Williams for murder, which was proceeding before her Honour Justice King and which had been investigated by the Purana Taskforce⁴
 - 3.2. she had been charged on 10 May 2005 by Purana Taskforce investigators with offences concerning possession of an unregistered firearm and giving false evidence to the Australia Crime Commission (ACC) (the firearm related offences). In June 2008, a *nolle prosequi* was announced in relation to those charges.⁵
 - 3.3. she was the subject of another Purana investigation into money laundering activities, Operation Pedal, a more detailed outline of which is contained at Chapter 9
 - 3.4. Purana investigators had recently forwarded a report to the Law Institute of Victoria regarding the professional conduct of Solicitor 2.⁶
4. Solicitor 2 was initially required to attend court on 30 September 2005. She attended before his Honour Justice Teague, represented by Mr Heliotis, although was not then called.
5. On 3 October 2005, the Crown applied for leave to add Solicitor 2's name to the presentment. Mr Heliotis appeared for her on this day.

¹ Un-tendered Victoria Police Criminal History Report, Solicitor 2, 16 December 2019, VPL.0099.0193.1930.

² *R v Solicitor 2* [2005] VSC 441, [1].

³ *R v Solicitor 2* [2005] VSC 441, [3]–[4].

⁴ *R v Solicitor 2* [2005] VSC 441, [1].

⁵ Exhibit RC0252 Purana Member Chronology, event from diary of Michelle Kerley, 10 May 2005, 19, VPL.0015.0001.0409 @ .0427; Exhibit RC0771 Unsigned confidential affidavit of Nigel L'Estrange, 22 August 2005, 4 [15], VPL.6024.0200.8553 @ .8556; Un-tendered Victoria Police Criminal History Report, Solicitor 2, 16 December 2019, VPL.0099.0193.1930.

⁶ Exhibit RC0775 Purana Taskforce Update, 19 September 2005, VPL.0100.0012.0182.

6. On 4 October 2005, Mr Stephen Shirrefs SC appeared on behalf of Solicitor 2. He made an unsuccessful application for the subpoena to be set aside. Solicitor 2 indicated [REDACTED].⁷
7. On 6 October 2005, Ms Gobbo reported to Mr Peter Smith that she was going to see Solicitor 2. That day, Solicitor 2 swore an affidavit in support [REDACTED].⁸
8. On 7 October 2005, Ms Gobbo appeared on behalf of Solicitor 2. Solicitor 2 was informed in court that [REDACTED]. She was then called to give evidence at a pre-trial hearing. She refused to answer any of the questions put to her by the Crown, even when directed to do so by the presiding Judge.⁹ Solicitor 2 alleged that her refusal to give evidence at trial was based on a fear of retribution from the accused, who had prior convictions for serious crimes involving violence.¹⁰ The presiding judge decided that Solicitor 2's refusal to answer questions should be dealt with by a judge other than himself.¹¹
9. Detective Sergeant Stuart Bateson, who had overseen the investigation of Williams referred to in paragraph 3.1 above, was also present in court. He had been involved in investigation of Solicitor 2 for criminal offending during the year referred to in paragraph 3.3 above. Ms Gobbo had been providing information about Solicitor 2 to Mr Bateson between May and August 2005.¹²
10. Superintendent Terry Purton received a briefing on Monday, 10 October 2005, including that Ms Gobbo had represented Solicitor 2. He was aware of Ms Gobbo's status as a human source.
11. That day the matter came on before his Honour Justice Harper who made a number of orders. Solicitor 2 was represented by Mr Shirrefs.
12. On 12 October 2005, the Director of Public Prosecutions (DPP) filed and served an Originating Motion which commenced proceedings, seeking an order that Solicitor 2 be adjudged guilty of contempt of court.¹³
13. When the matter came on before his Honour Justice Harper the next day, Mr Gerard Nash QC appeared on behalf of Solicitor 2.¹⁴
14. The application was heard in the Supreme Court of Victoria on 18 October 2005.¹⁵ Defences of necessity and duress were raised, and evidence was heard about a threat by Mr Gregory to Solicitor 2 following the murder of Mr Caine in 2004. Further, evidence was heard that in March 2005, in response to a Summons for Production, Mr Gavan Ryan had sworn an affidavit in which [REDACTED]

⁷ Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 25 May 2006, 4, RCMP1.0070.0001.0020 @.0097; Exhibit RC0109 Mr Terry Purton diary, 10 October 2005, 38 VPL.0005.0193.0218 @.0255.

⁸ *R v Solicitor 2* [2005] VSC 441, [12]; Exhibit RC0109 Mr Terry Purton diary, 10 October 2005, 38 VPL.0005.0193.0218 @.0255.

⁹ *R v Solicitor 2* [2005] VSC 441, [31].

¹⁰ *R v Solicitor 2* [2005] VSC 452, [6]; *R v Solicitor 2* [2005] VSC 441, 7 [17].

¹¹ Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 25 May 2006, 5 [15], RCMP1.0070.0001.0020 @.0098.

¹² See Chapter 9 of the Narrative Submissions.

¹³ *R v Solicitor 2* [2005] VSC 441, [31].

¹⁴ *R v Solicitor 2* [2005] VSC 441, [31].

¹⁵ *R v Solicitor 2* [2005] VSC 441.

[REDACTED]

During the hearing before his Honour Justice Harper, Mr Ryan, and a number of other police, gave evidence that the threat which had existed against Solicitor 2 had diminished.¹⁶

15. On 9 November 2005, Solicitor 2 was found guilty of contempt of court.¹⁷ His Honour found that whilst Solicitor 2 may have raised legitimate objections to answering questions going to the information referred to in Mr Ryan's March 2005 affidavit, rather than take objection if such questions were asked, she had refused to answer *any* questions. In so responding his Honour found she had not exhibited the firmness of mind which the ordinary person would be expected to display when faced with the importance of giving evidence in a criminal proceeding.¹⁸
16. On 17 November 2005, a plea hearing was conducted.¹⁹
17. On 22 November 2005, it was ordered that a conviction be recorded against Solicitor 2, but that no further penalty be imposed.²⁰
18. On 5 December 2005, the DPP instituted an appeal against the sentence imposed.²¹ Solicitor 2 subsequently instituted a cross appeal against her conviction,²² which she later abandoned.²³ On 19 December 2006, the Court of Appeal dismissed the appeal.²⁴
19. The DPP then filed an application for special leave to appeal to the High Court of Australia,²⁵ which was refused on 24 April 2007.²⁶

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Solicitor 2

20. It is clear that Ms Gobbo and Solicitor 2 were acquainted prior to Ms Gobbo's representation of Solicitor 2. Between 2000 and 2005, Solicitor 2, in her capacity as a solicitor,²⁷ had briefed Ms Gobbo to act on behalf of a number of her clients.²⁸ In addition, following Ms Gobbo's registration as a human source

¹⁶ *R v Solicitor 2* [2005] VSC 441, [18], [27]–[29]; *R v Solicitor 2* [2005] VSC 452, [11].

¹⁷ *R v Solicitor 2* [2005] VSC 441, 19 [49].

¹⁸ *R v Solicitor 2* [2005] VSC 452, [46]–[47].

¹⁹ *R v Solicitor 2* [2005] VSC 452.

²⁰ *R v Solicitor 2* [2005] VSC 452, 7 [22]; Un-tendered Victoria Police Criminal History Report, Solicitor 2, 16 December 2019, VPL.0099.0193.1930.

²¹ *DPP v Solicitor 2* [2006] VSCA 295.

²² Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 25 May 2006, 7 [27], RCMP.0070.0001.0020 @.0100.

²³ Un-tendered Applicant's Summary of Argument for the High Court of Australia, *R v Solicitor 2*, 13 February 2007, 4 [10], RCMP.0070.0001.0020 @.0172.

²⁴ *DPP v Solicitor 2* [2006] VSCA 295, 11 [26].

²⁵ Un-tendered Applicant's Summary of Argument for the High Court of Australia, *R v Solicitor 2*, 13 February 2007, RCMP.0070.0001.0020 @.0169.

²⁶ Transcript of Proceedings, *R v Solicitor 2* [2007] HCATrans 162, 315–325.

²⁷ *R v Solicitor 2* [2005] VSC 441 [8].

²⁸ Exhibit RC1568 Ms Gobbo fee book 01, 16 February 2000, 16, MIN.5000.7000.0001 @.0016; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Gobbo Statement of Account, 07 March 2019, 56, 61, 63, 64, GMH.0001.0001.0002 @.0056, .0061, .0063, .0064.

by the Source Development Unit (SDU), she reported regular phone contact and meetings with Solicitor 2 between at least January 2006 and May 2007.²⁹

21. There is some limited material concerning the nature and extent of the legal representation provided by Ms Gobbo to Solicitor 2.
22. When Solicitor 2 was arrested and charged with the firearm related offences on 10 May 2005 she rang Mr Heliotis, then when he was unavailable, she called Solicitor 2 to meet her at St Kilda Road Police Station.³⁰ It is presumed this was for the purposes of legal representation.
23. On 7 October 2005, Ms Gobbo appeared on behalf of Solicitor 2 in the Supreme Court before his Honour Justice Teague.³¹ It is understood that Ms Gobbo appeared due to the unavailability of Solicitor 2's Senior Counsel, Mr Shirrefs.³² As indicated above, on this date, Solicitor 2 was called by the Crown to give evidence and refused to answer any questions.³³
24. Mr Shirrefs, when later giving character evidence for Solicitor 2, stated the circumstances of his having provided advice to her. According to Mr Shirrefs, after providing advice to Solicitor 2 alone on one occasion he met with her again in informal circumstances with Ms Gobbo concerning the issue of Solicitor 2 giving evidence. He said he was not aware what advice Ms Gobbo or Mr Heliotis had separately given her.³⁴
25. Ms Gobbo made five pages of notes in her court book which appear to record a conference, advice and instructions from Solicitor 2. The notes are undated, however their location in Ms Gobbo's court book indicates they would have been made between 4 and 7 October 2005.³⁵ In her evidence to the Commission, Ms Gobbo accepted that she had taken instructions from Solicitor 2.³⁶

²⁹ See: Exhibit RC0281 ICR3838 (016), 13 January 2006, 123, VPL.2000.0003.1709; Exhibit RC0281 ICR3838 (017), 21 January 2006, 139, VPL.2000.0003.1725; Exhibit RC0281 ICR3838 (018), 15 February 2006, 153, VPL.2000.0003.1739; Exhibit RC0281 ICR3838 (023), 17 March 2006, 193, VPL.2000.0003.1779; Exhibit RC0281 ICR3838 (024), 27 March 2006, 213, VPL.2000.0003.1175; Exhibit RC0281 ICR3838 (028), 18 April 2006, 249, VPL.2000.0003.1835; Exhibit RC0281 ICR3838 (032), 17 May 2006, 301, VPL.2000.0003.1887; Exhibit RC0281 ICR3838 (033), 29 May 2006, 312, VPL.2000.0003.1898; Exhibit RC0281 ICR3838 (035), 13 June 2006, 328, VPL.2000.0003.1914; Exhibit RC0281 ICR3838 (036), 20 June 2006, 336, VPL.2000.0003.1922; Exhibit RC0281 ICR3838 (037), 11 July 2006, 353, VPL.2000.0003.1940; Exhibit RC0281 ICR3838 (038), 20 July 2006, 363, VPL.2000.0003.1949; Exhibit RC0281 ICR3838 (047), 3 October 2006, 446, VPL.2000.0003.2032; Exhibit RC0281 ICR3838 (049), 19 October 2006, 504 VPL.2000.0003.2090; Exhibit RC0281 ICR3838 (076), 22 April 2007, 806 VPL.2000.0003.2392; Exhibit RC0281 ICR3838 (080), 23 May 2007, 850, VPL.2000.0003.2436.

³⁰ Exhibit RC0252 Purana Member Chronology, event from diary of Michelle Kerley, 10 May 2005, 19, VPL.0015.0001.0409 @.0427.

³¹ Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 5 [15], RCMP.0070.0001.0020 @.0098.

³² Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 13 [35], RCMP.0070.0001.0020 @.0135.

³³ *R v Solicitor 2* [2005] VSC 441, 1 [1].

³⁴ Un-tendered Summary of proceedings for the Court of Appeal, *R v Solicitor 2; Solicitor 2 v the Queen*, 13 [35], RCMP.0070.0001.0020 @.0135.

³⁵ Exhibit RC0273 Ms Gobbo court book, volume 4, undated entry, 28-30, MIN.0001.0011.0004 @.0028; Exhibit RC0273 Ms Gobbo court book, volume 5, undated entry, 1-2, MIN.0001.0011.0005 @.0001.

³⁶ Transcript of Ms Nicola Gobbo, 4 February 2020, 13305, TRN.2020.02.04.01.

26. Ms Gobbo also appeared on behalf of Solicitor 2 on 31 August 2005 at a hearing in the Melbourne Magistrates' Court,³⁷ and on 23 May 2006 at a contest mention in relation to the firearm related offences.³⁸
27. When questioned about her decision to appear for Solicitor 2 in circumstances where she was actively informing to police about her, Ms Gobbo said she felt she could not say 'no', although not on the basis of any harm which would befall her. Ms Gobbo accepted she could simply have refused the brief had she not been so 'weak and pathetic in relation to [her] self-esteem'. Ms Gobbo said she never considered seeking a ruling from the Victorian Bar Ethics Committee in relation to the appropriateness of what she was doing. She accepted Counsel Assisting's proposition that the scenario was repugnant.³⁹

Types of Information Provided by Ms Gobbo to Police

28. Ms Gobbo provided information concerning Solicitor 2 to Victoria Police prior to her registration as a human source. Mr Bateson's diaries record conversations he had with Ms Gobbo concerning Solicitor 2, from at least 23 March 2005 until 23 August 2005. The information provided by Ms Gobbo during this period included:
 - 28.1. her concern that Solicitor 2 was 'causing trouble' by 'bad mouthing' her to Carl Williams and other known associates⁴⁰
 - 28.2. the fact that Solicitor 2 was conducting her business [REDACTED]⁴¹
 - 28.3. her belief that Solicitor 2 [REDACTED]⁴²
 - 28.4. information concerning the connection between the apartment Solicitor 2 was living in and [REDACTED]; and the connection between a proposed purchase of a vehicle and [REDACTED]
 - 28.5. the fact that Solicitor 2 regularly attended the [REDACTED]⁴⁴
 - 28.6. information concerning Mr Heliotis' proposed approach in relation to getting the charges against [REDACTED] dropped⁴⁵

³⁷ Exhibit RC1841 Magistrates' Court of Victoria record of persons represented by Ms Gobbo, 31 August 2005, 18, MCV.0001.0001.0001 @.0016.

³⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 May 2006, 61, OPP.0001.0004.0025 @.0085.

³⁹ Transcript of Ms Nicola Gobbo, 4 February 2020, 13305-6, TRN.2020.02.04.01.

⁴⁰ Exhibit RC0272 Commander Stuart Bateson, 23 March 2005, 136, VPL.0005.0058.0706 @ .0841; Transcript of Commander Stuart Bateson diary, 2 July 2019, 3432, TRN.2019.07.02.01.

⁴¹ Exhibit RC0272 Commander Stuart Bateson diary, 19 May 2005, 17-18, VPL.0005.0058.0233 @ .0249 - .0250; Exhibit RC0272 Commander Stuart Bateson diary, 22 May 2005, 20-21, VPL.0005.0058.0233 @ .0252 - .0253; Transcript of Commander Stuart Bateson, 2 July 2019, 3433, TRN.2019.07.02.01.

⁴² Exhibit RC0272 Commander Stuart Bateson diary, 22 May 2005, 20-21, VPL.0005.0058.0233 @.0252 - .0253.

⁴³ Exhibit RC0272 Commander Stuart Bateson diary, 4 June 2005, 25-26, VPL.0005.0058.0233 @ .0257- .0258; Transcript of Commander Stuart Bateson, 2 July 2019, 3435, TRN.2019.07.02.01.

⁴⁴ Exhibit RC0272 Commander Stuart Bateson diary, 29 June 2005, 33, VPL.0005.0058.0233 @ .0265.

⁴⁵ Exhibit RC0272 Commander Stuart Bateson diary, 21 July 2005, 40, VPL.0005.0058.0233 @ .0272.

- [REDACTED]
- [REDACTED]
- 31.6. that she was going to meet with Solicitor 2⁵⁸
- 31.7. a suggested approach to setting up Solicitor 2 with an undercover operative, raised by Ms Gobbo in a meeting with her handlers, Mr Sandy White and Mr Peter Smith, on 1 October 2005.⁵⁹
32. On 7 October 2005, the day Ms Gobbo appeared for Solicitor 2 in the Supreme Court, she told her handler that Solicitor 2 had been charged with contempt of court, was on bail, and that the matter was adjourned until the following week.⁶⁰
33. Ms Gobbo continued to provide information to police concerning Solicitor 2 following her representation on 7 October 2005, until at least November 2008. As mentioned above, Ms Gobbo represented Solicitor 2 during this period in relation to the firearm offences matter. The information provided by Ms Gobbo during this period included:
- 33.1. the fact Solicitor 2 had been [REDACTED]
- 33.2. her opinion that Solicitor 2 was likely to be imprisoned for the contempt matter⁶²
- 33.3. updates as to court proceedings, including dates of proceedings⁶³ and hearing outcomes⁶⁴
- 33.4. information concerning Solicitor 2 receiving a section 56A notice⁶⁵ and being required to attend and [REDACTED]⁶⁶
- 33.5. information concerning evidence to be relied upon by Solicitor 2 in her Court of Appeal proceedings, namely Mr Gregory's statements,⁶⁷ and the outcome of those proceedings⁶⁸

⁵⁷ Exhibit RC0281 ICR3838 (002), 20 September 2005, 11, VPL.2000.0003.1597. This was disseminated to Operation Purana through an Information Report: Exhibit RC0283 Information Report SID278, 07 October 2005, VPL.2000.0003.8409.

⁵⁸ Note: the purpose of the meeting was not disclosed: Exhibit RC0281 ICR3838 (005), 6 October 2005, 27, VPL.2000.0003.1613.

⁵⁹ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Mr Sandy White and Mr Peter Smith, 1 October 2005, 190-92, VPL.0005.0087.0068 @ .0257-.0259.

⁶⁰ Exhibit RC0281 ICR3838 (005), 7 October 2005, 27, VPL.2000.0003.1613.

⁶¹ Exhibit RC0281 ICR3838 (005), 8 October 2005, 28, VPL.2000.0003.1614.

⁶² Exhibit RC0281 ICR3838 (005), 10 October 2005, 28, VPL.2000.0003.1614; Exhibit RC0281 ICR3838 (006), 20 October 2005, 36, VPL.2000.0003.1622.

⁶³ Exhibit RC0281 ICR3838 (008), 17 November 2005, 55, VPL.2000.0003.1632; Exhibit RC0281 ICR2958 (021), 30 May 2008, 373, VPL.2000.0003.1113.

⁶⁴ Exhibit RC0281 ICR2958 (022), 4 June 2008, 389, VPL.2000.0003.1129; Exhibit RC0281 ICR2958 (023), 10 June 2008, 410, VPL.2000.0003.1150.

⁶⁵ Exhibit RC0281 ICR3838 (013), 16 December 2005, 124, VPL.2000.0003.1710.

⁶⁶ 'S/D BURROWS Op PURANA adv 0800 01/01/06': Exhibit RC0281 ICR3838 (017), 31 January 2006, 139, VPL.2000.0003.1725; Exhibit RC0281 ICR3838 (032), 22 May 2006, 304, VPL.2000.0003.1890.

⁶⁷ This information was disseminated to Purana Task Force: Exhibit RC0281 ICR3838 (033), 31 May 2006, 313, VPL.2000.0003.1899.

⁶⁸ Exhibit RC0281 ICR3838 (034), 07 June 2006, 320, VPL.2000.0003.1906.

- 33.6. possible misconduct committed by Solicitor 2,⁶⁹ including [REDACTED]
[REDACTED].⁷⁰ Ms Gobbo was tasked to meet with Solicitor 2 to obtain further information about this matter⁷¹
- 33.7. further information concerning [REDACTED] relationship with [REDACTED]
[REDACTED].⁷² Ms Gobbo was tasked to notify DSU if she became aware of [REDACTED] scheduling a face to face meeting with [REDACTED]
- 33.8. personal details of Solicitor 2, including her phone number,⁷⁴ information concerning a vehicle connected to her⁷⁵ and her address⁷⁶
- 33.9. information concerning the relationship between Solicitor 2 and a person she leased an apartment from ⁷⁷
- 33.10. her belief as to the potential for [REDACTED] to provide assistance to police⁷⁸
- 33.11. further information concerning Solicitor 2's relationship with [REDACTED]
[REDACTED]⁷⁹
- 33.12. information concerning a search warrant executed at Solicitor 2's office⁸⁰
- 33.13. that Solicitor 2 wanted to have a joint meeting with Ms Gobbo, Mr Carl Williams and Mr Thomas at [REDACTED] prison.⁸¹ The meeting did not eventuate 'due to lack of staff at the prison'.⁸² Ms Gobbo was later questioned about this proposed meeting by Vale Anscombe of the Office of Public Prosecutions and by Justice King of the Supreme Court, and advised that it 'was done without her knowledge or consent'⁸³
- 33.14. that Solicitor 2 raised the possibility of [REDACTED]
[REDACTED]
[REDACTED]

⁶⁹ Exhibit RC0281 ICR3838 (023), 18 March 2006, 195, VPL.2000.0003.1781; Exhibit RC0281 ICR3838 (097), 28 August 2007, 1165, VPL.2000.0003.2751; Exhibit RC0281 ICR2958 (018), 4 May 2008, 266, VPL.2000.0003.1006.

⁷⁰ Exhibit RC0281 ICR3838 (007), 28 October 2005, 42, VPL.2000.0003.1628.

⁷¹ Exhibit RC0281 ICR3838 (007), 28 October 2005, 46-47, VPL.2000.0003.1632-1633.

⁷² Exhibit RC0281 ICR3838 (008), 3 November 2005, 51, VPL.2000.0003.1637.

⁷³ Exhibit RC0281 ICR3838 (013), 13 December 2005, 94, VPL.2000.0003.1680.

⁷⁴ Numbers 'provided verbally to D/Sgt Flynn': Exhibit RC0281 ICR3838 (054), 21 November 2006, 563, VPL.2000.0003.2149.

⁷⁵ Exhibit RC0281 ICR3838 (008), 23 November 2005, 60, VPL.2000.0003.1646; Exhibit RC0281 ICR3838 (118), 7 January 2008, 1556, VPL.2000.0003.3142.

⁷⁶ Exhibit RC0281 ICR3838 (090), 17 July 2007, 1027, VPL.2000.0003.2613.

⁷⁷ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0282 Information Report SID344, 12 January 2006, VPL.2000.0003.8462.

⁷⁸ Exhibit RC0281 ICR3838 (012), 13 December 2005, 88, VPL.2000.0003.1674.

⁷⁹ Exhibit RC0281 ICR3838 (017), 1 February 2006, 140, VPL.2000.0003.1726.

⁸⁰ Exhibit RC0281 ICR3838 (023), 23 March 2006, 240, VPL.2000.0003.1790.

⁸¹ Exhibit RC0281 ICR3838 (026), 13 April 2006, 239, VPL.2000.0003.1825.

⁸² Exhibit RC0281 ICR3838 (027), 18 April 2006, 248, VPL.2000.0003.1834.

⁸³ Exhibit RC0281 ICR3838 (028), 21 April 2006, 257, VPL.2000.0003.1843.

⁸⁴ Exhibit RC0281 ICR3838 027, 15 April 2006, 304, VPL.2000.0003.1890.

- 33.15. suggesting other approaches to set Solicitor 2 up with an undercover operative⁸⁵ and offering to be involved 'in proactively targeting' Solicitor 2 for police investigation.⁸⁶

Submissions under Terms of Reference 1 and 2 in relation to Solicitor 2

34. It is submitted that it is open to the Commissioner to find that the case of Solicitor 2 may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
35. These submissions should be read in conjunction with the Narrative Submissions, Chapter 9 which contains an account of the conduct of Ms Gobbo and members of Victoria Police in relation to these matters.
36. The extent to which the case of Solicitor 2 may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

37. First, Category 1A⁸⁷ applies in that, in October 2005,⁸⁸ Ms Gobbo acted for Solicitor 2 while she was a human source,⁸⁹ and did not disclose same to her.⁹⁰
38. Secondly, Category 1B⁹¹ applies in that, between March 2005 and October 2005, which was before and during the period that Ms Gobbo acted for Solicitor 2 in relation to the case, Ms Gobbo provided information in relation to her to members of Victoria Police, and did not disclose same to her.⁹²
39. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁹³
40. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁸⁵ Exhibit RC0281 ICR3838 (028), 23 April 2006, 263, VPL.2000.0003.1849; Exhibit RC0281 ICR3838 (035), 18 June 2006, 335, VPL.2000.0003.1921.

⁸⁶ Exhibit RC0281 ICR3838 (049), 13 October 2006, 481, VPL.2000.0003.2067; Exhibit RC0281 ICR3838 (049), 16 October 2006, 491, VPL.2000.0003.2077.

⁸⁷ See Legal Principles Submissions at [249].

⁸⁸ See above analysis at [23]-[25].

⁸⁹ See Legal Principles Submissions at [20].

⁹⁰ See Legal Principles Submissions. at [239].

⁹¹ See Legal Principles Submissions at [249].

⁹² See above analysis at [28], [29], [31], [32].

⁹³ See Legal Principles Submissions at [249].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

41. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁴
 - 41.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Solicitor 2;
 - 41.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Solicitor 2, appropriate disclosure was made; or alternatively
 - 41.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
42. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [41.1] were taken, and accordingly there was the potential for the right of Solicitor 2 to a fair trial to have been interfered with.
43. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Solicitor 2 and/or her legal representatives.
44. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹⁵
45. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹⁶
46. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her conviction.⁹⁷
47. Category 3A⁹⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁹⁴ See Legal Principles Submissions at [384] and [452]-[457].

⁹⁵ See Legal Principles Submissions at [380]-[385].

⁹⁶ See Legal Principles Submissions at [351], [362]-[373].

⁹⁷ See Legal Principles Submissions at [351], [374].

⁹⁸ See Legal Principles Submissions at [465].

48. Category 3B⁹⁹ applies in that, before and during the period Ms Gobbo acted for Solicitor 2, she provided information in relation to her to members of Victoria Police,¹⁰⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
49. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁹ See Legal Principles Submissions at [465].

¹⁰⁰ See above analysis at [28], [29], [31], [32].

CASE STUDY: STEPHEN GAVANAS

The Relevant Case of Stephen Gavanas

1. The one relevant case of Mr Gavanas concerns his convictions before the Supreme Court in 2010 for:
 - 1.1. one charge of possessing substances and equipment with the intention of using them for the purpose of trafficking in a drug of dependence; and
 - 1.2. one charge of trafficking in not less than a commercial quantity of a drug of dependence, namely methylamphetamine (the case).¹
2. The offending occurred between May 2006 and October 2006.² On 9 October 2006, Mr Gavanas was arrested and interviewed in relation to the matter.³ On 10 October 2006, he was charged with the offending⁴ and brought before the Magistrates' Court for a filing hearing.⁵ The charges emerged from three investigations undertaken by Victoria Police and Australia Federal Police, namely: Operation Analogy, Operation Tool, and Operation Dotard.⁶ The offending concerned alleged activities in relation to drug trafficking and items found at two premises in Pascoe Vale.⁷
3. On 19 June 2010, following a trial before the Supreme Court, a jury found Mr Gavanas, along with his co-accused Mr Khodr, guilty of the offending.⁸ The prosecution case against Mr Gavanas included reliance upon the evidence of

¹ Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 17, OPP.0053.0001.0005 @.0017. Un-tendered, Reasons for sentence, *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, 739 [1], OPP.0053.0001.0005 @.0739.

² Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 17, OPP.0053.0001.0005 @.0017.

³ Un-tendered, Reasons for sentence, *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, 739 [3], OPP.0053.0001.0005 @.0739; Un-tendered Summary of charges, *The Police v Horthy Mokbel, Mohammad Khodr, Stephen Gavanas*, 35, RCMP1.0070.0001.0009 @.0035; See Exhibit RC0281 ICR3838 (048), 9 October 2006, 461-463, VPL.2000.0003.2043 @.0247-0249.

⁴ Un-tendered Summary of charges, *The Police v Horthy Mokbel, Mohammad Khodr, Stephen Gavanas*, OPP.0053.0001.0005 @.0049.

⁵ See Exhibit RC0281 ICR3838 (048), 10 October 2006, 464-465, VPL.2000.0003.2050-VPL.2000.0003.2051.

⁶ See Un-tendered 'Response to Applicant's written case', *The Queen v Stephen Gavanas* [2013] VSCA 178, 762-763, OPP.0053.0001.0005 @.0762-0763.

⁷ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [12]-[43].

⁸ Un-tendered Reasons for sentence, *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, 739 [1], OPP.0053.0001.0005 @.0739. See also Case Study of Mohammed Khodr.

Mr Cooper,⁹ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].¹⁵ The informant in the case was Mr Kelly. In addition, notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Graham Evans, Mr Craig Hayes, and Mr Dale Flynn.¹⁶

4. On 8 November 2010, Mr Gavanas was sentenced in the Supreme Court to a total effective sentence of 10 years' imprisonment, with a non-parole period of seven years.¹⁷ In 2013, Mr Gavanas brought an appeal against conviction and sentence in the Court of Appeal.¹⁸ While the Court refused Mr Gavanas' appeal against conviction,¹⁹ it upheld his appeal against sentence.²⁰ The grounds of appeal did not concern Ms Gobbo.²¹ In allowing the appeal, on 25 July 2013, the Court imposed a new total effective sentence of eight years and three months' imprisonment, with a non-parole period of five years and nine months.²²

Ms Gobbo's Legal Representation of Mr Gavanas

5. Material before the Commission indicates that Ms Gobbo acted for Mr Gavanas in relation to the case on one occasion, namely on 10 October 2006, when she appeared on his behalf in his filing hearing before the Magistrates' Court.²³ On that day, she marked fees of \$770 in the matter of "Police v M. Khodr & S. Gavanas", for a "[b]rief to appear at Melb. Mag. Court", addressed to Mr Stephen Andrianakis, solicitor.²⁴

⁹ See, Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 23, OPP.0053.0001.0005 @.0023, regarding witness 'FQ'. See Un-tendered 'Response to Applicant's written case', *The Queen v Stephen Gavanas* [2013] VSCA 178, 764 -766, OPP.0053.0001.0005 @.0764-0766.

¹⁰ See Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 24, OPP.0053.0001.0005 @.0024.

¹¹ See Un-tendered 'Response to Applicant's written case', *The Queen v Stephen Gavanas* [2013] VSCA 178, 766-767, OPP.0053.0001.0005 @.0766-767; Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 23, OPP.0053.0001.0005 @.0023.

¹² See Un-tendered Response to Applicant's written case, *The Queen v Stephen Gavanas* [2013] VSCA 178, 767-768, OPP.0053.0001.0005 @.0767-768. Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 24, OPP.0053.0001.0005 @.0024.

¹³ Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 24, OPP.0053.0001.0005 @.0024.

¹⁴ Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 24, OPP.0053.0001.0005 @.0024.

¹⁵ [REDACTED] @.0008. See also Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090.

¹⁶ See Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 23, OPP.0053.0001.0005 @.0023.

¹⁷ *DPP v Gavanas and Khodr* [2010] VSC 433, [55]-[59], especially [57]; Un-tendered Presentment C0605383.3B, *The Queen v Stephen Gavanas and Mohammad Khodr*, 29, OPP.0053.0001.0005 @.0029.

¹⁸ *Gavanas and Khodr v The Queen* [2013] VSCA 178.

¹⁹ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [91].

²⁰ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [93], [122].

²¹ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [9], [92].

²² *Gavanas and Khodr v The Queen* [2013] VSCA 178, [122].

²³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090.

²⁴ See Exhibit RC1568 Ms Nicola Gobbo fee book 01, 100, MIN.5000.7000.0001 @.0100. The fees were paid in full on 16 October 2006: Exhibit RC1569 Meldrum & Hyland, 'Invoice for fees due to Ms Gobbo', 18 March 2019, 39, GMH.0001.0001.0008 @.0039; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 07 March 2019, 41, GMH.0001.0001.0002 @.0041.

6. While the day before, on 9 October 2006, Ms Gobbo was asked by Mr Horty Mokbel to attend upon Mr Gavanas at the St Kilda Road Police Complex following his arrest, it appears that she did not do so, and that Mr Stephen Andrianakis attended alone instead.²⁵
7. In his submission to the Commission, Mr Gavanas makes a number of assertions of fact concerning Ms Gobbo's provision of legal representation. One of his assertions, namely that Ms Gobbo appeared on his behalf "on mention matters",²⁶ is consistent with the evidence before the Commission in relation to the filing hearing, as noted above.
8. However, Mr Gavanas goes further, and makes other assertions which are not supported by any other evidence presently before the Commission. In particular, he asserts that Ms Gobbo was the first legal representative who attended upon him following his arrest in 2006, at the Melbourne Assessment Prison, along with his solicitor, Mr Stephen Adrianakis, during which she advised him to plead guilty.²⁷ No such visit, however, is reflected in the Corrections Victoria records produced to the Commission, which detail Ms Gobbo's visitations to prisoners during the relevant periods.²⁸ He also states that he "thinks from memory that [in addition] she appeared for [him] on a bail application".²⁹ That too, however, is not borne out in the various records concerning Ms Gobbo's legal representation. Notably, in his submission, Mr Gavanas comments that "[s]ome things are difficult to remember given the time ...", and that he has "much more [he] would like to say".³⁰
9. It may be that further information exists which would establish that Ms Gobbo acted for him beyond her appearance on 10 October 2006. Upon the current evidence, however, it is submitted that it would not open to the Commissioner to find that Ms Gobbo represented Mr Gavanas on any occasion other than the filing hearing on 10 October 2006.

The Use of Ms Gobbo as a Human Source in relation to Mr Gavanas

Informing by Ms Gobbo in Direct relation to Mr Gavanas

10. Ms Gobbo began providing information to Victoria Police about Mr Gavanas in October 2005,³¹ soon after she was registered as a human source on 16 September 2005.³² She continued to provide information about him to police

²⁵ See Exhibit RC0281 ICR3838 (048), 9 October 2006 – 10 October 2006, 461-464, VPL.2000.0003.0247-VPL.2000.0003.0250.

²⁶ Submission 114, Stephen Gavanas, 1, SUB.0114.0001.0001

²⁷ Submission 114, Stephen Gavanas, 1, SUB.0114.0001.0001

²⁸ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, CNS.0001.0003.0037.

²⁹ Submission 114, Stephen Gavanas, 1, SUB.0114.0001.0001

³⁰ Submission 114, Stephen Gavanas, 1, SUB.0114.0001.0001

³¹ See Exhibit RC0281 ICR3838 (007), 24 October 2005, 37, VPL.2000.0003.1623. NB: the reference to "Oggy" is a reference to Mr Gavanas, see, eg, Exhibit RC0281 ICR3838 (020), 28 February 2006, 173, VPL.2000.0003.1759; Exhibit RC0281 ICR3838 (025), 9 April 2006, 229, VPL.2000.0003.1815, Exhibit RC0281 ICR3838 (037), 12 July 2006, 356, VPL.2000.0003.1942; Exhibit RC0281 ICR3838 (037), 16 July 2006, 359, VPL.2000.0003.1945; Exhibit RC0281 ICR3838 (037), 20 July 2006, 364, VPL.2000.0003.1950. See generally Un-tendered Victoria Police Summary of Extracts, 'Stephen Gavanas', 18 March 2019, 1, RCMP.0011.0001.1837 @.0001. See also Exhibit RC1930 Victoria Police Addendum Report in relation to Stephen Gavanas, 4 February 2020, VPL.5000.0043.0003.

³² See Exhibit RC0514, Informer Registration/Reactivation Application to be Completed by Handler and Authorised by LIR Dated 16 September 2005 LIR: Ian Thomas Handler: Officer Smith, VPL.0100.0121.0155

from that time until he was charged with the relevant offending in October 2006.³³ During this period, she was also directly tasked by her handlers to obtain and provide information in relation to Mr Gavanas, including for the benefit of the Purana Taskforce.³⁴

11. Notably, according to Mr Kelly, the informant in the matter, intelligence had been received from the Source Development Unit in the course of Operation Dotard that he believed had originated with Ms Gobbo.³⁵

12. Further, in the period immediately before and surrounding his arrest and charge on 9 and 10 October 2006, Ms Gobbo was used by Victoria Police to obtain targeted intelligence about Mr Gavanas. In particular, according to the Informer Contact Report (ICR) records:

12.1. On the afternoon 9 October 2006, Mr Anderson recorded that he had “called [Ms Gobbo] at the request of Purana Taskforce – [REDACTED] Mr Kelly regarding pending arrests re Operation Do[t]ard”.³⁶ Mr Anderson noted that “[i]nformation [was] required on Gavanas”, among others.³⁷ The ICRs record that, during their later telephone calls, Mr Anderson and Ms Gobbo “discussed [her] knowledge” in relation to Mr Gavanas and others.³⁸ The ICR notes:³⁹

(GAVANAS Steve @ Oggi [REDACTED] N/R IBR)

[Ms Gobbo] believes that GAVANAS may ring if arrested. Stated that GAVANAS will not assist police. GAVANAS is scared of NSW bikies that have threaten to kill him over debts owed. GAVANAS is said to owe bikies in NSW hundreds of thousands of dollars.

12.2. The ICRs record that the “[a]bove information [was] provided to DDI O’Brien verbally”.⁴⁰

12.3. Later that evening, at 7:15pm, Mr Anderson again telephoned Ms Gobbo to provide her with an “update ... regarding the status of Operation Dotard”.⁴¹ During their conversation, Ms Gobbo provided further information concerning Mr Gavanas, including concerning his relationship with Mr Horty Mokbel.⁴²

12.4. Later again, at 9:25pm, Ms Gobbo conveyed to Mr Anderson what had been told to her by Mr Horty Mokbel about the circumstances of Mr Gavanas’ arrest.⁴³ She reportedly informed Mr Anderson that “Horty ordered [her] to the police station to assist” Mr Gavanas, but that she

³³ See, e.g., entries in: Un-tendered Victoria Police Summary of Extracts, ‘Stephen Gavanas’, 18 March 2019, 8, RCMP1.0011.0001.1837 @.0008. See also Exhibit RC1930 Victoria Police Addendum Report in relation to Stephen Gavanas, 4 February 2020, VPL.5000.0043.0003.

³⁴ See, [REDACTED]

⁴¹ Exhibit RC0281 ICR3838 (048), 9 October 2006, 460, VPL.2000.0003.2046.

⁴² Exhibit RC0281 ICR3838 (048), 9 October 2006, 460-461, VPL.2000.0003.2046-VPL.2000.0003.2047.

⁴³ Exhibit RC0281 ICR3838 (048), 9 October 2006, 461-462, VPL.2000.0003.2047-VPL.2000.0003.2048.

proposed to contact Mr Stephen Andrianakis, solicitor, to attend the police station and provide assistance instead.⁴⁴

- 12.5. Throughout the remainder of that night and into the next day, 10 October 2006, Ms Gobbo and Mr Anderson were in ongoing contact about the circumstances surrounding Mr Gavanas' arrest, charge, and filing hearing.⁴⁵ Notably, during their conversations, it appears that Mr Anderson urged Ms Gobbo not to appear on behalf of Mr Gavanas at his filing hearing.⁴⁶
- 12.6. On 10 October 2006, notwithstanding Mr Anderson's advice to the contrary, Ms Gobbo did appear at the filing hearing, and afterwards confirmed to Mr Anderson that she had done so, reportedly suggesting that she "did not speak personally to either offender".⁴⁷
13. Thereafter, Mr Gavanas continued to feature in communications between Ms Gobbo and Victoria Police through till 2008.⁴⁸
14. Significantly, in her letter of 30 June 2015 to Assistant Commissioner Stephen Fontana, Ms Gobbo included Mr Gavanas on a list of "significant crimes and/or arrests" in which she was involved.⁴⁹

Relevant Conduct in relation to Mr Cooper

15. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Gavanas' case. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 15.1. the discovery of the offending the subject of Operation Posse;
 - 15.2. Mr Cooper being arrested in Operation Posse;
 - 15.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 15.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Gavanas (among others).
16. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Gavanas, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of

⁴⁴ Exhibit RC0281 ICR3838 (048), 9 October 2006, 461-462, VPL.2000.0003.2047-VPL.2000.0003.2048.

⁴⁵ Exhibit RC0281 ICR3838 (048), 9 October 2006–10 October 2006, 462-465, VPL.2000.0003.2048-VPL.2000.0003.2051.

⁴⁶ See eg, Exhibit RC0281 ICR3838 (048), 10 October 2006, 464, VPL.2000.0003.2050.

⁴⁷ Exhibit RC0281 ICR3838 (048), 10 October 2006, 465, VPL.2000.0003.2051.

⁴⁸ See, eg, entries in: Un-tendered Victoria Police Summary of Extracts, 'Stephen Gavanas', 18 March 2019, 30, RCMP1.0011.0001.1837 @.0030. See also Exhibit RC1930 Victoria Police Addendum Report in relation to Stephen Gavanas, 4 February 2020, 13, VPL.5000.0043.0003 @.0013.

⁴⁹ See Exhibit RC1433 Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 8, MIN.0002.0001.0584 @.0591.

any disclosure meant that Mr Gavanas may have been deprived of any opportunity to object to the admissibility of this evidence.

17. Further, as set out in case studies of [REDACTED] [REDACTED] is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and to those persons' respective subsequent decisions to do so.
18. On this basis, it may be argued that the evidence of [REDACTED] [REDACTED] relied upon in the prosecution of Mr Gavanas, may have also been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.
19. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁵⁰ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁵¹

Submission of Mr Gavanas to the Commission

20. In Mr Gavanas' submission to the Commission, he makes a number of assertions of fact concerning the extent of Ms Gobbo's legal representation of him, which are already addressed above, at [7].⁵² He also expresses "concerns about Mr Cooper and Gobbo and Police".⁵³ As the above and below demonstrate, concerns of that kind were well founded.

Submissions under Terms of Reference 1 and 2 in relation to Mr Gavanas

21. It is submitted that it is open to the Commissioner to find that the case of Mr Gavanas may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
22. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
23. The extent to which the case of Mr Gavanas may have been affected can be measured by virtue of the following matters.

⁵⁰ See Legal Principles Submissions at [210].

⁵¹ See Legal Principles Submissions at [222].

⁵² See Submission 114, Stephen Gavanas 1, SUB.0114.0001.0001

⁵³ See Submission 114, Stephen Gavanas 1, SUB.0114.0001.0001

Conduct of Ms Gobbo

24. First, Category 1A⁵⁴ applies in that, on 10 October 2006,⁵⁵ Ms Gobbo acted for Mr Gavanas while she was a human source,⁵⁶ and did not disclose same to him.⁵⁷
25. Secondly, Category 1B⁵⁸ applies in that, between October 2005 and 10 October 2006, which was before and upon the date that Ms Gobbo acted for Mr Gavanas in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁵⁹
26. Thirdly, Category 2A⁶⁰ applies in that evidence relied upon by the prosecution in the case against Mr Gavanas, namely the evidence of Mr Cooper,⁶¹ [REDACTED] [REDACTED] [REDACTED] may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁵
27. Fourthly, Category 2B⁶⁶ applies in that Ms Gobbo had knowledge of the circumstances founding the above [26] and failed to disclose same to her client, Mr Gavanas, thereby depriving him of the ability to object to the admission of that evidence.
28. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁶⁷
29. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁴ See Legal Principles Submissions at [249]

⁵⁵ See above analysis at [5].

⁵⁶ See Legal Principles Submissions at [20]

⁵⁷ See Legal Principles Submissions at [239]

⁵⁸ See Legal Principles Submissions at [249].

⁵⁹ See above analysis at [10]-[12].

⁶⁰ See Legal Principles Submissions at [249].

⁶¹ See above analysis at [3] and [15]-[19].

⁶² See above analysis at [3] and [17]-[18].

⁶³ See above analysis at [3] and [17]-[18].

⁶⁴ See above analysis at [3] and [17]-[18].

⁶⁵ See Legal Principles Submissions at [249].

⁶⁶ See Legal Principles Submissions at [249].

⁶⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Conduct of Victoria Police

30. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶⁸
 - 30.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Gavanas;
 - 30.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Gavanas, appropriate disclosure was made; or alternatively
 - 30.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
31. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [30.1] were taken, and accordingly there was the potential for the right of Mr Gavanas to a fair trial to have been interfered with.
32. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Gavanas and/or his legal representatives.
33. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁶⁹
34. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷⁰
35. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁷¹
36. Category 3A⁷² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
37. Category 3B⁷³ applies in that, between October 2005 and 10 October 2006, which was before and upon the date that Ms Gobbo acted for Mr Gavanas in relation to the case, Ms Gobbo provided information in relation to him to

⁶⁸ See Legal Principles Submissions at [384] and [452]-[457].

⁶⁹ See Legal Principles Submissions at [380]-[385].

⁷⁰ See Legal Principles Submissions at [351], [362]-[373].

⁷¹ See Legal Principles Submissions at [351] and [374].

⁷² See Legal Principles Submissions at [465].

⁷³ See Legal Principles Submissions at [465].

members of Victoria Police,⁷⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

38. Category 4A⁷⁵ applies in that, as noted above at [26], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
39. Category 4B⁷⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
40. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁴ See above analysis at [10]-[12].

⁷⁵ See Legal Principles Submissions at [465].

⁷⁶ See Legal Principles Submissions at [465].

CASE STUDY: GARRY GIBBS

The Relevant Case of Garry Gibbs

1. The submissions which follow concerning Mr Garry Gibbs should be read in conjunction with the relevant parts of the Narrative Submissions, at Chapter 15, which also contain matters in relation to Mr Gibbs.
2. The one relevant case concerning Mr Gibbs arises from Operation Posse,¹ and comprised one charge of dealing with proceeds of crime on 5 September 2006.²
3. In summary, the charge concerned proceeds of crime, namely cash of \$336,750 and jewellery, which Mr Gibbs was holding for safekeeping on behalf of Mr Milad and Ms Renate Mokbel.³ Mr Gibbs is the uncle of Ms Renata Mokbel.⁴ The cash and jewellery were provided to Mr Gibbs by the Mokbels on a number of occasions in late 2005 and early 2006.⁵ The proceeds were located and seized by police on 5 September 2006, upon the execution a search warrant (the Search Warrant) at Mr Gibbs' residence.⁶ On the same day, he was interviewed by police. [REDACTED]
4. He was subsequently charged, and, in addition to the product of the Search Warrant, the prosecution case relied on the evidence of Mr Cooper.⁸ The informant in the case was Mr James (Jim) O'Brien.⁹ Other notable members of police involved in the prosecution as police witnesses included Mr Craig Hayes and Mr Dale Flynn.¹⁰

¹ See Chapters 10 and 11 of the Narrative Submissions.

² Un-tendered Reasons for Sentence, *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @.0002; Un-tendered Presentment W00313206, *R v Garry Gibbs*, 2007, 23 - 24, RCMP.0070.0003.0028 @.0023 - .0024.

³ Un-tendered Reasons for Sentence, *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @.0002.

⁴ Un-tendered Reasons for Sentence', *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @ .0002.

⁵ Reasons for Sentence', *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @.0002.

⁶ Un-tendered Reasons for Sentence, *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @ .0002; Un-tendered, Plea Opening, *R v Garry Gibbs*, 2007, 29 - 30, RCMP.0070.0003.0028 @.0029-.0030.

⁷ Un-tendered Reasons for Sentence, *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 2, COR.1011.0001.0026 @.0002; Un-tendered Plea Opening, *R v Garry Gibbs*, 2007, 30, RCMP.0070.0003.0028 @.0030.

⁸ Un-tendered Presentment W00313206', *R v Garry Gibbs*, 2007, 24, RCMP.0070.0003.0028 @ .0024; Un-tendered 'Annexure A, Witnesses and Related Accused Matter Outcomes' 2, OPP.0050.0003.0001 @.0002; Statement of Mr Cooper, 13 November 2006, 1-3. RCMP.0028.0002.0001 @ .0001-0003.

⁹ See Un-tendered Witness List, *Police v Garry James Gibbs*, 8, RCMP.0070.0003.0028 @ .0008. Mr Tim Robinson was also listed in the witness list as an informant. See also, Un-tendered Presentment W00313206', *R v Garry Gibbs*, 2007, 24, RCMP.0070.0003.0028 @.0024.

¹⁰ See Un-tendered Witness List, *Police v Garry James Gibbs*, 8, RCMP.0070.0003.0028 @.0008; See also Un-tendered, 'Presentment W00313206', *R v Garry Gibbs*, 2007, 24, RCMP.0070.0003.0028 @.0024.

5. On 21 August 2007, Mr Gibbs was arraigned before the County Court and entered a plea of guilty.¹¹ On 7 December 2007, Mr Gibbs was convicted and sentenced in the County Court to six months' imprisonment, which was ordered to be wholly suspended for 12 months.¹²

6. [REDACTED]

Ms Gobbo's Legal Representation of Mr Gibbs

7. The material before the Commission indicates that, between June 2007 and November 2007, Ms Gobbo was briefed in the case on behalf of Mr Gibbs.¹⁴ In particular, the Informer Contact Reports (ICRs) indicate that, on 5 June 2007, Ms Gobbo told Mr Anderson, one of her handlers, that "as of today" she would be "representing" Mr Gibbs.¹⁵ She appears to have been retained from that time through to 26 November 2007, when she reported to her handlers that she had returned the brief to Mr Gibbs' solicitor after holding it for "3 months".¹⁶

The Conduct of Ms Gobbo as a Human Source in relation to Mr Gibbs

Prior to June 2007: Relevant Conduct in relation to Mr Cooper

8. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper, between September 2005 and February 2007, is relevant to an assessment of Mr Gibbs' matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:

- 8.1. the discovery of the offending the subject of Operation Posse;
- 8.2. Mr Cooper being arrested in Operation Posse;
- 8.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)

¹¹ Un-tendered, 'Presentment W00313206', *R v Garry Gibbs*, 2007, 24, RCMP1.0070.0003.0028 @.0024; Un-tendered, 'Annexure A, Witnesses and Related Accused Matter Outcomes' 2, OPP.0050.0003.0001 @.0002.

¹² Un-tendered 'Reasons for Sentence', *R v Gibbs, Garry* [2007] VCC 1809 (revised), 7 December 2007, 4, COR.1011.0001.0026 @.0004.

¹³ See Case Studies of Domenic Barbaro and Mr Keene, respectively.

¹⁴ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2461- VPL.2000.0003.2462; Exhibit RC0281 ICR3838 (113), 26 November 2007, 1460; VPL.2000.0003.3046; Exhibit RC0281 ICR3838 (113) 28 November 2007, 1472, VPL.2000.0003.3058.

¹⁵ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2461- VPL.2000.0003.2462. Note that the ICR entry misspells the name as "GIPP".

¹⁶ Exhibit RC0281 ICR3838 (113), 26 November 2007, 1460, VPL.2000.0003.3046; Exhibit RC0281 ICR3838 (113) 28 November 2007, 1472, VPL.2000.0003.3058. See also Exhibit RC281 ICR3838 (112), 24 November 2007, 1453, VPL.2000.0003.3039, where it is noted that Ms Gobbo was "asked to do [Mr Gibbs'] plea on the 7-DEC-07".

- 8.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Gibbs (among others).
9. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Gibbs, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Gibbs may have been deprived of any opportunity to object to the admissibility of this evidence.
10. Separately, it appears that other information provided by Ms Gobbo to Victoria Police was pertinent to the investigation in relation to Mr Gibbs in the period leading up to the execution of the Search Warrant on 5 September 2006. In particular, the ICRs record that, on 6 July 2006, Ms Gobbo conveyed to her handler, Mr Peter Smith, that, according to Mr Cooper, large amounts of cash were being stored at the residence of Ms Renate Mokbel's aunty.¹⁷ She also told Mr Peter Smith that Mr Cooper had conveyed the information to Mr Bartlett.¹⁸ The ICRs record that Mr Ryan was also advised of the information.¹⁹ The next day, on 7 July 2006, Ms Gobbo reported to her handlers that Mr Cooper had been visited by Mr Paul Rowe and told him the information.²⁰ In addition, on 28 July 2006, Ms Gobbo informed her handlers that "Auntie Marie" is a relative of Ms Renate Mokbel, and that she has large amounts of cash buried on behalf of Mr Milad Mokbel.²¹
11. It is clear, however, that it was information provided to police directly from Mr Cooper which advanced the investigation and led to the execution of the Search Warrant on 5 September 2006, which resulted in the obtaining of the incriminating evidence of proceedings of crime. In particular, in a statement made by Mr Cooper on 13 November 2006, he sets out the relevant information he provided police.²² In addition, the affidavit in support of the search warrant on Alma Rd (executed on 5 September 2006), sworn by Mr O'Brien, makes express reference to intelligence provided by Mr Cooper as founding the basis for the Search Warrant.²³ Given the reliance upon Mr Cooper in the affidavit, it may be argued, for reasons similar to those advanced above, that the evidence seized as a result of the Search Warrant may have been obtained in consequence of improper or illegal conduct. Such evidence may therefore have been liable to exclusion. As above, it is submitted that the absence of any disclosure meant that Mr Gibbs may have been deprived of any opportunity to object to the admissibility of this evidence.

¹⁷ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937.

¹⁸ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937.

¹⁹ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937. See also, Transcript of Mr James (Jim) O'Brien, 6 September 2019, 5792, TRN.2019.08.06.P.

²⁰ Exhibit RC0281 ICR3838 (037), 7 July 2006, 351, VPL.2000.0003.1937.

²¹ Exhibit RC0281 ICR3838 (039), 28 July 2006, 374; VPL.2000.0003.1960; Exhibit RC282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 28 July 2006, 157-159 VPL.0005.0104.0440, VPL.0005.0104.0596-0598.

²² See Un-tendered Statement of Mr Cooper 13 November 2006, 1-3, RCMP.0028.0002.001 @.0001-.0003. See also Un-tendered Witness List, *Police v Garry James Gibbs*, RCMP.0070.0003.0028 @.0008; See also Un-tendered Summary of Charges, *Police v Garry James Gibbs*, RCMP.0070.0003.0028 @.0003-0005.

²³ See Un-tendered Affidavit of James (Jim) O'Brien for Search Warrant, undated, VPL.6111.0200.1258. The identification of Mr Cooper was made verbally by Victoria Police, through its lawyers, to Solicitors Assisting the Commission on 20 May 2020.

Between June 2007 and November 2007 (during Period Ms Gobbo Acted as Lawyer)

12. Ms Gobbo continued to inform on Mr Gibbs in the period during which she was retained as his counsel.²⁴ For example:
 - 12.1. On 5 June 2007, the ICRs record that Ms Gobbo told her handlers, Messrs Anderson and Fox, that “as of today she will be representing [Mr Gibbs]”.²⁵ Further the ICRs record that Ms Gobbo conveyed that Mr Gibbs “is thinking of a plea [REDACTED], and that he would “be joined on Horty’s committal.”²⁶ The transcript of the meeting between Ms Gobbo and her handlers also records that Ms Gobbo stated: “I have said to [Mr Gibbs’] solicitor, to say to the DPP [Director of Public Prosecutions], he will plead guilty, [REDACTED] ...”²⁷ Despite apparently being cognisant of the “ethical issues of representing co-accused and being an informer” and of the “conflict of interest issues”,²⁸ Ms Gobbo continued to be engaged in the matter.
 - 12.2. On [REDACTED] 2007, the ICRs record that Ms Gobbo and her handler, Mr Anderson, discussed the matter of [REDACTED], which appears to have been a reference to Mr Gibbs.²⁹ Ms Gobbo reportedly “asked if there was any problem with [her] representing [Mr Gibbs]”, and added that she “will be able to ensure [REDACTED]”.³⁰ Mr Anderson noted that the issue was “[t]o be discussed further.”³¹
 - 12.3. On 22 August 2007, according to the ICRs, Ms Gobbo told Mr Fox that, inter alia, Mr Gibbs was “a cocaine trafficker”.³²
 - 12.4. On 24 November 2007, shortly before she returned the brief to Mr Gibbs’ solicitor,³³ Ms Gobbo discussed with Mr Fox, inter alia, the content of the brief and her view on the case.³⁴

²⁴ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2465-VPL.2000.0003.2466; Exhibit RC0281 ICR3838, 13 June 2007, 892, VPL.2000.0003.2478; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1131, VPL.2000.0003.2717; Exhibit RC0281 ICR3838 (113), 26 November 2007, 1460, VPL.2000.0003.3046; Exhibit RC0281 ICR3838 (112), 24 November 2007, 1453, VPL.2000.0003.3039; Exhibit RC0281 ICR3838 (113) 28 November 2007, 1472, VPL.2000.0003.3058.

²⁵ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2465-VPL.2000.0003.2466. Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Anderson and Fox, 5 June 2007, 271-275 VPL.0005.0137.0351 @.0621-.0625.

²⁶ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2465-VPL.2000.0003.2466. Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Anderson and Fox, 5 June 2007, 271-275 VPL.0005.0137.0351 @.0621-.0625.

²⁷ See Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Anderson and Fox, 5 June 2007, 271-275 VPL.0005.0137.0351 @.0622.

²⁸ Exhibit RC0281 ICR3838 (082), 5 June 2007, 879-880, VPL.2000.0003.2465- VPL.2000.0003.2466. See also Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Anderson and Fox, 5 June 2007, 271-275 VPL.0005.0137.0351 @.0621-.0625.

²⁹ Exhibit RC0281 ICR3838 (083), 13 June 2007, 892, VPL.2000.0003.2478.

³¹ Exhibit RC0281 ICR3838 (083), 13 June 2007, 892, VPL.2000.0003.2478.

³² Exhibit RC0281 ICR3838 (096), 22 August 2007, 1131, VPL.2000.0003.2717.

³³ Exhibit RC0281 ICR3838 (113), 26 November 2007, 1460, VPL.2000.0003.3046; Exhibit RC0281 ICR3838 (113) 28 November 2007, 1472, VPL.2000.0003.3058.

³⁴ Exhibit RC0281 ICR3838 (112), 24 November 2007, 1453, VPL.2000.0003.3039.

13. It appears that Ms Gobbo ceased communicating with her handlers about Mr Gibbs at the end of 2007.³⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Gibbs

14. It is submitted that it is open to the Commissioner to find that the case of Mr Gibbs may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
16. The extent to which the case of Mr Gibbs may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

17. First, Category 1A³⁶ applies in that, between June 2007 and November 2007,³⁷ Ms Gobbo acted for Mr Gibbs in relation to the case while she was a human source,³⁸ and did not disclose same to him.³⁹
18. Secondly, Category 1B⁴⁰ applies in that, between June 2007 and November 2007⁴¹, which was during the period that Ms Gobbo acted for Mr Gibbs relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴²
19. Thirdly, Category 2A⁴³ applies in that evidence relied upon by the prosecution in the case against Mr Gibbs, namely the evidence of and obtained by way of Mr Cooper,⁴⁴ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴⁵
20. Fourthly, Category 2B⁴⁶ applies in that Ms Gobbo had knowledge of the circumstances founding the above [19] and failed to disclose same to her client, Mr Gibbs, thereby depriving him of the ability to object to its admission.
21. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may

³⁵ Exhibit RC0281 ICR3838 (112), 24 November 2007, 1453, VPL.2000.0003.3039; Exhibit RC0281 ICR3838 (113), 30 November 2007, 1485, VPL.2000.0003.3071.

³⁶ See Legal Principles Submissions at [249].

³⁷ See above analysis at [7].

³⁸ See Legal Principles Submissions at [20].

³⁹ See Legal Principles Submissions at [239].

⁴⁰ See Legal Principles Submissions at [249].

⁴¹ See above analysis at [7].

⁴² See above analysis at [12]-[13].

⁴³ See Legal Principles Submissions at [249].

⁴⁴ See [3]-[4] and [19]-[11] above.

⁴⁵ See Legal Principles Submissions at [196]-[222].

⁴⁶ See Legal Principles Submissions at [249].

constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁷ Further, in relation to at least one instance identified above,⁴⁸ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁴⁹

22. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

23. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁰
 - 23.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Gibbs;
 - 23.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Gibbs, appropriate disclosure was made; or alternatively
 - 23.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
24. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [23.1] were taken, and accordingly there was the potential for the right of Mr Gibbs to a fair trial to have been interfered with.
25. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Gibbs and/or his legal representatives.
26. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest

⁴⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁴⁸ See above analysis at [12.1].

⁴⁹ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁵⁰ See Legal Principles Submissions at [452]-[457].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵¹

27. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵²
28. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁵³
29. Category 3A⁵⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. Category 3B⁵⁵ applies in that, during the period Ms Gobbo acted for Mr Gibbs, she provided information in relation to him to members of Victoria Police,⁵⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
31. Category 4A⁵⁷ applies in that, as noted above at [19], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
32. Category 4B⁵⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
33. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵¹ See Legal Principles Submissions at [380]-[385].

⁵² See Legal Principles Submissions at [351], [362]-[373].

⁵³ See Legal Principles Submissions at [351], [374].

⁵⁴ See Legal Principles Submissions at [465].

⁵⁵ See Legal Principles Submissions at [465].

⁵⁶ See above analysis at [12].

⁵⁷ See Legal Principles Submissions at [465].

⁵⁸ See Legal Principles Submissions at [465].

CASE STUDY: MR GOLDMAN (A PSEUDONYM)

The Relevant Case of Mr Goldman

1. The one relevant case of Mr Goldman concerns his convictions before the County Court in March 2009.¹
2. On 13 September 2007, following the execution of a search warrant at his address, Mr Goldman was arrested and charged with drug offences.²
3. The prosecution case was that Mr Goldman was supplied drugs by Vincent Benvenuto for the purpose of selling them to others.³ The prosecution case relied on telephone intercepts, listening devices and optical surveillance utilised in an unrelated investigation.⁴
4. On 25 November 2008, Mr Goldman was arraigned and entered a plea of guilty to:
 - 4.1. one count of trafficking methylamphetamine;
 - 4.2. one count of trafficking cocaine; and
 - 4.3. three counts of possession of drugs of dependence (namely; methylamphetamine, 3,4-Methylenedioxyamphetamine [MDMA] and cannabis).⁵
5. On 12 March 2009, Mr Goldman was sentenced to a total effective sentence of four years and six months' imprisonment, with a non-parole period of three years' imprisonment.⁶ A pecuniary penalty order in the sum of \$98,115 was also made, by consent.⁷

¹ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, RCMP1.0070.0003.0029 @.0044 [Restricted]; Un-tendered Victoria Police Criminal History Report, Mr Goldman, 16 December 2019, VPL.0099.0193.2062.

² Un-tendered Prosecution opening for plea hearing, *R v Mr Goldman*, undated, 18 [136], RCMP1.0070.0003.0029 @.0040.

³ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, 159 [2], 160 [5], RCMP1.0070.0003.0029 @.0045, .0046 [Restricted]; Un-tendered Summary of Charges, *R v Mr Goldman*, undated, 2-20, RCMP1.0070.0003.0029 @.0002-.0018.

⁴ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, 159 [2], 160 [5], RCMP1.0070.0003.0029 @.0045-.0046 [Restricted].

⁵ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, 159 [1], RCMP1.0070.0003.0029 @.0044 [Restricted]; Un-tendered Presentment No: W02546487, *R v Mr Goldman*, 2008, RCMP1.0070.0003.0029 @.0019-.0021.

⁶ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, 173 [49], RCMP1.0070.0003.0029 @.0044 [Restricted]; Un-tendered Victoria Police Criminal History Report, Mr Goldman, 16 December 2019, VPL.0099.0193.2062.

⁷ Un-tendered Reasons for Sentence, *R v Mr Goldman* [2009] VCC, 174 [53], RCMP1.0070.0003.0029 @.0060 [Restricted]; Un-tendered Order of Judge Hampel in *R v Mr Goldman* (County Court of Victoria, 12 March 2009), 22, RCMP1.0070.0003.0029 @.0022.

6. Mr Goldman subsequently made an application for leave to appeal against the sentence,⁸ which was dismissed on 18 January 2011.⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Goldman

7. Ms Gobbo provided legal representation to Mr Goldman between at least September 2007 and November 2008. During that period, she appeared at court on behalf of Mr Goldman on the following occasions:
 - 7.1. on 14 September 2007, at the Melbourne Magistrates' Court for a bail application¹⁰
 - 7.2. on 23 June 2008, at the Melbourne Magistrates' Court for a committal hearing¹¹
 - 7.3. on 25 November 2008, at the Melbourne County Court for a plea hearing.¹²
8. Ms Gobbo charged fees for her appearances at the committal hearing and plea hearing, including for preparation and conferences.¹³
9. In addition, it is submitted that it is open to the Commissioner to infer, based on the information provided by Ms Gobbo at [11.3] below, that Ms Gobbo continued to act on behalf of Mr Goldman for a short period following the plea hearing on 25 November 2008.
10. However, it is clear that Ms Gobbo was no longer representing Mr Goldman on 3 December 2008, when she told her handler that Mr Goldman fired his solicitor and Ms Gobbo.¹⁴

The Conduct of Ms Gobbo as a Human Source in relation to Mr Goldman

11. Ms Gobbo provided information to Victoria Police concerning Mr Goldman during her representation of him, on at least the following three occasions:

⁸ Un-tendered Notice of Application for Leave to Appeal Against a Sentence, *R v Mr Goldman*, 19 March 2009, 61, RCMP1.0070.0003.0029 @.0061.

⁹ Un-tendered Notification of Result of Appeal or Application, *R v Mr Goldman*, 18 January 2011, COR.1015.0001.0002.

¹⁰ Exhibit RC1841 Magistrates' Court of Victoria Record of Persons represented by Ms Nicola Gobbo, 14 September 2007, 20, MCV.0001.0001.0001 @.0018; Exhibit RC0281 ICR3838 (100), 14 September 2007, VPL.2000.0003.2804; Un-tendered Summary of Charges, *R v Mr Goldman*, undated, [37], RCMP1.0070.0003.0029 @.0017.

¹¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 June 2008, 70, OPP.0001.0004.0025 @.0094.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 November 2008, 70, OPP.0001.0004.0025 @.0094.

¹³ Exhibit RC1568 Ms Gobbo fee book 02, 10 December 2008, 121, MIN.5000.7000.0103 @.0121, .0129; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 7 March 2019, 13, GMH.0001.0001.0002 @.0004, .0013; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 12 December 2008, 10, GMH.0001.0001.0004 @.0010; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 24 June 2006, 5, GMH.0001.0001.0005 @.0005.

¹⁴ Exhibit RC0281 ICR2958 (047), 3 December 2008, 750, VPL.2000.0003.1490.

- 11.1. On 14 September 2007, she told her handler that Mr Goldman and others had been arrested overnight as a result of Purana raids and were making bail applications. She then discussed the issues which arose in the bail application.¹⁵
- 11.2. On 25 November 2008, Ms Gobbo told her handler that Mr Goldman was her client, that it was a 'Purana brief' and advised as to the nature of his charges. She stated that Mr Goldman was clearly supplied by another (Mr Michael LaVerde) and asked if that other person was of interest.¹⁶
- 11.3. On [REDACTED] November 2008, Ms Gobbo advised her handlers as to the co-accused charged in relation to Mr Goldman's matter and the outcome of Mr Goldman's hearing, stating that his matter had been adjourned to 16 December 2008 for a plea hearing.¹⁷ She stated that whilst reading the brief of evidence she realised that Mr LaVerde was a significant supplier of cocaine.¹⁸ In addition, she relayed her belief as to the [REDACTED]
[REDACTED].¹⁹ Ms Gobbo stated that, in her opinion, [REDACTED]:
 - 11.3.1. [REDACTED]
 - 11.3.2. [REDACTED]
 - 11.3.3. [REDACTED]
 - 11.3.4. [REDACTED]
 - 11.3.5. [REDACTED]
 - 11.3.6. [REDACTED]

12. Ms Gobbo continued to provide information concerning Mr Goldman to Victoria Police following her representation of him until at least 9 December 2008. The information provided during that period included:

- 12.1. that Mr Goldman had sacked his solicitor,²¹ and later, the name of his new solicitor²²
- 12.2. the date of his next court hearing²³
- 12.3. the sentence received by Mr Goldman's co-accused²⁴
- 12.4. information concerning Mr Goldman's financial circumstances and assets²⁵

¹⁵ Exhibit RC0281 ICR3838 (100), 14 September 2007, 1218, VPL.2000.0003.2804.

¹⁶ Exhibit RC0281 ICR2958 (047), 25 November 2008, 714, VPL.2000.0003.1454.

[REDACTED]

²¹ Exhibit RC0281 ICR2958 (047), 3 December 2008, 750, VPL.2000.0003.1490.

²² Exhibit RC0281 ICR2958 (048), 4 December 2008, 753, VPL.2000.0003.1493.

²³ Exhibit RC0281 ICR2958 (047), 3 December 2008, 750, VPL.2000.0003.1490.

²⁴ Exhibit RC0281 ICR2958 (048), 4 December 2008, 753, VPL.2000.0003.1493.

[REDACTED]

12.5. [REDACTED]

Submissions under Terms of Reference 1 and 2 in relation to Mr Goldman

13. It is submitted that it is open to the Commissioner to find that the case of Mr Goldman may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. The extent to which the case of Mr Goldman may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

15. First, Category 1A²⁷ applies in that, between September 2007 and November 2008,²⁸ Ms Gobbo acted for Mr Goldman while she was a human source,²⁹ and did not disclose same to him.³⁰
16. Secondly, Category 1B³¹ applies in that, between September 2007 and November 2008, which was during the period that Ms Gobbo acted for Mr Goldman in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.³²
17. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³³
18. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁷ See Legal Principles Submissions at [249].

²⁸ See above analysis at [7]-[9].

²⁹ See Legal Principles Submissions at [20].

³⁰ See Legal Principles Submissions at [239].

³¹ See Legal Principles Submissions at [249].

³² See above analysis at [11].

³³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁴
 - 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Goldman;
 - 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Goldman, appropriate disclosure was made; or alternatively
 - 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Goldman to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Goldman and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³⁵
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁶
24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁷
25. Category 3A³⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. Category 3B³⁹ applies in that, between September 2007 and November 2008, which was during the period that Ms Gobbo acted for Mr Goldman in relation to the case, Ms Gobbo provided information in relation to him to members of

³⁴ See Legal Principles Submissions at [384] and [452]-[457].

³⁵ See Legal Principles Submissions at [380]-[385].

³⁶ See Legal Principles Submissions at [351], [362]-[373].

³⁷ See Legal Principles Submissions at [351], [374].

³⁸ See Legal Principles Submissions at [465].

³⁹ See Legal Principles Submissions at [465].

Victoria Police,⁴⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁰ See above analysis at [11].

CASE STUDY: CRAIG GREENSLADE AND VANCE JOHN GREENSLADE (AKA VANCE THOW)

MR CRAIG GREENSLADE

The Relevant Case of Mr Greenslade

1. The one relevant case of Mr Craig Greenslade concerns his convictions before the County Court in April 2011.¹
2. On 14 February 2008, Mr Greenslade was arrested following the execution of a search warrant at his address.²
3. The prosecution alleged that Mr Greenslade was involved in 'low-level street trafficking' of amphetamines at various locations in Melbourne,³ together with co-accused Paul Logan and Mr Greenslade's half-brother, Vance Thow (who was also known as Vance Greenslade).⁴ It was also alleged that Mr Greenslade was involved in assaulting others involved in a drug deal.⁵
4. The prosecution relied upon DNA evidence linking Mr Greenslade to the victim of the assault, telephone records, and items located at Mr Greenslade's address, including amphetamines, drug paraphernalia, various weapons and mobile phones.⁶
5. On 26 November 2010, Mr Greenslade was arraigned and entered a plea of not guilty to all but one count on the presentment.⁷
6. On 1 December 2010, he amended his plea and entered a plea of guilty to:

¹ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 1 [1], 5 [18], COR.1011.0001.0032 @.0002, .0005; Un-reported Presentment, *The Queen v Craig Greenslade, Paul Logan & Vance John Thow* [2010] VCC, 84, RCMP.0070.0001.0021 @.0084; Un-tendered Particulars of Offence, *The Queen v Craig Greenslade, Paul Logan & Vance John Thow* [2010] VCC, 93, RCMP.0070.0001.0021 @.0093.

² Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 4 [15], COR.1011.0001.0032 @ 0004; Un-reported Summary of Prosecution Opening, *The Queen v Vance Greenslade* [2010] VCC, 118, RCMP.0070.0001.0021 @.0118.

³ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, [6] – [8], COR.1011.0001.0032 @.0002.

⁴ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 2 [6] – [8], COR.1011.0001.0032 @.0002.

⁵ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 3 [11], COR.1011.0001.0032 @.0003.

⁶ Un-tendered Summary of prosecution opening, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 118, RCMP.0070.0001.0021 @.0118; Un-tendered Crown Opening, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 123, RCMP.0070.0001.0021 @ 0123; Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 2 [7], 4 [15], COR.1011.0001.0032 @.0002, .0004.

⁷ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 5 [19], COR.1011.0001.0032 @.0005.

- 6.1. one count of trafficking amphetamine;
 - 6.2. one count of aggravated burglary;
 - 6.3. three counts of intentionally causing serious injury;
 - 6.4. one count of handling stolen goods; and
 - 6.5. one count of possession of amphetamine.⁸
7. On 29 April 2011, Mr Greenslade was sentenced to a total effective sentence of seven years and six months' imprisonment, with non-parole period of five years' imprisonment.⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Greenslade

8. Ms Gobbo appeared in court on behalf of Mr Greenslade on one occasion; namely a bail application on 27 February 2008.¹⁰ She submitted an invoice for fees relating to this appearance on 28 February 2008.¹¹
9. Based on the material reviewed, there is nothing to suggest that Ms Gobbo continued to provide legal representation to Mr Greenslade following that hearing.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Greenslade

10. Ms Gobbo provided information concerning Mr Greenslade to Victoria Police prior to or during her representation of him, on at least the following two occasions:
 - 10.1. On 26 February 2008, Ms Gobbo told her handler that Mr Greenslade was a drug runner for a known associate, Ian Lesser, and advised that the case had been referred to her for a bail application by a solicitor named Lee Ristivojevic.¹²
 - 10.2. On 27 February 2008 (the day of Mr Greenslade's bail application), Ms Gobbo provided information concerning the nature of Mr Greenslade's

⁸ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 1 [1], 5 [18], COR.1011.0001.0032 @.0002, .0005; Un-tendered Presentment, *The Queen v Craig Greenslade, Paul Logan & Vance John Thow* [2010] VCC, 84, RCMP.0070.0001.0021 @ 0084; Un-tendered Particulars of Offence, *The Queen v Craig Greenslade, Paul Logan & Vance John Thow* [2010] VCC, 93, RCMP.0070.0001.0021 @.0093.

⁹ Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Craig David Greenslade, 16 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.2250; Un-tendered Record of Orders made, 29 April 2011, COR.1011.0001.0031; Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 17 [68] - [69], COR.1011.0001.0032 @.0017.

¹⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 71, produced by the Office of Public Prosecutions Victoria in response to a Commission Notice to Produce, OPP.0001.0004.0025 @.0095.

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 28 February 2008, 15, MIN.5000.7000.0103 @.0117; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax invoices, 28 February 2008, 50, GMH.0001.0001.0005 @.0050; Exhibit RC1569 Meldrum & Hyland Ms Gobbo Statement of Account, 7 March 2019, 18, GMH.0001.0001.0002 @.0018.

¹² Exhibit RC0281 ICR2958 (006), 26 February 2008, 64, VPL.2000.0003.0801 @.0804.

offending (and that of his half-brother) and the extent of the injuries of the victims of the assault.¹³ In addition, she provided information to police concerning a co-accused, Paul Logan.¹⁴

11. Subsequently, on 19 March 2008, Ms Gobbo informed her handler that Craig Greenslade was at court in relation to trafficking offences and Ian Lesser was funding his case to find out how much police knew.¹⁵
12. There is no information available to the Commission that suggests that the information provided by Ms Gobbo, whether before, during or after Ms Gobbo acted for Mr Greenslade, materially advanced his prosecution.

Submissions under Terms of Reference 1 and 2 in relation to Mr Greenslade

13. It is submitted that it is open to the Commissioner to find that the case of Mr Greenslade may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. The extent to which the case of Mr Greenslade may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

15. First, Category 1A¹⁶ applies in that, in February 2008,¹⁷ Ms Gobbo acted for Mr Greenslade while she was a human source,¹⁸ and did not disclose same to him.¹⁹
16. Secondly, Category 1B²⁰ applies in that, in February 2008,²¹ which was before and during the period that Ms Gobbo acted for Mr Greenslade in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²²
17. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²³ Further, in certain instances identified above,²⁴ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁵
18. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at

¹³ Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, VPL.2000.0003.0807.

¹⁴ Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, VPL.2000.0003.0807.

¹⁵ Exhibit RC0281 ICR2958 (010), 19 March 2008, 6, VPL.2000.0003.0849.

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See above analysis at [8].

¹⁸ See Legal Principles Submissions at [20].

¹⁹ See Legal Principles Submissions at [239].

²⁰ See Legal Principles Submissions at [249].

²¹ See above analysis at [8].

²² See above analysis at [10].

²³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁴ See above analysis at [10].

²⁵ See Legal Principles Submissions at [310]-[319] and [301]-[306].

preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁶
 - 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Greenslade;
 - 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Greenslade, appropriate disclosure was made; or alternatively
 - 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Greenslade to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Greenslade and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁷
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁸

²⁶ See Legal Principles Submissions at [384] and [452]-[457].

²⁷ See Legal Principles Submissions at [380]-[385].

²⁸ See Legal Principles Submissions at [351], [362]-[373].

24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after guilty plea.²⁹
25. Category 3A³⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. Category 3B³¹ applies in that, before and during the period Ms Gobbo acted for Mr Greenslade, she provided information in relation to him to members of Victoria Police,³² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁹ See Legal Principles Submissions at [351], [374].

³⁰ See Legal Principles Submissions at [465].

³¹ See Legal Principles Submissions at [465].

³² See above analysis at [10].

VANCE JOHN THOW

The Relevant Case of Mr Thow

28. The one relevant case of Mr Vance Thow concerns his convictions before the County Court in April 2011.³³
29. On 14 February 2008, Mr Thow was arrested and interviewed in relation drug offences.³⁴
30. As outlined at [3] above, the prosecution alleged that Mr Thow and Mr Greenslade were involved in 'low-level street trafficking' of amphetamine at various locations in Melbourne.³⁵
31. Mr Thow was arraigned and pleaded not guilty, and a trial was conducted in the County Court.³⁶
32. On 31 January 2011, Mr Thow was found guilty by a jury of:
 - 32.1. one count of aggravated burglary;
 - 32.2. three counts of intentionally causing serious injury; and
 - 32.3. one count of trafficking amphetamine.³⁷
33. On 29 April 2011, Mr Thow was sentenced to a total effective sentence of nine years and six months' imprisonment, with non-parole period of seven years' imprisonment.³⁸

³³ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 18-19 [79] - [80], COR.1011.0001.0032 @.0019; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Vance John Greenslade, 16 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.5000; Un-tendered Record of Orders made, 29 April 2011, 1, COR.1011.0001.0031; Un-tendered Record of orders made, Vance John Greenslade, 1, COR.1011.0001.0034.

³⁴ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 4 [16], COR.1011.0001.0032 @.0004.

³⁵ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 2 [6] – [8], COR.1011.0001.0032 @.0002.

³⁶ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 5 [19], COR.1011.0001.0032 @.0005.

³⁷ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 2 [3], COR.1011.0001.0032 @.0002; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Vance John Greenslade, 16 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.5000; Un-tendered Presentment, *The Queen v Craig Greenslade, Paul Logan & Vance Thow (2010)*, 84, RCMPI.0070.0001.0021 @.0084.

³⁸ Un-tendered Reasons for sentence, *DPP v Craig Greenslade, Paul Logan & Vance Thow* [2011] VCC 567, 18-19 [79] - [80], COR.1011.0001.0032 @ 0019; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Vance John Greenslade, 16 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.5000; Un-tendered Record of Orders made, 29 April 2011, 1, COR.1011.0001.0031; Un-tendered Record of orders made, Vance John Greenslade, 1, COR.1011.0001.0034.

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Thow

34. Ms Gobbo appeared in court on behalf of Mr Thow on one occasion; being a bail application on 27 February 2008.³⁹ She charged fees for this appearance.⁴⁰
35. Based on the material reviewed, there is nothing to suggest that Ms Gobbo continued to provide legal representation to Mr Thow following that hearing.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Thow

36. As outlined above at [10.2], Ms Gobbo provided information to Victoria Police concerning Mr Thow on at least one occasion. On 27 February 2008, (the day of Mr Thow's bail application, Ms Gobbo provided information concerning the nature of Mr Greenslade and Mr Thow's offending, and the extent of the injuries of the victims of the assault.⁴¹ In addition, she provided information to police concerning a co-accused, Paul Logan.⁴²
37. There is no information available to the Commission that suggests that the information provided by Ms Gobbo, whether before or during her acting for Mr Thow, materially advanced his prosecution.

Submissions under Terms of Reference 1 and 2 in relation to Mr Thow

38. It is submitted that it is open to the Commissioner to find that the case of Mr Thow may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
39. The extent to which the case of Mr Thow may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

40. First, Category 1A⁴³ applies in that, in February 2008,⁴⁴ Ms Gobbo acted for Mr Thow while she was a human source,⁴⁵ and did not disclose same to him.⁴⁶

³⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 71, OPP.0001.0004.0025 @.0095.

⁴⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 28 February 2008, 15, MIN.5000.7000.0103 @.0117; Exhibit RC1569 Meldrum & Hyland Ms Gobbo Statement of Account, 7 March 2019, 18, GMH.0001.0001.0002 @.0018; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax invoices, 28 February 2008, 51, GMH.0001.0001.0005 @.0051.

⁴¹ Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, VPL.2000.0003.0807.

⁴² Exhibit RC0281 ICR2958 (006), 27 February 2008, 67, VPL.2000.0003.0807.

⁴³ See Legal Principles Submissions at [249].

⁴⁴ See above analysis at [34].

⁴⁵ See Legal Principles Submissions at [20].

⁴⁶ See Legal Principles Submissions at [239].

41. Secondly, Category 1B⁴⁷ applies in that, in February 2008, which was before and during the period that Ms Gobbo acted for Mr Thow in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴⁸
42. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁹
43. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

44. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁰
 - 44.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Thow;
 - 44.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Thow, appropriate disclosure was made; or alternatively
 - 44.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
45. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [44.1] were taken, and accordingly there was the potential for the right of Mr Thow to a fair trial to have been interfered with.
46. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Thow and/or his legal representatives.

⁴⁷ See Legal Principles Submissions at [249].

⁴⁸ See above analysis at [36].

⁴⁹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵⁰ See Legal Principles Submissions at [384] and [452]-[457].

47. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵¹
48. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵²
49. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁵³
50. Category 3A⁵⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
51. Category 3B⁵⁵ applies in that, before and during the period Ms Gobbo acted for Mr Thow, she provided information in relation to him to members of Victoria Police,⁵⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
52. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵¹ See Legal Principles Submissions at [380]-[385].

⁵² See Legal Principles Submissions at [351], [362]-[373].

⁵³ See Legal Principles Submissions at [351], [374].

⁵⁴ See Legal Principles Submissions at [465].

⁵⁵ See Legal Principles Submissions at [465].

⁵⁶ See above analysis at [36].

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT PUBLISHED

CASE STUDY: NADIM HAJ

The Relevant Case of Mr Haj

1. The case addressed in this case study arose for consideration as part of Stage 5 in the methodology of Counsel Assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 5 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
2. The one relevant case of Mr Haj concerns his convictions and sentence before the Dandenong Magistrates' Court on 27 November 2008, on counts of trafficking cannabis, cultivating a narcotic plant, possession of cannabis, theft, and criminal damage.¹
3. On that day Mr Haj was sentenced to nine months' imprisonment which was wholly suspended for a period of 24 months and ordered to complete a Community-based Order over 12 months.

Ms Gobbo's Legal Representation of Mr Haj

4. Material before the Commission indicates that Ms Gobbo appeared for Mr Haj before the Dandenong Magistrates' Court on 27 November 2008.²

The Conduct of Ms Gobbo as a Human Source in relation to Mr Haj

5. Material before the Commission records that Mr Haj was the subject of communications between Ms Gobbo (in her capacity as a human source) and a member of Victoria Police on 27 November 2008, in which she passed on information Mr Haj had allegedly told her about [REDACTED].³

Submissions under Terms of Reference 1 and 2 in relation to Mr Haj

6. It is submitted that it is open to the Commissioner to find that the case of Mr Haj may have been affected by the conduct of Ms Gobbo as a human source,

¹ Un-tendered Victoria Police Criminal History Report, Nadim Haj, 12 December 2019, 1-3, VPL.0099.0193.2300 @.2300-.2302.

² Exhibit RC1841 Magistrates' Court of Victoria, Persons represented by Ms Gobbo, 27 November 2008, 21, MCV.0001.0001.0001 @_.00019; Exhibit RC1568 Ms Gobbo fee book 02, 27 November 2008, 25, MIN.5000.7000.0103 @.0127; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 7 March 2019, 5, GMH.0001.0001.0002 @_.0005; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 1 December 2008, 21, GMH.0001.0001.0004 @_.0021.

³ Exhibit RC0281 ICR2958 (047), 27 November 2008, 717, VPL.2000.0003.1457.

as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

7. The extent to which the case of Mr Haj may have been affected can be measured by virtue of the following matters:

Conduct of Ms Gobbo

8. First, Category 1A⁴ applies in that, on 27 November 2008,⁵ Ms Gobbo acted for Mr Haj while she was a human source,⁶ and did not disclose same to him.⁷
9. Secondly, Category 1B⁸ applies in that, apparently while acting for Mr Haj in relation to the case, Ms Gobbo provided information to members of Victoria Police in relation to him.⁹
10. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁰
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹¹
 - 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Haj;
 - 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Haj, appropriate disclosure was made; or alternatively

⁴ See Legal Principles Submissions at [249].

⁵ See above analysis at [4].

⁶ See Legal Principles Submissions at [20].

⁷ See Legal Principles Submissions at [239].

⁸ See Legal Principles Submissions at [249].

⁹ See above analysis at [5].

¹⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹¹ See Legal Principles Submissions at [384] and [452]-[457].

- 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Haj to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Haj and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹³
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.¹⁴
18. Category 3A¹⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
19. Category 3B¹⁶ applies in that, while Ms Gobbo acted for Mr Haj, she provided information in relation to him to members of Victoria Police,¹⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹² See Legal Principles Submissions at [380]-[385].

¹³ See Legal Principles Submissions at [351], [362]-[373].

¹⁴ See Legal Principles Submissions at [351], [374].

¹⁵ See Legal Principles Submissions at [465].

¹⁶ See Legal Principles Submissions at [465].

¹⁷ See above analysis at [5].

CASE STUDY: PERSON 12 (A PSEUDONYM)

The Relevant Case of Person 12

1. The one relevant case of Person 12 concerns his conviction before the Supreme Court in March 2006 for the manslaughter of ██████████.¹
2. He was arrested and charged with murder on 12 September 2003.² He pleaded not guilty and at trial the jury found him not guilty of murder but guilty of manslaughter.³
3. On ████████ March 2006, Person 12 was sentenced to 15 years' imprisonment, to be served cumulatively upon a sentence of four years and one month imprisonment, imposed in respect of separate offending.⁴ A new non-parole period of 13 years' imprisonment was imposed in respect of both sentences.⁵
4. Person 12 made an application for leave to appeal against sentence. Ultimately, that application was granted, the appeal allowed and Person 12 was re-sentenced to 15 years' imprisonment, with a non-parole period of 11 years.⁶ (However, taking into account the amount of time already served, Person 12 was for practical purposes to serve a non-parole period of 13 years' imprisonment).⁷

Ms Gobbo's Legal Representation of Person 12

5. Material before the Commission suggests that Ms Gobbo provided legal representation to Person 12 between at least 25 March 2003 (including in relation to earlier matters) and February 2006.
6. Ms Gobbo marked the following fees for the following in relation to Person 12's matters:
 - 6.1. on 31 May 2003, for a brief to draft a Form 8A, appear at the committal mention and prepare a subpoena for Person 12 and his co-accused ██████████⁸

¹ Un-tendered Reasons for Sentence, *The Queen v Person 12* ██████████, 42 [1], OPP.0043.0003.0007 @.0042.

² Un-tendered Reasons for Sentence, *The Queen v Person 12* ██████████, 54 [37], OPP.0043.0003.0007 @.0054,

³ Un-tendered Reasons for Sentence, *The Queen v AB (No 2)* [2008] VSCA 39, 2 [1], COR.1015.0001.0009 @.0002.

⁴ Un-tendered Reasons for Sentence, *The Queen v AB (No 2)* [2008] VSCA 39, 2 [1], COR.1015.0001.0009 @.0002.

⁵ Un-tendered Reasons for Sentence, *The Queen v AB (No 2)* [2008] VSCA 39, 2 [1], COR.1015.0001.0009 @.0002.

⁶ Un-tendered Notification of Result of Appeal or Application, 4 April 2008, 1, COR.1015.0001.0010 @.0001

⁷ Un-tendered Reasons for Sentence, *The Queen v AB (No 2)* [2008] VSCA 39, 26, COR.1015.0001.0009 @.0026.

⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 31 May 2003, 62, MIN.5000.7000.0001 @.0062.

- 6.2. on 21 July 2003, for a brief to appear at a special mention on 18 July 2003 at the Melbourne Magistrates' Court⁹
 - 6.3. on 8 April 2004, for a brief to appear at a County Court case conference, plea and sentence and conferences at Barwon Prison.¹⁰ She was also briefed to draft a form 8A, attend a case conference at Barwon Prison and appear at a committal mentions¹¹
 - 6.4. on 24 May 2004, for a brief to draft an affidavit for bail¹²
 - 6.5. on 1 October 2004, for a brief to appear to adjourn committal proceedings and to appear to adjourn contempt charges¹³
 - 6.6. on 17 March 2005, for a brief to appear at committal proceedings including preparation and conferences¹⁴
 - 6.7. on 21 April 2006, for a brief to appear at trial including conferences and preparation September to October 2005 and December 2005 to February 2006.¹⁵
7. Ms Gobbo appeared on behalf of Person 12 at the following court hearings between March 2003 and August 2004:
- 7.1. on 25 March 2003, at a hearing in the Melbourne Magistrates Court¹⁶
 - 7.2. on 15 January 2004, at a committal mention¹⁷
 - 7.3. on 29 January 2004, at a special mention¹⁸
 - 7.4. on 12 February 2004, at a case management conference¹⁹
 - 7.5. on ■ March 2004, at a plea hearing²⁰

⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 21 July 2003, 64, MIN.5000.7000.0001 @.0064.

¹⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 8 April 2004, 73, MIN.5000.7000.0001 @.0073.

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 8 April 2004, 73, MIN.5000.7000.0001 @.0073; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 7 March 2019, 48, GMH.0001.0001.0002 @.0048

¹² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 24 May 2005, 76, MIN.5000.7000.0001 @.0076; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 7 March 2019, 80, GMH.0001.0001.0002 @.0080.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 1 October 2004, 81, MIN.5000.7000.0001 @.0081; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 7 March 2019, 70, GMH.0001.0001.0002 @.0070.

¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 17 March 2005, 86, MIN.5000.7000.0001 .0086; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 7 March 2019, 62, GMH.0001.0001.0002 @.0062.

¹⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 21 April 2006, 95, MIN.5000.7000.0001 @.0095; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Invoices for fees due to Ms Gobbo, 1 May 2006, 46, GMH.0001.0001.0009 @.0046; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 7 March 2019, 48, GMH.0001.0001.0002 @.0048.

¹⁶ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 25 March 2003, 14, MCV.0001.0001.0001 @.00012.

¹⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 January 2004, 44, OPP.0001.0004.0025 @.0068.

¹⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 January 2004, 44, OPP.0001.0004.0025 @.0068; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 29 January 2004, 15, MCV.0001.0001.0001 @.0013.

¹⁹ Exhibit RC1989 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 12 February 2004, 40, OPP.0001.0004.0025 @.0064.

²⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, ■ March 2004, 40, OPP.0001.0004.0025 @.0064.

- 7.6. on █ April 2004, at a sentencing hearing²¹
- 7.7. on 24 May 2004, at a filing hearing in the Melbourne Magistrates' Court²²
- 7.8. on 12 August 2004, at a summary contest²³
- 7.9. on 13 August 2004, at a mention.²⁴
8. Ms Gobbo visited Person 12 in custody on seven occasions between 11 November 2003 and 5 December 2005.²⁵ In addition, she visited on 13 February 2009.²⁶
9. The above corroborates Person 12's █ the Commission, in his █ to the Commission █, in which he asserted that Ms Gobbo acted as junior counsel to Mr Remy Van De Wiel QC in relation to the case,²⁷ and appeared for him at his committal hearing, but not at trial (although she continued to provide legal advice).²⁸

The Conduct of Ms Gobbo as a Human Source in relation to Person 12

10. Material before the Commission indicates that Ms Gobbo may have provided information to police in relation to Person 12 on two occasions, as follows:
 - 10.1. on 28 January 2006, she told her handlers that Person 12's trial was 'starting soon';²⁹ and
 - 10.2. on 30 January 2006, she told her handlers that Person 12's case was starting on that date.³⁰

Submissions under Terms of Reference 1 and 2 in relation to Person 12

11. It is submitted that it is open to the Commissioner to find that the case of Person 12 may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their

²¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, █ April 2004, 40, OPP.0001.0004.0025 @.0064.

²² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 24 May 2004, 50, OPP.0001.0004.0025, @.0074; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 24 May 2004, 16, MCV.0001.0001.0001 @.0014.

²³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 12 August 2004, 50, OPP.0001.0004.0025, @.0074.

²⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 August 2004, 44, OPP.0001.0004.0025 @.0068.

²⁵ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 11 November 2006, 23 November 2006, 13 January 2004, 15 September 2005, 5 December 2005, 15, 16, 22, 23, CNS.0001.0003.0037 @.0051, .0052, .0058, .0059.

²⁶ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 February 2009, 27, CNS.0001.0003.0037 @.0063.

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²⁹ Exhibit RC0281 ICR3838 (016), 28 January 2006, 134, VPL.2000.0003.1720.

³⁰ Exhibit RC281, ICR3838 (017), 30 January 2006, 137, VPL.2000.0003.1723.

disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

12. [REDACTED]

13. The extent to which the case of Person 12 may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

14. First, Category 1A³¹ applies in that, between March 2003 and February 2006,³² Ms Gobbo acted for Person 12 while she was a human source,³³ and did not disclose same to him.³⁴

15. Secondly, Category 1B³⁵ applies in that, during the period that Ms Gobbo acted for Person 12 in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.³⁶

16. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³⁷

17. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

18. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³⁸

³¹ See Legal Principles Submissions at [249].

³² See above analysis at [5].

³³ See Legal Principles Submissions at [20].

³⁴ See Legal Principles Submissions at [239].

³⁵ See Legal Principles Submissions at [249].

³⁶ See above analysis at [10].

³⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

³⁸ See Legal Principles Submissions at [384] and [452]-[457].

- 18.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Person 12;
 - 18.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Person 12, appropriate disclosure was made; or alternatively
 - 18.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
19. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [18.1] were taken, and accordingly there was the potential for the right of Person 12 to a fair trial to have been interfered with.
 20. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Person 12 and/or his legal representatives.
 21. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³⁹
 22. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴⁰
 23. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial and guilty plea.⁴¹
 24. Category 3A⁴² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 25. Category 3B⁴³ applies in that, during the period that Ms Gobbo acted for Person 12 in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁴⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 26. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

³⁹ See Legal Principles Submissions at [380]-[385].

⁴⁰ See Legal Principles Submissions at [351], [362]-[373].

⁴¹ See Legal Principles Submissions at [351], [374].

⁴² See Legal Principles Submissions at [465].

⁴³ See Legal Principles Submissions at [465].

⁴⁴ See above analysis at [10].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

7. On [REDACTED] 2006, Mr Irons provided a statement in relation to his involvement in the offence, in which he nominated [REDACTED] [REDACTED].¹⁷ He also provided an undertaking to assist in the future trial of the matter.¹⁸
8. The Crown relied on the evidence of Mr Irons in the prosecution of the following persons: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].²³ Mr Irons was also a witness in the prosecution of [REDACTED], who was found not guilty.²⁴ In addition, Mr Irons was a witness in the prosecution of [REDACTED] 2007.²⁵
9. On [REDACTED] 2008, Mr Irons was arraigned and pleaded guilty to one count of trafficking in [REDACTED].²⁶
10. A plea hearing was conducted on [REDACTED] 2008, during which the Crown conceded that a [REDACTED] was within range.²⁷
11. On [REDACTED] 2008, Mr Irons was convicted and sentenced to a term of imprisonment of [REDACTED], wholly suspended for a period of [REDACTED].²⁸

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Irons

12. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo was acquainted with Mr Irons from at least [REDACTED] 2006, when she commenced providing information about him to Victoria Police. On [REDACTED] 2006, Ms Gobbo told her handler that Mr Irons was known by the nickname 'Archie'.²⁹ On [REDACTED] 2006, she advised that she had been provided with Mr Irons' record of interview tape by [REDACTED] 'to dissect'.³⁰
13. However, it is submitted that it is open to the Commissioner to infer that Ms Gobbo provided legal representation to Mr Irons from at least [REDACTED] 2006, when she told her handlers that 'as of [REDACTED] this afternoon Arch is now my

¹⁷ Un-tendered Statement of Mr Irons, [REDACTED], VPL.0216.0003.0002; [REDACTED]
[REDACTED]

¹⁸ Un-tendered Transcript of plea hearing, *R v Mr Irons*, [REDACTED] 2008, 48, RCMP.0070.0001.0001 @.0048.

¹⁹ [REDACTED].

²⁰ Un-tendered Police v [REDACTED], witness list, VPL.0200.0002.0066.

²¹ Un-tendered Presentment No U01990298, *R v [REDACTED]*, 2008, 7, RCMP.0070.0001.0007 @.0007.

²² Presentment no U00918482 (CR-07-00361/CR-07-00366): RCMP.0042.0002.0002; Un-tendered Police v [REDACTED], witness list, VPL.0200.0002.0066.

²³ Un-tendered Police v [REDACTED], witness list, VPL.0200.0002.0066.

²⁴ Un-tendered Police v [REDACTED], witness list, VPL.0216.0003.0038.

²⁵ Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 4, OPP.0056.0001.0001.

²⁶ Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 4, OPP.0056.0001.0001; Un-tendered Presentment No:C0605102c, *R v Mr Irons*, 2008, 23, RCMP.0070.0001.0001 @.0023; Un-tendered, Return of prisoners convicted, [REDACTED] 2008, COR.1017.0008.0001.

²⁷ Un-tendered Transcript of plea hearing, *R v Mr Irons*, [REDACTED] 2008, 48, RCMP.0070.0001.0001 @.0048.

²⁸ Un-tendered Return of prisoners convicted, [REDACTED] 2008, COR.1017.0008.0001.

[REDACTED]
[REDACTED]

client.³¹ Based on the following circumstances, it is submitted it can be inferred that she provided legal representation to Mr Irons from that date until around [REDACTED] 2006.

14. On [REDACTED] 2006 (the day before Mr Irons' second arrest), Ms Gobbo's handler, Peter Smith, informed her that Mr Irons 'may be arrested tomorrow.'³²
15. Upon his arrest, Mr Irons apparently told police that his solicitor was Ms Gobbo.³³ Ms Gobbo was subsequently notified of Mr Irons' arrest and advised her handler that she would see Mr Irons at a later stage³⁴ at the Melbourne Custody Centre.³⁵
16. On [REDACTED] 2006, Ms Gobbo appeared at court on behalf of Mr Irons for a bail application.³⁶ The following day she charged fees for this appearance.³⁷
17. On [REDACTED] 2006, Mr James (Jim) O'Brien advised the Source Development Unit (SDU) that Mr Irons was considering giving a statement to police, and he did not want to advise his instructing solicitor. Mr O'Brien advised that his charges would not be withdrawn nor would he be indemnified. This was relayed to Ms Gobbo who indicated she would advise the SDU if she saw Mr Irons.³⁸ He made a statement to police on that same day, as outlined at paragraph [7] above.³⁹
18. On [REDACTED] 2006 Ms Gobbo's handler told her that she should not continue to provide representation to Mr Irons as 'it would be an unnecessary complication.'⁴⁰ Despite this, Ms Gobbo accepted a brief to draft a Form 8A on behalf of Mr Irons, for which she submitted an invoice on [REDACTED] 2006.⁴¹
19. The material reviewed by Counsel Assisting does not suggest that Ms Gobbo subsequently provided representation to Mr Irons. Whilst the disclosure report provided by Victoria Police to the Office of Public Prosecutions states that Ms Gobbo's last 'involvement with the POI and Victoria Police' was on [REDACTED] 2008,⁴² it is likely this referred to an Informer Contact Report (ICR) entry recorded on that date.⁴³ In any case, the last ICR entry recorded concerning Mr Irons was on [REDACTED] 2008.⁴⁴

[REDACTED]

³⁷ Exhibit RC1569 Meldrum & Hyland Statement of Account, 47, GMH.0001.0001.0002 @.0047.
³⁸ Exhibit RC0281 ICR3838 (032), 19 May 2006, 303, VPL.2000.0003.1889.
³⁹ Un-tendered Statement of Mr Irons, [REDACTED], VPL.0216.0003.0299.
⁴⁰ Exhibit RC0281 ICR3838 (034), 6 June 2006, 320, VPL.2000.0003.1906.
⁴¹ Exhibit RC1569 Meldrum & Hyland Statement of Account, 38, GMH.0001.0001.0002 @.0038.
⁴² Un-tendered OPP Disclosure Report, Mr Irons, RCMP.0006.0001.0008.

[REDACTED]

The Conduct of Ms Gobbo as a Human Source in relation to Mr Irons

20. Ms Gobbo provided information to Victoria Police concerning Mr Irons prior to and during her representation of him, between [REDACTED] 2006 and around [REDACTED] 2006. The information provided during that period included:
 - 20.1. Mr Irons' nickname⁴⁵
 - 20.2. Mr Irons' employment history, including that he was employed as [REDACTED]
[REDACTED]⁴⁶
 - 20.3. that Mr Irons was the [REDACTED] of [REDACTED]
 - 20.4. information concerning Mr Irons' relationship with [REDACTED], including that [REDACTED] 'wanted Mr Irons to get bail straight away',⁴⁸ was not prepared to fund the bail application,⁴⁹ wanted to see Ms Gobbo after the application 'so can advise him what Police know',⁵⁰ and was [REDACTED] Mr Irons [REDACTED]⁵¹
 - 20.5. information concerning his finances⁵²
 - 20.6. her opinion as to Mr Irons' prospects of bail and matters concerning his bail application⁵³
 - 20.7. information concerning the brief of evidence against Mr Irons;⁵⁴
 - 20.8. information concerning the offending and further misconduct committed by Mr Irons⁵⁵
 - 20.9. her belief as to the potential for Mr Irons to assist to police.⁵⁶

Information concerning Mr Irons' Bail Application

21. Prior to appearing at Mr Irons' bail application, Ms Gobbo told her handler that 'Mr Irons is a monty for bail'.⁵⁷
22. On [REDACTED] 2006, she suggested that a written summary be provided for Mr Irons' application and that it would assist her if Mr Irons were to be released on bail.⁵⁸
23. On [REDACTED] 2006, she requested that her handler speak to Detective Inspector O'Brien, for him to approach the informant in the bail application and seek his

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵³ See paras [22] – [24].

⁵⁴ See para [25].

⁵⁵ See paras [25] – [27].

[REDACTED]

[REDACTED]

[REDACTED]

consent to bail.⁵⁹ Ms Gobbo's handler subsequently advised her that bail would be consented to with reporting conditions, and that she was to contact Detective Sergeant Jason Kelly of Purana.⁶⁰

Information concerning the Brief of Evidence

- 24. On [REDACTED] 2006 Ms Gobbo reviewed [REDACTED] briefs of evidence against [REDACTED], prior to it being served on any of those accused.⁶¹ She perused the brief and made comments in relation to its contents.⁶² One of those comments was that Mr Irons and [REDACTED] should be included in the same brief of evidence.⁶³

Information concerning the Offending and Further Misconduct by Mr Irons

- 25. On [REDACTED] 2006, Ms Gobbo provided information to her handler concerning the circumstances of Mr Irons' arrest, including the fact that Mr Irons was driving the vehicle that was intercepted, that [REDACTED] was located in the vehicle and that 'police said they saw [REDACTED] put it in the car'.⁶⁴ She further stated that [REDACTED] had and got caught with in [REDACTED] belongs to [REDACTED]⁶⁵ and that Mr Irons was a 'runner' on behalf of Mr [REDACTED].⁶⁶
- 26. Following Mr Irons' second arrest, on [REDACTED] 2006 Ms Gobbo told her handler that [REDACTED] shared ownership of the chemicals the subject matter of the charge,⁶⁷ and that Mr Irons was in possession of further chemicals at his house.⁶⁸

Ms Gobbo's Belief as to the Potential for Mr Irons to Assist the Police

- 27. On [REDACTED] 2006, Ms Gobbo discussed with her handler her belief as to the potential for Mr Irons to assist police and stated that 'if the charges were withdrawn Mr Irons says he would make a statement.'⁶⁹
- 28. As outlined at [17] above, on [REDACTED] 2006, Mr O'Brien advised the SDU that Mr Irons was considering giving a statement to police, and this information was relayed to Ms Gobbo who indicated she would advise the SDU if she saw Mr Irons.⁷⁰

[REDACTED]

29. Following Mr Irons' signing of his statement, Ms Gobbo continued to provide information to police regarding the potential of Mr Irons providing further assistance, including:
- 29.1. On [REDACTED] 2006, she told police that Mr Irons 'would be a write off for the Police to get co-operation from.'⁷¹
- 29.2. On [REDACTED] 2006 Ms Gobbo advised her handler that the statement Mr Irons made was false and that 'nobody wants to deal with Irons.'⁷²
- 29.3. On [REDACTED] 2007, during a meeting with her handlers, Ms Gobbo suggested that Mr Irons might further assist police if they were to withdraw charges against him.⁷³ The relevant ICR states as follows:

H/S states that informants have got it in for MR IRONS. H/S suggests that if charges are withdrawn [REDACTED]. MR IRONS is an [REDACTED] and is not being supported [REDACTED]. MR IRONS has made a statement against others. [REDACTED] is not paying for the legal fess for Mr Irons [REDACTED] – fuck him. MR IRONS could implicate [REDACTED] and [REDACTED]. Only can be done after charges have been withdrawn. Or maybe it could be arranged to plead to another alternative charged that he may receive a [REDACTED].⁷⁴

Relevant conduct in relation to Mr Cooper

30. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Irons' matter. As set out in the Narrative Submissions at [REDACTED], it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 30.1. the discovery of the offending the subject of Operation Posse;
- 30.2. Mr Cooper being arrested in Operation Posse;
- 30.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
- 30.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Irons (among others).
31. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Irons, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Irons may have been deprived of any opportunity to object to the admissibility of this evidence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

to members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution, and did not disclose same to him.⁸²

40. Thirdly, Category 2A⁸³ applies in that evidence relied upon by the prosecution in Mr Irons' case, namely the evidence of Mr Cooper,⁸⁴ and person connected to Cooper,⁸⁵ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸⁶
41. Fourthly, Category 2B⁸⁷ applies in that Ms Gobbo had knowledge of the circumstances founding the above [40] and failed to disclose same to her client, Mr Irons, thereby depriving him of the ability to object to its admission.
42. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁸⁸ Further, in certain instances identified above,⁸⁹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁹⁰
43. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

44. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹¹
 - 44.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Irons;

⁸² See above analysis at [20]-[29].

⁸³ See Legal Principles Submissions at [249].

⁸⁴ See above analysis at [6] and [30]-[33].

⁸⁵ See above analysis at [6] and [32].

⁸⁶ See Legal Principles Submissions at [196]-[222].

⁸⁷ See Legal Principles Submissions at [249].

⁸⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁸⁹ See above analysis at [20.2], [20.4] – [20.9], [21] – [24], [26] – [28], [29.1], [29.2].

⁹⁰ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁹¹ See Legal Principles Submissions at [384] and [452]-[457].

- 44.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Irons, appropriate disclosure was made; or alternatively
- 44.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
45. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [44.1] were taken, and accordingly there was the potential for the right of Mr Irons to a fair trial to have been interfered with.
- Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Irons and/or his legal representatives.
46. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹²
47. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹³
48. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹⁴
49. Category 3A⁹⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
50. Category 3B⁹⁶ applies in that, before and during the period Ms Gobbo acted for Mr Irons, she provided information in relation to him to members of Victoria Police and/or otherwise assisted the prosecution of the accused,⁹⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
51. Category 4A⁹⁸ applies in that, as noted above at [40], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

⁹² See Legal Principles Submissions at [380]-[385].

⁹³ See Legal Principles Submissions at [351], [362]-[373].

⁹⁴ See Legal Principles Submissions at [351], [374].

⁹⁵ See Legal Principles Submissions at [465].

⁹⁶ See Legal Principles Submissions at [465].

⁹⁷ See above analysis at [20]-[29].

⁹⁸ See Legal Principles Submissions at [465].

52. Category 4B⁹⁹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
53. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁹ See Legal Principles Submissions at [465].

CASE STUDY: OLIVER ROBERT JACKSON

The Relevant Case of Mr Jackson

1. The one relevant case of Mr Jackson concerns his conviction before the County Court in February 2010 for one count of trafficking in a large commercial quantity of a drug of dependence and one count of trafficking in a drug of dependence.¹
2. The large commercial quantity trafficking offending occurred between 8 November 2007 and 17 January 2008, and the other trafficking offending occurred between 29 November 2007 and 17 January 2008.²
3. Mr Jackson pleaded guilty to both counts³ and was sentenced to a total effective sentence of four years and six months' imprisonment, with a two year non-parole period.⁴

Ms Gobbo's Legal Representation of Mr Jackson

4. Material before the Commission indicates Ms Gobbo acted for Mr Jackson on one occasion in relation to the case. On 25 January 2008, Ms Gobbo marked fees for a brief from Galbally Rolfe to appear at a bail application, a conference and for associated preparation for Mr Jackson in the matter of "Oliver Jackson v Police".⁵

The Conduct of Ms Gobbo as a Human Source in relation to Mr Jackson

5. Material before the Commission records only one instance in which Ms Gobbo is recorded as having provided information to police about Mr Jackson. On 25 January 2008, she is recorded as having advised her handler, Mr Peter Smith, that she has a court appearance the next day in which the defendant is Mr Jackson.⁶

¹ Un-Tendered Presentment No. X00151140, *The Queen v Oliver Robert Jackson* (2010), OPP.0048.0001.0007 @.0005; Un-Tendered Reasons for Sentence, *DPP v Jackson, Oliver* [2010] VCC 0669UR (Unreported, County Court of Victoria, Judge Rozenes, 25 February 2010), [1]-[2], OPP.0048.0001.0007 @.0093.

² See Particulars of Offence, Un-Tendered Presentment No. X00151140, *The Queen v Oliver Robert Jackson* (2010), OPP.0048.0001.0007 @.0004.

³ Un-Tendered Reasons for Sentence, *DPP v Jackson, Oliver* [2010] VCC 0669UR (Unreported, County Court of Victoria, Judge Rozenes, 25 February 2010), [1]-[2], OPP.0048.0001.0007 @. 0094.

⁴ Un-Tendered Reasons for Sentence, *DPP v Jackson, Oliver* [2010] VCC 0669UR (Unreported, County Court of Victoria, Judge Rozenes, 25 February 2010), [14]-[16], OPP.0048.0001.0007 @.0099.

⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 January 2008, 13, MIN.5000.7000.0103 @.0115; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 25 January 2008, 19, GMH.0001.0001.0002 @.0019; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 07 March 2019, 18, GMH.0001.0001.0002 @.0018; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 January 2008, 66, MIN.5000.7000.0103 @.0066; Exhibit RC1568 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 25 January 2008, 70, OPP.0001.0004.0025 @.0094.

⁶ Exhibit RC0281 ICR2958 (001), 24 January 2008, VPL.2000.0003.0741.

Submissions under Terms of Reference 1 and 2 in relation to Mr Jackson

6. It is submitted that it is open to the Commissioner to find that the case of Mr Jackson may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
7. The extent to which the case of Mr Jackson may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

8. First, Category 1A⁷ applies in that, in January 2008,⁸ Ms Gobbo acted for Mr Jackson while she was a human source,⁹ and did not disclose same to him.¹⁰
9. Secondly, Category 1B¹¹ applies in that, during the period that Ms Gobbo acted for Mr Jackson in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police¹² and did not disclose same to him.
10. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹³
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁴

⁷ See Legal Principles Submissions at [249].

⁸ See above at [4].

⁹ See Legal Principles Submissions at [20].

¹⁰ See Legal Principles Submissions at [239].

¹¹ See Legal Principles Submissions at [249].

¹² See above at [5].

¹³ See Legal Principles Submissions at [249].

¹⁴ See Legal Principles Submissions at [384] and [452]-[457].

- 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Jackson;
- 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Jackson, appropriate disclosure was made; or alternatively
- 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Jackson to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Jackson and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁵
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁶
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁷
18. Category 3A¹⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
19. Category 3B¹⁹ applies in that, during the period that Ms Gobbo acted for Mr Jackson in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

¹⁵ See Legal Principles Submissions at [380]-[385].

¹⁶ See Legal Principles Submissions at [351], [362]-[373].

¹⁷ See Legal Principles Submissions at [351], [374].

¹⁸ See Legal Principles Submissions at [465].

¹⁹ See Legal Principles Submissions at [465].

²⁰ See above at [5].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: MR KING (A PSEUDONYM); NOEL LAURIE; KABALAN MOKBEL

1. In January 2003, the Major Drug Investigation Division commenced an investigation into the trafficking of methylamphetamines and activities of Mr Cooper and his associates, codenamed 'Operation Matchless'.¹ Investigators discovered Mr Cooper [REDACTED] utilising a clandestine laboratory at [REDACTED] Street, Rye to manufacture methylamphetamine.²
2. As a result of these investigations, on 11 April 2003, Mr Kabalan Mokbel,³ Mr King⁴ and Mr Noel Laurie⁵ were arrested and charged with drug offences.
3. The prosecution case relied on surveillance evidence, including physical and optical surveillance conducted at the laboratory, listening devices and telephone intercepts.⁶ In addition, over a period of some four weeks, [REDACTED] the [REDACTED] the laboratory was observed at different stages of the manufacturing process.⁷
4. The prosecution also relied on the evidence of Messrs Cooper [REDACTED] [REDACTED], who both provided statements to the police and became prosecution witnesses against Messrs Mokbel, King and Laurie.⁸ The case pertaining to Messrs Mokbel, King and Laurie will be addressed below.

¹ Un-tendered Operation Matchless Remand Summary, *R v Jacques El-Hage*, undated, 14, OPP.0043.0006.0006 @.0014; Un-tendered Summary of Prosecution Opening, *R v Mr King*, 8 October 2007, 3[12], OPP.0043.0002.0008 @.0021.

² Un-tendered Notes Re:- Operation 2/Matchless, *R v Mr Cooper, [REDACTED], Mr King, Kabalan Mokbel and Noel Laurie*, 153, OPP.0043.0006.0010 @.0153; Un-tendered Operation Matchless Remand Summary, *R v Jacques El-Hage*, undated, 15, OPP.0043.0006.0006 @.0015.

³ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 1 [8], COR.1032.0001.0025 @.0002 [Restricted]; Un-tendered Prosecution Opening, *R v Kabalan Mokbel*, undated, 5 [25], OPP.0043.0006.0010 @.0222.

⁴ Un-tendered Operation Matchless Prosecution Opening, *R v Milad Mokbel*, undated, 12 [44], OPP.0043.0002.0008 @.0017; Un-tendered Summary of Prosecution Opening, *R v Mr King*, 8 October 2007, 15, OPP.0043.0002.0008, @.0033.

⁵ Un-tendered Reasons for Sentence, *R v Laurie, Noel James* [2006] VCC 1885 (30 June 2006), 91 [24], COR.1032.0001.0020 @.0007 [Restricted]; Un-tendered Summary of Evidence, *R v Kabalan Mokbel, Mr Cooper, [REDACTED], Mr King, Noel Laurie, Rasim Tezer and Rodney Davis*, undated, 141, OPP.0043.0006.0009 @.0148.

⁶ Un-tendered Operation Matchless Prosecution Opening, *R v Milad Mokbel*, undated, 3[8], OPP.0043.0002.0008 @.0008.

⁷ Un-tendered Summary of Evidence, *R v Kabalan Mokbel, Cooper, [REDACTED], Mr King, Noel Laurie, Rasim Tezer and Rodney Davis*, undated, 3, OPP.0043.0006.0010 @.0008.

⁸ See Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1-3, OPP.0056.0001.0001 @.0001-.0003.

MR KING (A PSEUDONYM)

The Relevant Cases of Mr King

5. The prosecution case was that Mr King, [REDACTED], sourced and collected chemicals, cutting agents and glassware from different locations,⁹ and assisted with the manufacturing process at the laboratory on two occasions.¹⁰
6. On 27 July 2007, Mr King was arraigned and pleaded guilty to one count of trafficking in not less than a large commercial quantity of methylamphetamine.¹¹
7. On 8 October 2007, a plea hearing was conducted.¹²
8. On 22 October 2007, Mr King was sentenced to four years' imprisonment, with a non-parole period of 18 months' imprisonment.¹³

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr King

9. On 2 August 2004, Ms Gobbo submitted an invoice for fees for a brief to draft a Form 8A in Mr King's matter.¹⁴ There is nothing to suggest Ms Gobbo provided any representation to Mr King following submission of this invoice.

The Conduct of Ms Gobbo as a Human Source in relation to Mr King

10. Based on the material reviewed, Ms Gobbo does not appear to have provided any information to police concerning Mr King prior to, or during, her representation of him.

⁹ Un-tendered Reasons for Sentence, *R v Mr King* [2007] VCC 1362, 22 October 2007, 7-8 [67], COR.1032.0001.0014 @.0008-.0009 [Restricted]; Un-tendered Operation Matchless Prosecution Opening, *R v Milad Mokbel*, undated, 1 [1], OPP.0043.0002.0008 @.0006.

¹⁰ Un-tendered Reasons for Sentence, *R v Mr King* [2007] VCC 1362, 22 October 2007, 8-9 [70], COR.1032.0001.0014 @.0009-.0010 [Restricted]; Un-tendered Operation Matchless Prosecution Opening, *R v Milad Mokbel*, undated, 5 [15]-[17], OPP.0043.0002.0008 @.0010; Un-tendered Summary of Prosecution Opening, *R v Mr King*, 8 October 2007, 3 [10]-[19], 4 [19], OPP.0043.0002.0008 @.0021 and @.0022.

¹¹ Un-tendered Reasons for Sentence, *R v Mr King* [2007] VCC 1362, 22 October 2007, 5 [60], COR.1032.0001.0014 @.0006 [Restricted]; Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001 @.0001; Un-tendered Presentment No. C0303299.4, *R v Mr King*, 2005, 1, OPP.0043.0002.0008 @.0001.

¹² Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001 @.0001.

¹³ Un-tendered Reasons for Sentence, *R v Mr King* [2007] VCC 1362, 22 October 2007, 19 [107], COR.1032.0001.0014 @.0020 [Restricted]; Un-tendered Victoria Police Criminal History Report, Mr King, 14 December 2019, 1, VPL.0099.0193.2665 @.2665.

¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 2 August 2004, 79, MIN.5000.7000.0001 @.0079; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 4 August 2004, 75, GMH.0001.0001.0002 @.0074; Exhibit RC1569 Meldrum & Hyland Barristers; Clerk Nicola Gobbo Tax Invoice, 4 August 2008, 85, GMH.0001.0001.0012 @.0085.

11. Ms Gobbo provided information concerning Mr King on one occasion following her representation on him, during a meeting with her handlers Messrs Peter Smith, Sandy White and Green on 20 April 2006. Ms Gobbo identified Mr King as co-accused for Messrs Cooper [REDACTED], and told her handlers that he had not yet determined whether or not he was going to plead guilty.¹⁵ However, it is not submitted that Ms Gobbo gleaned this information from her prior representation of Mr King, as she makes it clear she was told this information by Mr King's arresting officer Dave Bartlett in a social setting.¹⁶

Relevant Conduct in relation to Mr Cooper

12. Mr Cooper was a prosecution witnesses against Mr King.¹⁷ and the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr King's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 12.1. the discovery of the offending the subject of Operation Posse;
 - 12.2. Mr Cooper being arrested in Operation Posse;
 - 12.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 12.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr King (among others).
13. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr King, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr King may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions under Terms of Reference 1 and 2 in relation to Mr King

14. It is submitted that it is open to the Commissioner to find that the case of Mr King may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.

¹⁵ Exhibit RC0282 Transcript of meeting between Nicola Gobbo and Sandy White and Peter Smith and Green, 20 April 2006, 212, VPL.0005.0097.0011 @.0222.

¹⁶ Exhibit RC0282 Transcript of meeting between Nicola Gobbo and Sandy White and Peter Smith and Green, 20 April 2006, 212, VPL.0005.0097.0011 @.0222.

¹⁷ Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001 @.0001.

16. The extent to which the case of Mr King may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

17. First, Category 1A¹⁸ applies in that, in August 2004,¹⁹ Ms Gobbo acted for Mr King while she was a human source,²⁰ and did not disclose same to him.²¹
18. Secondly, Category 2A²² applies in that evidence relied upon by the prosecution in Mr King's case, namely the evidence of Mr Cooper,²³ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²⁴
19. The above conduct by Ms Gobbo under Categories 1A, together with conduct under Categories 2A, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁵
20. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

21. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁶
22. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr King;
 - 22.1. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr King, appropriate disclosure was made; or alternatively
 - 22.2. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of

¹⁸ See Legal Principles Submissions at [249].

¹⁹ See above analysis at [9].

²⁰ See Legal Principles Submissions at [20].

²¹ See Legal Principles Submissions at [239].

²² See Legal Principles Submissions at [249].

²³ See above analysis at [12]-[13].

²⁴ See Legal Principles Submissions at [196]-[222].

²⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁶ See Legal Principles Submissions at [384] and [452]-[457].

Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.

23. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [22.1] were taken, and accordingly there was the potential for the right of Mr King to a fair trial to have been interfered with.
24. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr King and/or his legal representatives.
25. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁷
26. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁸
27. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁹
28. Category 3A³⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
29. Category 4A³¹ applies in that, as noted above at [18], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
30. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁷ See Legal Principles Submissions at [380]-[385].

²⁸ See Legal Principles Submissions at [351], [362]-[373].

²⁹ See Legal Principles Submissions at [351], [374].

³⁰ See Legal Principles Submissions at [465].

³¹ See Legal Principles Submissions at [465].

NOEL LAURIE

The Relevant Cases of Mr Laurie

31. The prosecution case was that Mr Laurie purchased amphetamines from Mr Cooper [REDACTED], and then on-sold the drugs to others.³²
32. On 26 May 2006, Mr Laurie was arraigned and pleaded guilty to one count of trafficking not less than a large commercial quantity of methylamphetamine and one count of trafficking cannabis.³³
33. Plea hearings were conducted on 26 May 2006 and 30 May 2006.³⁴
34. On 30 June 2006, Mr Laurie was sentenced to a total effective sentence of seven years and three months' imprisonment, with a non-parole period of five years' imprisonment.³⁵

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Laurie

35. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Mr Laurie during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Laurie

36. [REDACTED] was a prosecution witnesses against Mr Laurie.³⁶ For the reasons set out in the case study of [REDACTED] at Paragraphs [REDACTED], it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of a [REDACTED], relied upon in the prosecution of Mr Laurie, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

³² Un-tendered Reasons for Sentence, *R v Laurie, Noel James* [2006] VCC 1885 (30 June 2006), 87 [6]-[8], COR.1032.0001.0020 @3 [Restricted]; Un-tendered Reasons for Sentence, *R v Rasim Tezer & Rodney Craig Davis* [2007] VSCA 123 (13 June 2007), 2 [6], OPP.0043.0006.0004 @.0203.

³³ Un-tendered Reasons for Sentence, *R v Laurie, Noel James* [2006] VCC 1885 (30 June 2006), 86 [1], COR.1032.0001.0020 @.0002 [Restricted]; Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001 @.0002; Un-tendered Presentment No. C0303299.1, *R v Noel James Laurie*, 2005, 1-2, OPP.0043.0006.0009 @.0002-.0003.

³⁴ Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001 @.0002.

³⁵ Un-tendered Reasons for Sentence, *R v Laurie, Noel James* [2006] VCC 1885 (30 June 2006), 94 [34], COR.1032.0001.0020 @.0010 [Restricted]; Un-tendered Victoria Police Criminal History Report, Noel James Laurie, 14 December 2019, 1, VPL.0099.0193.3217 @.3217.

³⁶ Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001 @.0002.

Submissions under Terms of Reference 1 and 2 in relation to Mr Laurie

37. It is submitted that it is open to the Commissioner to find that the case of Mr Laurie may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
38. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
39. The extent to which the case of Mr Laurie may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

40. First, Category 2A³⁷ applies in that evidence relied upon by the prosecution in Mr Laurie's case, namely the evidence of ██████████,³⁸ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.³⁹
41. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

42. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁰
 - 42.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Laurie;
 - 42.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Laurie, appropriate disclosure was made; or alternatively
 - 42.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
43. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [42.1] were taken, and accordingly there

³⁷ See Legal Principles Submissions at [249].

³⁸ See above analysis at [36].

³⁹ See Legal Principles Submissions at [196]-[222].

⁴⁰ See Legal Principles Submissions at [384] and [452]-[457].

was the potential for the right of Mr Laurie to a fair trial to have been interfered with.

44. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Laurie and/or his legal representatives.
45. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴¹
46. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴²
47. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁴³
48. Category 4A⁴⁴ applies in that, as noted above at [40], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
49. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴¹ See Legal Principles Submissions at [380]-[385].

⁴² See Legal Principles Submissions at [351], [362]-[373].

⁴³ See Legal Principles Submissions at [351], [374].

⁴⁴ See Legal Principles Submissions at [465].

KABALAN MOKBEL

The Relevant Cases of Mr Mokbel

50. The prosecution case was that Mr Kabalan Mokbel supplied Mr Cooper with chemicals which were used in the manufacturing of methylamphetamine,⁴⁵ and collected a package of methylamphetamines from Mr Cooper.⁴⁶ The sentencing judge accepted that Mr Mokbel never visited the laboratory in Rye and did not gain financially from his involvement.⁴⁷
51. On 29 October 2007, Mr Mokbel was arraigned and pleaded guilty to one count of trafficking in not less than a large commercial quantity of methylamphetamine.⁴⁸
52. On 12 November 2007, a plea hearing was conducted.⁴⁹
53. On 3 December 2007, Mr Mokbel was sentenced to three years' imprisonment, with a non-parole period of two years' imprisonment.⁵⁰

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Mokbel

54. Based on the material reviewed by Counsel Assisting, it is not entirely clear as to when Ms Gobbo first became acquainted with Kabalan Mokbel. Ms Gobbo's historical association with the Mokbel family is dealt with to some extent in Chapter 5 of the Narrative Submissions. It was submitted to the Commission that in or around 1997 Mr Mokbel met Ms Gobbo through his brother, Antonios Mokbel.⁵¹ It was submitted that he socialised with Ms Gobbo at the races and at dinner events,⁵² and that she would regularly attend dinner with members of the Mokbel family between 1997 and 2004.⁵³
55. Based on the following circumstances, it is submitted that it can be inferred that Ms Gobbo provided ongoing legal representation to Mr Mokbel between at least April 2003 and August 2004:

⁴⁵ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 1 [6], COR.1032.0001.0025 @.0002 [Restricted]; Un-tendered Agreed Facts, *R v Kabalan Mokbel*, undated, 1 [4]-[7], OPP.0043.0006.0010 @.0159.

⁴⁶ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 1 [7], COR.1032.0001.0025 @.0002 [Restricted]; Un-tendered Agreed Facts, *R v Kabalan Mokbel*, undated, 1 [8], OPP.0043.0006.0010 @.0159.

⁴⁷ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 2 [10], COR.1032.0001.0025 @.0003 [Restricted].

⁴⁸ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 1 [1], 2 [12] COR.1032.0001.0025 @.0002, .0003 [Restricted]; Un-tendered Prosecution Opening, *R v Kabalan Mokbel*, undated, 8, OPP.0043.0006.0010 @.0225; Un-tendered Presentment No. C0303299, *R v Kabalan Mokbel, Cooper and [REDACTED]*, 2005, 1, OPP.0043.0006.0010 @.0002.

⁴⁹ Un-tendered Prosecution Opening, *R v Kabalan Mokbel*, undated, 8, OPP.0043.0006.0010 @.0225.

⁵⁰ Un-tendered Reasons for Sentence, *R v Kabalan Mokbel* [2007] VCC 1524, 5 [28]-[29], COR.1032.0001.0025 @.0006 [Restricted]; Un-tendered Victoria Police Criminal History Report, Kaelan Mokbel, 14 December 2019, 1, VPL.0099.0193.3556 @.3556.

⁵¹ Anonymous Submission 033, 3 [2].

⁵² Anonymous Submission 033, 3 [3].

⁵³ Anonymous Submission 033, 3 [4].

- 55.1. According to Senior Constable David Bartlett, on 14 April 2003, he attended at the Melbourne Magistrates' Court and provided Ms Gobbo with interview tapes pertaining to Mr Mokbel.⁵⁴ In his evidence to the Commission, Mr Bartlett indicated he had no record that Ms Gobbo was acting for Mr Mokbel at the time, but acknowledged that he would not have provided the tapes to someone who was not representing him.⁵⁵ It is submitted that it can be inferred that Ms Gobbo accepted service of the tapes as a legal representative of Mr Mokbel on that date.
- 55.2. Material before the Commission suggests that Ms Gobbo received the brief of evidence in Mr Mokbel's matter on or around 31 May 2004, at which time she contacted Mr Bartlett and thanked him for service of the brief.⁵⁶
- 55.3. Between 27 April 2003 and 19 June 2003, Ms Gobbo visited Mr Mokbel in custody on three occasions.⁵⁷
- 55.4. Between July 2003 and August 2004, she appeared at court on behalf of Mr Mokbel on the following three occasions:
 - 55.4.1. on 10 July 2003, at the Melbourne Magistrates' Court for a bail application;⁵⁸
 - 55.4.2. on 19 December 2003, at an application;⁵⁹ and
 - 55.4.3. on 9 August 2004, at the Melbourne Magistrates' Court for a committal mention.⁶⁰
- 55.5. Ms Gobbo charged fees for her appearance at the Melbourne Magistrates' Court in July 2003.
56. It was submitted to the Commission that Ms Gobbo acted for Mr Mokbel pursuant to an informal ongoing retainer and provided tactical and legal advice concerning all his criminal matters.⁶¹ It was submitted that Ms Gobbo represented Mr Mokbel at his filing hearing in April 2003, at three subsequent bail applications, and was 'involved throughout the committal proceedings'.⁶² However, based on the material reviewed, it does not appear that Ms Gobbo continued to provide legal representation to Mr Mokbel following her

⁵⁴ RC1375 Detective Senior Constable David Bartlett diary, 14 April 2003, 5, VPL.0005.0079.0001 @.0005.

⁵⁵ Transcript of Detective Senior Constable David Bartlett, 2 May 2019, 1307, TRN.2019.05.02.01.P.

⁵⁶ RC1375 Detective Senior Constable David Bartlett diary, 31 May 2004, 6, VPL.0005.0079.0001 @.0006; Transcript of Detective Senior Constable David Bartlett, 2 May 2019, 1307, TRN.2019.05.02.01.P.

⁵⁷ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 27 April 2003, 14, CNS.0001.0003.0037 @.0050; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 25 May 2003, 14, CNS.0001.0003.0037 @.0050; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 19 June 2003, 14, CNS.0001.0003.0037 @.0050.

⁵⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 25 September 2003, 67, MIN.5000.7000.0001 @.0067; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Statement of Account, 29 September 2003, 87, GMH.0001.0001.0002; @.0087; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo Tax Invoice, 29 September 2003, 9, GMH.0001.0001.0014 @.0009.

⁵⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 19 December 2003, 41, OPP.0001.0004.0025 @.0065.

⁶⁰ Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 9 August 2004, 16, MCV.0001.0001.0001, @.00014; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 9 August 2004, 41, OPP.0001.0004.0025 @.0065.

⁶¹ Anonymous Submission 033, 5 [17].

⁶² Anonymous Submission 033, 3 [5]-[7].

appearance in August 2004. On 16 September 2005, during a meeting with her handlers, Messrs Sandy White and Peter Smith, Ms Gobbo was asked whether she represented Mr Mokbel and replied that she probably would be representing him but that it depended on the timing of the trial of Tony Mokbel.⁶³ She also stated that she did not think she could represent Mr Mokbel due to his connection to Mr Cooper.⁶⁴ In his evidence to the Commission, Mr Sandy White stated that he interpreted this to mean she was not representing Kabalan Mokbel at that time.⁶⁵

The Conduct of Ms Gobbo as a Human Source in relation to Mr Mokbel

57. Ms Gobbo does not appear to have provided any information to police concerning Mr Mokbel prior to, or during, her representation of him. Even if the submission that Ms Gobbo was involved throughout Mr Mokbel's committal proceedings was accepted, those proceedings took place in March 2005, and there is nothing to suggest that Ms Gobbo provided any information to police concerning Mr Mokbel prior to September 2005.
58. Ms Gobbo provided information concerning Mr Mokbel to Victoria Police on numerous occasions following her representation of him between September 2005 and July 2008. This information provided during that period included:
 - 58.1. information relating to his court proceeding, including relevant court dates,⁶⁶ the fact he had offered a plea,⁶⁷ and outcomes of court hearings⁶⁸
 - 58.2. identification of Mr Mokbel's wife from photographs obtained at Mr Coopers' party⁶⁹
 - 58.3. Mr Mokbel's phone number⁷⁰
 - 58.4. his relationship with known associates⁷¹

⁶³ Exhibit RC0282 Transcript of meeting between Nicola Gobbo and Sandy White and Peter Smith, 16 September 2005, 67, VPL.0005.0037.0014 @.0080.

⁶⁴ Exhibit RC0282 Transcript of meeting between Nicola Gobbo and Sandy White and Peter Smith, 16 September 2005, 67, VPL.0005.0037.0014 @.0080; Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

⁶⁵ Transcript of Mr Sandy White, 1 August 2019, 3735, TRN.2019.08.01.01.P.

⁶⁶ Exhibit RC0281 ICR3838 (006), 17 October 2005, 34, VPL.2000.0003.1620; Exhibit RC0281 ICR3838 (028), 20 April 2006, 255, VPL.2000.0003.1841; Exhibit RC0281 ICR3838 (048), 11 October 2006, 469, VPL.2000.0003.2055; Exhibit RC0281 ICR3838 (099), 8 September 2007, 1202, VPL.2000.0003.2788.

⁶⁷ Exhibit RC0281 ICR3838 (106), 24 October 2007, 1317, VPL.2000.0003.2903.

⁶⁸ Exhibit RC0281 ICR3838 (106), 25 October 2007, 1318, VPL.2000.0003.2904, Exhibit RC0281 ICR3838 (107), 29 October 2007, 1328, VPL.2000.0003.2914; Exhibit RC0281 ICR3838 (114), 3 December 2007, 1493, VPL.2000.0003.3079.

⁶⁹ Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1784.

⁷⁰ Exhibit RC0281 ICR3838 (023), 20 March 2006, 199, VPL.2000.0003.1785; Exhibit RC0283 Information Report SID543, 27 March 2006, 1, VPL.2000.0003.8649.

⁷¹ Exhibit RC0281 ICR3838 (039), 28 July 2006, 374, VPL.2000.0003.1960; Exhibit RC0281 ICR3838 (049), 15 October 2006, 483, VPL.2000.0003.2069; Exhibit RC0281 ICR3838 (051), 29 October 2006, 527, VPL.2000.0003.2113; Exhibit RC0281 ICR3838 (097), 27 August 2007, 1157, VPL.2000.0003.2743; Exhibit RC0281 ICR3838 (105), 17 October 2007, 1307, VPL.2000.0003.2893.

- 58.5. Mr Mokbel's financial circumstances⁷²
 - 58.6. Mr Mokbel's legal representatives⁷³
 - 58.7. information concerning pressure applied by Tony Mokbel to Mr Cooper to make a false statement to assist the defence of Mr Kabalan Mokbel.⁷⁴
59. As referred to above, Messrs Cooper⁷⁵ and [REDACTED]⁷⁶ were prosecution witnesses and provided statements against Mr Mokbel.

Relevant Conduct in relation to Mr Cooper

60. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Mokbel's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 60.1. the discovery of the offending the subject of Operation Posse;
 - 60.2. Mr Cooper being arrested in Operation Posse;
 - 60.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 60.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Mokbel (among others).
61. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
62. Further, as set out in case study of [REDACTED] at paragraphs 8 to 10, it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr

⁷² Exhibit RC0281 ICR3838 (039), 1 July 2006, 349, VPL.2000.0003.1935; Exhibit RC0281 ICR3838 (049), 15 October 2006, 483, VPL.2000.0003.2069; Exhibit RC0281 ICR3838 (070), 14 March 2007, 700, VPL.2000.0003.2286; Exhibit RC0281 ICR3838 (082), 5 June 2007, 880, VPL.2000.0003.2466; Exhibit RC0281 ICR3838 (103), 3 October 2007, 1261, VPL.2000.0003.2847; Exhibit RC0281 ICR3838 (106), 27 October 2007, 1322, 1323, VPL.2000.0003.2908, VPL.2000.0003.2909; Exhibit RC0281 ICR2958 (012), 5 April 2008, 139, VPL.2000.0003.0879; Exhibit RC0281 ICR2958 (027), 8 July 2008, 481, VPL.2000.0003.1221.

⁷³ Exhibit RC0281 ICR3838 (039), 28 July 2006, 372, VPL.2000.0003.1958; Exhibit RC0281 ICR3838 (052), 2 November 2006, 537, VPL.2000.0003.2123; Exhibit RC0281 ICR3838 (070), 14 March 2007, 700, VPL.2000.0003.2286; Exhibit RC0281 ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2334; Exhibit RC0281 ICR3838 (095), 15 August 2007, 1097, VPL.2000.0003.2683; Exhibit RC0281 ICR3838 (105), 18 October 2007, 1309, VPL.2000.0003.2895.

⁷⁴ Exhibit RC0281 ICR3838 (051), 27 October 2006, 526, VPL.2000.0003.2112; Exhibit RC0281 ICR3838 (070), 15 March 2007, 709, VPL.2000.0003.2295.

⁷⁵ Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001 @.0001.

⁷⁶ Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 3, OPP.0056.0001.0001 @.0003.

Cooper to agree to assist and co-operate with authorities, [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Mokbel, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

63. If he had been aware of Ms Gobbo's involvement with Mr Cooper and with Victoria Police, Mr Mokbel would not have sought legal advice from her, would not have pleaded guilty to the charges and would have challenged the admissibility of evidence including the evidence of Mr Cooper..⁷⁷

64. **Submissions under Terms of Reference 1 and 2 in relation to Mr Mokbel**

65. It is submitted that it is open to the Commissioner to find that the case of Mr Mokbel may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

66. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.

67. The extent to which the case of Mr Mokbel may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

68. First, Category 1A⁷⁸ applies in that, between April 2003 and August 2004,⁷⁹ Ms Gobbo acted for Mr Mokbel while she was a human source,⁸⁰ and did not disclose same to him.⁸¹

69. Secondly, Category 2A⁸² applies in that evidence relied upon by the prosecution in Mr Mokbel's case, namely the evidence of Mr Cooper⁸³ and the evidence of [REDACTED],⁸⁴ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸⁵

70. The above conduct by Ms Gobbo under Categories 1A, together with conduct under Categories 2A, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁸⁶

⁷⁷ Anonymous Submission 033, 5 [19].

⁷⁸ See Legal Principles Submissions at [249].

⁷⁹ See above analysis at [55].

⁸⁰ See Legal Principles Submissions at [20].

⁸¹ See Legal Principles Submissions at [239].

⁸² See Legal Principles Submissions at [249].

⁸³ See above analysis at [4] and [60]-[63].

⁸⁴ See above analysis at [4] and [62].

⁸⁵ See Legal Principles Submissions at [196]-[222].

⁸⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

71. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

72. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸⁷
- 72.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mokbel;
 - 72.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mokbel, appropriate disclosure was made; or alternatively
 - 72.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
73. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [72.1] were taken, and accordingly there was the potential for the right of Mr Mokbel to a fair trial to have been interfered with.
74. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mokbel and/or his legal representatives.
75. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸⁸
76. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸⁹

⁸⁷ See Legal Principles Submissions at [384] and [452]-[457].

⁸⁸ See Legal Principles Submissions at [380]-[385].

⁸⁹ See Legal Principles Submissions at [351], [362]-[373].

77. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹⁰
78. Category 3A⁹¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
79. Category 4A⁹² applies in that, as noted above at [69] evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
80. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁰ See Legal Principles Submissions at [351], [374].

⁹¹ See Legal Principles Submissions at [465].

⁹² See Legal Principles Submissions at [465].

CASE STUDY: ROMI KARAM

The Relevant Case of Mr Karam

1. The case addressed in this case study arose for consideration as part of Stage 5 in the methodology of Counsel Assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 5 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
2. The one relevant case of Mr Karam concerns his convictions before the Heidelberg Magistrates' Court on 16 July 2008, for possession of ecstasy, possessing an imitation general category handgun, possessing ammunition without licence, and dealing in property suspected of being proceeds of crime.¹
3. Mr Karam was sentenced to four months' imprisonment, wholly suspended for 24 months.²

Ms Gobbo's Legal Representation of Mr Karam

4. Material before the Commission indicates that Ms Gobbo appeared on behalf of Mr Karam in relation to the case before the Heidelberg Magistrates' Court on 16 July 2008.³

The Conduct of Ms Gobbo as a Human Source in relation to Mr Karam

5. Material before the Commission records that Mr Karam was the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police, on numerous occasions prior to 16 July 2008.⁴

¹ Un-tendered Victoria Police Criminal History Report, Romi Karam, 14 December 2019, 48-49, VPL.0099.0193.2701 @.2748-2749.

² Un-tendered Victoria Police Criminal History Report, Romi Karam, 14 December 2019, 48-49, VPL.0099.0193.2701 @.2748-2749.

³ Exhibit RC1841 Magistrates' Court of Victoria Record Persons represented by Ms Nicola Gobbo, 16 July 2008, 21, MCV.0001.0001.0001 @.0019.

⁴ Exhibit RC0281 ICR3838 (110), 14 November 2007, 1401, VPL.2000.0003.2987; Exhibit RC0281 ICR3838 (111), 16 November 2007, 1414, VPL.2000.0003.3000; Exhibit RC0281 ICR3838 (113), 27 November 2007, 1466, VPL.2000.0003.3052; Exhibit RC0281 ICR3838 (116), 20 December 2007, 1534, VPL.2000.0003.3120; Exhibit RC0281 ICR3838 (118), 3 January 2008, 1549, VPL.2000.0003.3135; Exhibit RC0281 ICR2958 (001), 30 January 2008, 15, VPL.2000.0003.0755; Exhibit RC0281 ICR2958 (019), 13 May 2008, 296 VPL.2000.0003.3544; Exhibit RC0281 ICR2958 (023), 10 June 2008, 12 June 2008, 409, 425, VPL.2000.0003.1149, VPL.2000.0003.1165; Exhibit RC0281 ICR2958 (024), 15 June 2008, 435, VPL.2000.0003.1175; Exhibit RC0281 ICR2958 (029), 25 July 2008, 513, VPL.2000.0003.3750; Exhibit RC0281 ICR2958 (030), 29 July 2008, 5 August 2008, 517, 539, VPL.2000.0003.1257, VPL.2000.0003.1279; Exhibit RC0281 ICR2958 (033), 8 August 2008, 548, VPL.2000.0003.1288; Un-tendered Transcript of meeting between Officer Fox and Officer Sandy White and Ms Gobbo, 24 April 2008, 125, VPL.0005.0104.1246 @.1370.

Submissions under Terms of Reference 1 and 2 in relation to Mr Karam

6. It is submitted that it is open to the Commissioner to find that the case of Mr Karam may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
7. The extent to which the case of Mr Karam may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

8. First, Category 1A⁵ applies in that, on 16 July 2008,⁶ Ms Gobbo acted for Mr Karam while she was a human source,⁷ and did not disclose same to him.⁸
9. Secondly, Category 1B⁹ applies in that, before and/or during the period that Ms Gobbo acted for Mr Karam in relation to the case, she provided information in relation to him to members of Victoria Police.¹⁰
10. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹¹
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²

⁵ See Legal Principles Submissions at [249].

⁶ See above analysis at [4].

⁷ See Legal Principles Submissions at [20].

⁸ See Legal Principles Submissions at [239].

⁹ See Legal Principles Submissions at [249].

¹⁰ See above analysis at [5].

¹¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹² See Legal Principles Submissions at [384] and [452]-[457].

- 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Karam;
- 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Karam, appropriate disclosure was made; or alternatively
- 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Karam to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Karam and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹³
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁴
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.¹⁵
18. Category 3A¹⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁷
19. Category 3B¹⁸ applies in that, before and/or during the period Ms Gobbo acted for Mr Karam, she provided information in relation to him to members of Victoria Police,¹⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

¹³ See Legal Principles Submissions at [380]-[385].

¹⁴ See Legal Principles Submissions at [351], [362]-[373].

¹⁵ See Legal Principles Submissions at [351], [374].

¹⁶ See Legal Principles Submissions at [465].

¹⁷ See Legal Principles Submissions at [351], [374].

¹⁸ See Legal Principles Submissions at [465].

¹⁹ See above analysis at [5].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: NABIL KARAM

The Relevant Case of Mr Karam

1. The one relevant case of Mr Karam concerns his conviction before the County Court in 2016 for one charge of trafficking in a drug of dependence in a large commercial quantity.¹
2. The offending occurred between 1 December 2012 and 13 June 2013.² Mr Karam was arrested on 13 June 2013.³
3. Mr Karam pleaded guilty,⁴ and was sentenced on 8 July 2016 to four and a half years' imprisonment, with a non-parole period of two years.⁵

Ms Gobbo's Legal Representation of Mr Karam

4. There are no formal records of Ms Gobbo's representation of Mr Karam. However, in an anonymous submission to the Commission, it is said that Ms Gobbo:
 - 4.1. provided him with legal advice on the night of his arrest before taking part in a police interview;
 - 4.2. continued to provide legal advice, took copies of his summary and brief and formulated defence strategies; and
 - 4.3. advised him to plead guilty "against [his] better judgement".⁶
5. On the basis of other evidence before the Commission as to the tendency of Ms Gobbo to represent clients in an informal manner⁷, it is probable that Ms Gobbo represented Mr Karam at some point after his arrest on 13 June 2013.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Karam

6. The period of Mr Karam's offending post-dates the Loricated database records produced by Victoria Police to the Commission. However, material before the Commission indicates that Mr Karam was the subject of information provided

¹ See Un-tendered Indictment No C1309093, *DPP v Nabil Karam and Fedele D'Amico* [OPP.0053.0001.0008_0003]; Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [1], COR.1027.0001.0007 @.0002

² See Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [1], COR.1027.0001.0007 @.0002.

³ See Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [51], COR.1027.0001.0007 @.0014.

⁴ See Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [1], COR.1027.0001.0007 @.0002.

⁵ Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [84], COR.1027.0001.0007 @.0024.

⁶ Anonymous submission 148.

⁷ See, eg, Case Study of Horty Mokbel, Milad Mokbel, Zlate Cvetanovski, Faruk Orman, Carl Williams.

by Ms Gobbo to police on numerous occasions between 2005 and 2009,⁸ including in relation to his involvement in trafficking,⁹ and his association with co-accused Antonio Sergi.¹⁰

Submissions to the Commission regarding Mr Karam

7. In an anonymous submission to the Commission, it is asserted that Mr Karam's case was affected due to the alleged involvement of an informer, suspected to be Ms Gobbo, in the obtaining of the warrants for the telephone intercept and listening devices used in evidence
8. On the basis of material reviewed before the Commission it is not possible to make a finding whether or not such a submission is made out, however, it is open to find that the general submission that his case may have been affected is made out, for the reasons below.

Submissions under Terms of Reference 1 and 2 in relation to Mr Karam

9. It is submitted that it is open to the Commissioner to find that the case of Mr Karam may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about, and the recruitment, management and handling of Ms Gobbo as a human source.
10. The extent to which the case of Mr Karam may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

11. First, Category 1A¹¹ applies in that, between 13 June 2013 and July 2016,¹² Ms Gobbo acted for Mr Karam while she was a human source,¹³ and did not disclose same to him.¹⁴
12. Secondly, Category 1B¹⁵ applies in that, prior to the period that Ms Gobbo acted for Mr Karam in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,¹⁶ and did not disclose same to him.

⁸ See, eg, Exhibit RC0281 ICR3838 (014), 24 January 2006, VPL.2000.0003.1717; Exhibit RC0281 ICR3838 (018), 10 February 2006, VPL.2000.0003.1736.

⁹ See, eg, Exhibit RC0281 ICR2958 (052), 4 January 2009, VPL.2000.0003.1546.

¹⁰ See, eg, Exhibit RC0281 ICR3838 (111), 16 November 2007, VPL.2000.0003.3000; See also Un-tendered Reasons for Sentence *DPP v Nabil Karam* [2016] VCC 970 (Unreported, County Court of Victoria, Judge Allen, 8 July 2016 2004), [29], COR.1027.0001.0007 @.0006 .

¹¹ See Legal Principles Submissions at [249].

¹² See above analysis at [5].

¹³ See Legal Principles Submissions at [20].

¹⁴ See Legal Principles Submissions at [239].

¹⁵ See Legal Principles Submissions at [249].

¹⁶ See above analysis at [6].

13. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁷
14. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

15. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁸
 - 15.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Karam;
 - 15.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Karam, appropriate disclosure was made; or alternatively
 - 15.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
16. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [15.1] were taken, and accordingly there was the potential for the right of Mr Karam to a fair trial to have been interfered with.
17. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Karam and/or his legal representatives.
18. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁹

¹⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹⁸ See Legal Principles Submissions at [384] and [452]-[457].

¹⁹ See Legal Principles Submissions at [380]-[385].

19. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁰
20. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²¹
21. Category 3A²² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
22. Category 3B²³ applies in that, prior to the period that Ms Gobbo acted for Mr Karam in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
23. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁰ See Legal Principles Submissions at [351], [362]-[373].

²¹ See Legal Principles Submissions at [351], [374].

²² See Legal Principles Submissions at [465].

²³ See Legal Principles Submissions at [465].

²⁴ See above analysis at [6].

CASE STUDY: STEPHEN JOHN KAVANAGH

The Relevant Case of Mr Kavanagh

1. The one relevant case of Mr Kavanagh concerns his conviction before the County Court in February 2007 for two counts of trafficking in a drug of dependence, one count of stealing shipping containers, one count of dishonestly handling stolen goods, one count of possessing a drug of dependence, and one count of intending to pervert the course of public justice.¹
2. Mr Kavanagh pleaded guilty² and was sentenced to a total effective sentence of seven years and nine months' imprisonment with a non-parole period of five years.³ The court made ancillary orders including forfeiture and disposal orders in relation to the accoutrements and proceeds of his offending.⁴

Ms Gobbo's Legal Representation of Mr Kavanagh

3. Material before the Commission indicates Ms Gobbo acted for Mr Kavanagh on one occasion in relation to the case. On 30 January 2007, Ms Gobbo appeared for Mr Kavanagh in a plea.⁵ This is corroborated by the record of her appearance on the reasons for sentence.⁶ Further, other material records that on 9 February 2007, Ms Gobbo marked fees for a brief to settle a plea including all conferences, mentions, defence reply and reading material in the matter of *The Queen v Stephen Kavanagh*.⁷

The Conduct of Ms Gobbo as a Human Source in relation to Mr Kavanagh

4. Material before the Commission records that Ms Gobbo provided information in relation to Mr Kavanagh on a number of occasions.
5. On 31 July 2006, she is recorded as informing her handler Mr Peter Smith that she had conferred with Mr Kavanagh, and of her observations in relation to his

¹ Un-tendered Presentment No C0303618.2, *The Queen v Dean Barry Erdman, Stephen John Kavanagh and Jake Simmons* (2006), OPP.0054.0001.0001 @.0016; Un-tendered Reasons for Sentence, *R v Kavanagh, Stephen John* [2007] VCC 1830 (Unreported, County Court of Victoria, Judge Wood, 6 February 2007), [1]-[2], OPP.0054.0001.0001 @.0115.

² Un-tendered Reasons for Sentence, *R v Kavanagh, Stephen John* [2007] VCC 1830 (Unreported, County Court of Victoria, Judge Wood, 6 February 2007), [1]-[2], OPP.0054.0001.0001 @.0115.

³ Un-tendered Reasons for Sentence, *R v Kavanagh, Stephen John* [2007] VCC 1830 (Unreported, County Court of Victoria, Judge Wood, 6 February 2007), [46], OPP.0054.0001.0001 @.0130.

⁴ Un-tendered Reasons for Sentence, *R v Kavanagh, Stephen John* [2007] VCC 1830 (Unreported, County Court of Victoria, Judge Wood, 6 February 2007), [48], OPP.0054.0001.0001 @.0131.

⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 30 January 2007, 46, OPP.0001.0004.0025 @.0046; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 30 January 2002, 60, OPP.0001.0004.0025 @.0047.

⁶ Un-tendered Reasons for Sentence, *R v Kavanagh, Stephen John* [2007] VCC 1830 (Unreported, County Court of Victoria, Judge Wood, 6 February 2007), OPP.0054.0001.0001 @.0114.

⁷ Exhibit RC1568 Ms Gobbo fee book 02, 9 February 2007, 104, MIN.5000.7000.0103 @.0104

offending and related-accused.⁸ The record makes the note that Mr Kavanagh is Ms Gobbo's client, and that Mr Sandy White and Mr James (Jim) O'Brien were subsequently advised of the information provided.⁹ Ms Gobbo is later recorded as informing Mr Anderson of her suspicions about Mr Kavanagh's criminal activities and associates,¹⁰ and possible police corruption in his brief of evidence.¹¹ Police records also indicate that she provided Mr Green with general procedural updates.¹²

Submissions under Terms of Reference 1 and 2 in relation to Mr Kavanagh

6. It is submitted that it is open to the Commissioner to find that the case of Mr Kavanagh may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
7. The extent to which the case of Mr Kavanagh may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

8. First, Category 1A¹³ applies in that, in January 2007,¹⁴ Ms Gobbo acted for Mr Kavanagh while she was a human source,¹⁵ and did not disclose same to him.¹⁶
9. Secondly, Category 1B¹⁷ applies in that, before and during the period that Ms Gobbo acted for Mr Kavanagh in relation to the case, she provided information in relation to him to members of Victoria Police.¹⁸
10. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁹
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁸ Exhibit RC0281 ICR3838 (039), 31 July 2006, 489, VPL.2000.0003.1963.

⁹ Exhibit RC0281 ICR3838 (039), 31 July 2006, 489, VPL.2000.0003.1963.

¹⁰ Exhibit RC0281 ICR3838 (049), 16 October 2006, VPL.2000.0003.2070.

¹¹ Exhibit RC0281 ICR3838 (052), 9 November 2006, VPL.2000.0003.2133.

¹² See also Exhibit RC0281 ICR3838 (052), 29 January 2007, VPL.2000.0003.2204-5.

¹³ See Legal Principles Submissions at [249].

¹⁴ See above at [3].

¹⁵ See Legal Principles Submissions at [20].

¹⁶ See Legal Principles Submissions at [239].

¹⁷ See Legal Principles Submissions at [249].

¹⁸ See above at [5].

¹⁹ See Legal Principles Submissions at [320]-[329].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁰
 - 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Kavanagh;
 - 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Kavanagh, appropriate disclosure was made; or alternatively
 - 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Kavanagh to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Kavanagh and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²¹
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²²
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after guilty plea.²³
18. Category 3A²⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

²⁰ See Legal Principles Submissions at [384] and [452]-[457].

²¹ See Legal Principles Submissions at [380]-[385].

²² See Legal Principles Submissions at [351], [362]-[373].

²³ See Legal Principles Submissions at [351], [374].

²⁴ See Legal Principles Submissions at [351], [374].

19. Category 3B²⁵ applies in that, before and during the period that Ms Gobbo acted for Mr Kavanagh in relation to the case, she provided information in relation to him to members of Victoria Police,²⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁵ See Legal Principles Submissions at [465].

²⁶ See above at [5].

CASE STUDY: MR KELVIN (A PSEUDONYM)

The Relevant Case of Mr KELVIN

1. The one relevant case of Mr Kelvin arose from Operation Posse,¹ and concerned his plea of guilty and sentence in the County Court on [REDACTED] [REDACTED] 2008 for one charge of trafficking in a commercial quantity of methylamphetamine between [REDACTED] 2004 and [REDACTED] 2006.² In brief terms, the offences arose from Mr Kelvin's involvement in drug trafficking activities with [REDACTED] in relation to a premises in [REDACTED].³
2. On [REDACTED] 2006, Mr Kelvin was arrested, following a search at the premises.⁴ He was released pending further investigation and arrested again on [REDACTED] 2007.⁵ The prosecution case against Mr Kelvin included reliance upon the evidence of Mr Cooper.⁶ The informant in the case was Mr Graham Evans.⁷ Other notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Craig Hayes, and Mr Dale Flynn.⁸
3. In [REDACTED] 2007, committal proceedings were conducted before the Magistrates' Court.⁹ On [REDACTED] 2008, Mr Kelvin was convicted and sentenced in the County Court to a total effective term of imprisonment of [REDACTED] years, wholly suspended for a period of [REDACTED] years.¹⁰ That sentence incorporated a discount that Mr Kelvin received by reason of his assistance to and co-operation with the authorities. In particular, the sentencing judge noted that he made statements to police, dated [REDACTED] August 2008, and gave an undertaking to give evidence in accordance with them.¹¹

¹ See Chapters 10 and 11 of the Narrative Submissions. See also Untendered 'Bail Application Notes, [REDACTED]', 1, OPP.0095.0001.0020 @.0009.

² See Un-tendered Presentment No. C0705675.1, *The Queen v Mr Kelvin and [REDACTED]*, 2008, 1-4, OPP.0095.0001.0020 @.0005-.0008; Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]* [2008] VCC 1123, 1 [1], OPP.0095.0001.0020 @.0037.

³ Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]* [2008] VCC 1123, 1, 2 [1]-[4], OPP.0095.0001.0020 @.0037, 0038.

⁴ Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]*, [2008] VCC 1123, 2 [4], OPP.0095.0001.0020 @.0038.

⁵ Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]*, [2008] VCC 1123, 2 [4], OPP.0095.0001.0020 @.0038.

⁶ S See Un-tendered Presentment No. C0705675.1, *The Queen v Mr Kelvin and [REDACTED]*, 2008, 3, OPP.0095.0001.0020 @.0007; Un-tendered Statement 37 of Mr Cooper, 11 May 2007, 101-102, OPP.0050.0002.0007 @.0266-.0267; Un-tendered Office of Public Prosecutions Victoria, 'Annexure A – Witnesses and Related Accused Matter Outcomes' 29 May 2020, 2 OPP.0056.0001.0001.

⁷ See Un-tendered Bail Variation Order (Magistrates' Court of Victoria, Magistrate Bakos 31 July 2007) 1, OPP.0095.0001.0020 @.0014; Un-tendered Presentment No. C0705675.1, *The Queen v Mr Kelvin and [REDACTED]*, 2008, 4, OPP.0095.0001.0020 @.0008.

⁸ See Un-tendered Presentment No. C0705675.1, *The Queen v Mr Kelvin and [REDACTED]*, 2008, 4, OPP.0095.0001.0020 @.0008.

⁹ See Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]* [2008] VCC 1123, 3 [9], OPP.0095.0001.0020 @.0039; See also Un-tendered Crown Summary for Case Conference, *The Queen v [REDACTED], Mr Kelvin, and [REDACTED]*, 1, OPP.0095.0001.0020 @.0020.

¹⁰ See Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]*, [2008] VCC 1123, 4 [12], OPP.0095.0001.0020 @.0040.

¹¹ See Un-tendered Reasons for sentence, *R v Mr Kelvin & [REDACTED]*, [2008] VCC 1123, 4 [11]-[12], 5 [14], OPP.0095.0001.0020 @.0040-.0041.

Whether Ms Gobbo Acted as Mr Kelvin's Lawyer

4. There is no evidence before the Commission to suggest that Ms Gobbo acted as a lawyer for Mr Kelvin in relation to the impugned case.

The Use of Ms Gobbo as a Human Source in relation to Mr Kelvin

Relevant Conduct in relation to Mr Cooper

5. While there is no evidence to suggest that Ms Gobbo provided Victoria Police with any information about Mr Kelvin, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is relevant to an assessment of Mr Kelvin's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 5.1. the discovery of the offending the subject of Operation Posse;
 - 5.2. Mr Cooper being arrested in Operation Posse;
 - 5.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 5.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Kelvin (among others).
6. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Kelvin, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Kelvin may have been deprived of any opportunity to object to the admissibility of this evidence.

The Circumstances of Mr Kelvin Agreeing to Co-Operate with and Assist Authorities

7. As noted above, upon his plea hearing, Mr Kelvin gave evidence that statements made by him on ■ August 2008 to the police were true and he undertook to give evidence in accordance with them when called upon to do so.¹² On the basis of his co-operation with and assistance to the authorities, he received a discount in sentence.¹³
8. While there is no evidence to suggest that Ms Gobbo played a direct role in Mr Kelvin's decision to co-operate with and assist authorities, it is submitted that it is open to infer, based on the surrounding circumstances, that his decision to do so may have been influenced by the course that Mr Cooper took. It appears from the above that Mr Kelvin's decision to co-operate with and assist

¹² See Un-tendered Reasons for sentence, *R v Mr Kelvin & ■■■■■*, [2008] VCC 1123, 4 [11]-[12], 5 [14], OPP.0095.0001.0020 @.0040-.0041.

¹³ See Un-tendered Reasons for sentence, *R v Mr Kelvin & ■■■■■*, [2008] VCC 1123, 4 [11]-[12], 5 [14], OPP.0095.0001.0020 @.0040-.0041.

authorities was made in the context of facing prosecution for offending in Operation Posse (which prosecution included reliance upon the evidence of Mr Cooper). In these circumstances, it is open to reason that, but for Mr Cooper's decision to co-operate with and assist the authorities (which may have been obtained by way of improper or illegal conduct of Ms Gobbo and members of Victoria Police, as addressed in the Narrative Submissions at Chapter 11), Mr Kelvin would not have made statements and given an undertaking to give evidence in any subsequent prosecutions.

9. Based on the foregoing, it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police that led Mr Cooper to agree to assist and co-operate with authorities, and Mr Kelvin's subsequent decision to do so. On this basis, it may be argued that the evidence and assistance which Mr Kelvin gave, and which was relied upon in subsequent proceedings, may have been obtained illegally or improperly by virtue of its causal connection (albeit indirect) to the circumstances surrounding Mr Cooper. Whilst this point does not alter the ways in which Mr Kelvin's case may have been affected, it does have a flow-on effect in subsequent matters in which the evidence of Mr Kelvin was relied upon.
10. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁴ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Kelvin

11. It is submitted that it is open to the Commissioner to find that the case of Mr Kelvin may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
12. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
13. The extent to which the case of Mr Kelvin may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

14. Category 2A¹⁶ applies in that evidence relied upon by the prosecution in the case against Mr Kelvin, namely the evidence of Mr Cooper,¹⁷ may have been

¹⁴ See Legal Principles Submissions at [210].

¹⁵ See Legal Principles Submissions at [222].

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See [2], and [5]-[6] above.

obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁸

15. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁹
 - 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Kelvin;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Kelvin, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Mr Kelvin to a fair trial to have been interfered with.
18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Kelvin and/or his legal representatives.
19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁰
20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²¹
21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²²

¹⁸ See Legal Principles Submissions at [196]-[222].

¹⁹ See Legal Principles Submissions at [384] and [452]-[457].

²⁰ See Legal Principles Submissions at [380]-[385].

²¹ See Legal Principles Submissions at [351], [362]-[373].

²² See Legal Principles Submissions at [351], [374].

22. Category 4A²³ applies in that, as noted above at [14], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
23. Category 4B²⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
24. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²³ See Legal Principles Submissions at [465].

²⁴ See Legal Principles Submissions at [465].

CASE STUDY: MR KEARNEY (A PSEUDONYM)

The Relevant Case of Mr Kearney

1. The one relevant case of Mr Kearney arose from Operation Posse,¹ and concerned his plea of guilty and sentence in the County Court on [REDACTED] [REDACTED] 2008 for one charge of trafficking in a commercial quantity of methylamphetamine between [REDACTED] 2005 and [REDACTED] 2006.² In brief terms, the offences arose from Mr Kearney's involvement in drug trafficking activities with [REDACTED] in relation to a premises in [REDACTED].³
2. On [REDACTED], Mr Kearney was arrested, following a search at the premises.⁴ The prosecution case against Mr Kearney included reliance upon the evidence of Mr Cooper.⁵ The informant in the case was Mr Graham Evans.⁶ Other notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Craig Hayes, and Mr Dale Flynn.⁷
3. In [REDACTED] 2007, committal proceedings were conducted before the Magistrates' Court.⁸ On [REDACTED] 2008, Mr Kearney was convicted and sentenced to a total effective term of imprisonment of [REDACTED] months, wholly suspended for a period of [REDACTED] years.⁹ That sentence incorporated a discount that Mr Kearney received by reason of his assistance to and co-operation with the authorities. In particular, the sentencing judge noted that he had made statements to police, dated [REDACTED] 2006 and [REDACTED] 2008, and gave an undertaking to give evidence in accordance with them.¹⁰

¹ See Chapters 10 and 11 of the Narrative Submissions. See also Un-tendered 'Bail Application Notes, Mr Kearney and [REDACTED]', 1, OPP.0095.0001.0021 @.0009.

² See Un-tendered Presentment No. C0705675.1, *The Queen v [REDACTED] and Mr Kearney*, 2008, 1-4, OPP.0095.0001.0021 @.0005-.0008; Un-tendered Reasons for sentence, *R v [REDACTED] & Mr Kearney*, [2008] VCC 1123, 6 [24], OPP.0095.0001.0021 @.0042.

³ Un-tendered Reasons for sentence, *R v [REDACTED] & Mr Kearney*, [2008] VCC 1123, 1-2 [1]-[4], 6-7 [24]-[26], OPP.0095.0001.0021 @.0037, .0038, .0042, .0043.

⁴ Un-tendered Reasons for sentence, *R v [REDACTED] & Mr Kearney*, [2008] VCC 1123, 2 [4], 7 [27], OPP.0095.0001.0021 @.0038, .0043.

⁵ See Un-tendered Presentment No. C0705675.1, *The Queen v [REDACTED] & Mr Kearney*, 2008, 3, OPP.0095.0001.0021 @.0007; Un-tendered Statement 37 of Mr Cooper, 11 May 2007, 101-102, OPP.0050.0002.0007 @.0266-.0267; Un-tendered Office of Public Prosecutions Victoria, 'Annexure A – Witnesses and Related Accused Matter Outcomes' 29 May 2020, 2 OPP.0056.0001.0001 @.0002.

⁶ See Un-tendered Bail Variation Order (Magistrates' Court of Victoria, Magistrate [REDACTED], 31 July 2007) 1, OPP.0095.0001.0021 @.0014; See also Un-tendered Presentment No. C0705675.1, *The Queen v Mr [REDACTED] and Mr Kearney*, 2008, 4, OPP.0095.0001.0021 @.0008.

⁷ See Un-tendered Presentment No. C0705675.1, *The Queen v [REDACTED] and Mr Kearney*, 2008, 4, OPP.0095.0001.0021 @.0008.

⁸ See Un-tendered Reasons for sentence, *R v [REDACTED] & Mr Kearney*, [2008] VCC 1123, 7 [27], OPP.0095.0001.0021 @.0043; See also Un-tendered Crown Summary for Case Conference, *The Queen v [REDACTED], and Mr Kearney*, 1, OPP.0095.0001.0021 @.0030.

⁹ See Un-tendered Reasons for sentence, *R v [REDACTED] and Mr Kearney*, [2008] VCC 1123, 8 [30], OPP.0095.0001.0021 @.0044.

¹⁰ See Un-tendered Reasons for sentence, *R v [REDACTED] and Mr Kearney*, [2008] VCC 1123, 8 [30], OPP.0095.0001.0021 @.0044.

Whether Ms Gobbo Acted as Mr Kearney's Lawyer

4. Whether Ms Gobbo acted as Mr Kearney's lawyer is discussed in the following paragraph.
5. There is no evidence before the Commission to suggest that Ms Gobbo acted as a lawyer for Mr Kearney in relation to the impugned case.

The Use of Ms Gobbo as a Human Source in relation to Mr Kearney

Relevant Conduct in relation to Mr Cooper

6. While there is no evidence to suggest that Ms Gobbo provided Victoria Police with any information about Mr Kearney, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is relevant to an assessment of Mr Kearney's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 6.1. the discovery of the offending the subject of Operation Posse;
 - 6.2. Mr Cooper being arrested in Operation Posse;
 - 6.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 6.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Kearney (among others).
7. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Kearney, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Kearney may have been deprived of any opportunity to object to the admissibility of this evidence.

The Circumstances of Mr Kearney Agreeing to Co-Operate with and Assist Authorities

8. As noted above, upon his plea hearing, Mr Kearney gave evidence that statements made by him on ██████████ 2006 and ██████████ 2008 to the police were true and he undertook to give evidence in accordance with them when called upon to do so.¹¹ On the basis of his co-operation with and assistance to the authorities, he received a discount in sentence.¹²
9. While there is no evidence to suggest that Ms Gobbo played a direct role in Mr Kearney's decision to co-operate with and assist authorities, based on the

¹¹ See Un-tendered Reasons for sentence, *R v ██████████ & Mr Kearney*, [2008] VCC 1123, 7 [27], [30], [32] OPP.0095.0001.0021 @.0043.

¹² See Un-tendered Reasons for sentence, *R v ██████████ & Mr Kearney*, [2008] VCC 1123, 7 [27], [30], [32] OPP.0095.0001.0021 @.0043.

surrounding circumstances, it is submitted that it is open to infer that his decision to do so may have been influenced by the course that Mr Cooper took. It appears from the above that Mr Kearney's decision to co-operate with and assist authorities was made in the context of facing prosecution for offending in Operation Posse (which prosecution included reliance upon the evidence of Mr Cooper). In these circumstances, it may be open to reason that, but for Mr Cooper's decision to co-operate with and assist the authorities (which may have been obtained by way of improper or illegal conduct of Ms Gobbo and members of Victoria Police, as addressed in the Narrative Submissions at Chapter 11), Mr Kearney would not have made statements and given an undertaking to give evidence in any subsequent prosecutions.

10. Based on the foregoing, it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police that led Mr Cooper to agree to assist and co-operate with authorities, and Mr Kearney's subsequent decision to do so. On this basis, it may be argued that the evidence and assistance which Mr Kearney gave, and which was relied upon in subsequent proceedings, may have been obtained illegally or improperly by virtue of its causal connection (albeit indirect) to the circumstances surrounding Mr Cooper. Whilst this point does not alter the ways in which Mr Kearney's case may have been affected, it does have a flow-on effect in subsequent matters in which the evidence of Mr Kearney was relied upon.¹³
11. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁴ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁵

Submissions under the Terms of Reference in relation to Mr Kearney

12. It is submitted that it is open to the Commissioner to find that the case of Mr Kearney may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
13. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
14. The extent to which the case of Mr Kearney may have been affected can be measured by virtue of the following matters.

¹³ See, eg, the case studies of Stephen Gavanas, Mohammed Kodhr, Horthy Mokbel, and Zlate Cvetanovski.

¹⁴ See Legal Principles Submissions at [210].

¹⁵ See Legal Principles Submissions at [222].

Conduct of Ms Gobbo

15. Category 2A¹⁶ applies in that evidence relied upon by the prosecution in the case against Mr Kearney, namely the evidence of Mr Cooper,¹⁷ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁸
16. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

17. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁹
 - 17.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Kearney;
 - 17.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Kearney, appropriate disclosure was made; or alternatively
 - 17.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
18. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [17.1] were taken, and accordingly there was the potential for the right of Mr Kearney to a fair trial to have been interfered with.
19. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Kearney and/or his legal representatives.
20. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁰
21. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²¹

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See [2], and [5]-[6] above.

¹⁸ See Legal Principles Submissions at [196]-[222].

¹⁹ See Legal Principles Submissions at [384] and [452]-[457].

²⁰ See Legal Principles Submissions at [380]-[385].

²¹ See Legal Principles Submissions at [351], [362]-[373].

22. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²²
23. Category 4A²³ applies in that, as noted above at [15], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
24. Category 4B²⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
25. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²² See Legal Principles Submissions at [351], [374].

²³ See Legal Principles Submissions at [465].

²⁴ See Legal Principles Submissions at [465].

CASE STUDY: MR KEENE (A PSEUDONYM)

The Relevant Case of Mr Keene

1. The one relevant case of Mr Keene arose from Operation Posse,¹ and concerned his conviction and sentence before the County Court on 23 June 2008 in relation to one charge of attempting to traffick in a drug of dependence namely methylamphetamine on 25 April 2006.²
2. The charge concerned Mr Keene's involvement, on 25 April 2006, in attempting to traffick methylamphetamine together with Mr Milad Mokbel.³ On that day, Mr Cooper, [REDACTED], delivered five [REDACTED] packages, purporting to contain methylamphetamine, to Mr Milad Mokbel's residence in Brunswick.⁴ Mr Keene was present at the residence at the time of the delivery, allegedly in order to assist Mr Milad Mokbel in the handling of the packages.⁵ During the delivery, members of Victoria Police executed a search warrant.⁶
3. Following the execution of the search warrant on 25 April 2006, Mr Keene was taken into police custody, where he provided a version of events consistent with innocence.⁷ He was then released pending further enquiries.⁸
4. On 16 June 2006, Mr Keene was again arrested by members of the Purana Taskforce and interviewed in relation to the events of 25 April 2006.⁹ He declined to answer any questions but provided a forensic sample.¹⁰
5. On 18 August 2006, after receiving DNA analysis results in relation to a pair of gloves allegedly worn by Mr Keene on 26 April 2006 and which were seized at the residence, members of Victoria Police again interviewed him.¹¹ He again

¹ See Chapter 11 in Narrative Submissions concerning Cooper and Operation Posse.

² See: Un-tendered Presentment No. U01990298, *R v Mr Keene*, 2008, 7, RCMP1.0070.0001.0007 @ .0002-.0008; Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 6 [1]-[2], COR.1011.0001.0048 @ .0002.

³ Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 2-3 [2]-[23], COR.1011.0001.0048 @ 0002-3

⁴ Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 6 [2], COR.1011.0001.0048 @ .0002.

⁵ Un-tendered, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 2-3 [3], COR.1011.0001.0048 @ .0002-3

⁶ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 2-4 [2]-[7], COR.1011.0001.0048 @ .0002-4.

⁷ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 4 [7]-[8], COR.1011.0001.0048 @ .0004 [7]-[8].

⁸ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 4 [7]-[8], COR.1011.0001.0048 @ .0004.

[REDACTED]
[REDACTED]
[REDACTED] where it is suggested that these events took place on 17 June 2006.

¹⁰ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 4 [9], COR.1011.0001.0048 @ .0004.

¹¹ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 12 4 [6], [9], 23 June 2008, COR.1011.0001.0048 @ .0004.

exercised his right to silence.¹² He was subsequently charged with the offending.¹³

6. The prosecution case against Mr Keene included reliance upon the evidence of Mr Cooper¹⁴ [REDACTED].¹⁶ Reliance was also placed upon DNA analysis results from the pair of latex gloves described above.¹⁷
7. The informant in the case was Mr Kelly.¹⁸ Other notable members of police involved in the prosecution as police witnesses included Mr Dale Flynn, Mr Tim Johns, Mr Boris Buick, Mr James (Jim) O'Brien, and Mr James Coghlan.¹⁹
8. Ultimately, on 9 May 2008, Mr Keene pleaded guilty to the offending in the County Court.²⁰ On 23 June 2008, he was convicted and released on a Community-based Order for a period of two years, with special conditions.²¹
9. [REDACTED]

¹² See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 4 [9], 23 June 2008, COR.1011.0001.0048 @ 0004.

¹³ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 4-5 [9], 23 June 2008, COR.1011.0001.0048 @ .0004-0005.

¹⁴ See mention of "A person known to the Director of Public Prosecutions", which it can be inferred is a reference to Mr Cooper, on Un-tendered Presentment No. U01990298, *R v Mr Keene*, 2008, 7, RCMP.0070.0001.0007 @ .0008; See also Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001 @ .0002. See also mention of "protected witness" in Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 2 [2] ff., COR.1011.0001.0048 @ .0002. See reference to the evidence of "Protected Witness" (inferred to be Cooper) in Un-tendered Crown Opening, *R v Mr Keene*, 8 May 2008, 1-6, RCMP.0070.0001.0007 @ .0016-0021.

¹⁵ Un-tendered Presentment No. U01990298, *R v Mr Keene*, 2008, 6, RCMP.0070.0001.0007 @ .0007.

¹⁶ Un-tendered Presentment No. U01990298, *R v Mr Keene*, 2008, 4, RCMP.0070.0001.0007 @ .0005.

¹⁷ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 3-4 [6], 23 June 2007, COR.1011.0001.0048 @ .0003-0004. See also Un-tendered Crown Opening, *R v Mr Keene*, 8 May 2008, 2-3 [17], RCMP.0070.0001.0007 @ .0017-18.

¹⁸ See [REDACTED]

¹⁹ The involvement of these members in the investigation and proceedings can be inferred from their presence as witnesses on the presentment: [REDACTED]

²⁰ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 6-7 [15] COR.1011.0001.0048 @ .0006-0007; Un-tendered Presentment No. U01990298, *R v Mr Keene*, 2008, 1, RCMP.0070.0001.0007 @ .0002.

²¹ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 13-14 [33], COR.1011.0001.0048 @ .0013-0014.

[REDACTED]

Ms Gobbo's Legal Representation of Mr Keene

10. The evidence before the Commission indicates that Ms Gobbo acted for Mr Keene on at least one occasion in relation to the case, namely on 16 June 2006, when she advised Mr Keene upon his arrest.²⁵ According to Mr Kelly, the informant and member of police who conducted the arrest and interview, he attempted to contact Ms Gobbo upon the arrest at Mr Keene's request.²⁶ Further, Mr Kelly states that, on the night of 16 June 2006, Ms Gobbo attended the St Kilda Road Police Station and conferred with Mr Keene during his interview.²⁷ As addressed in more detail below, it appears that that Ms Gobbo did so with the backing of her handlers.
11. Notably, in October 2007, it appears that Ms Gobbo declined Mr Keene's request that she act for him.²⁸

The Conduct of Ms Gobbo as a Human Source in relation to Mr Keene

Prior to 16 June 2006 (when Ms Gobbo Acted as Mr Keene's Lawyer)

12. Evidence before the Commission establishes that Mr Keene was the subject of communications between Ms Gobbo (in her capacity as a human source) and Victoria Police in the period prior to her acting for him on 16 June 2006.
13. In particular, the ICRs record a series of communications concerning Mr Keene between Ms Gobbo and Mr Green, one of her handlers, between 25 and 26 April 2006, following his first arrest.²⁹ Those communications may be summarised as follows:
 - 13.1. At approximately 6:50pm on 25 April 2006, the search warrant was executed at the residence of Mr Milad Mokbel, during which Mr Keene was arrested.³⁰
 - 13.2. At 8:16pm, the ICRs record information from Ms Gobbo in the following terms: "Someone called the source from mobile [REDACTED] poss [REDACTED] wanting to meet the source at Wheat Bistro".³¹ It is not clear, but it appears that person referred to as [REDACTED] was [REDACTED] not Mr Keene.³²

[REDACTED]

²⁸ See Exhibit RC0281, ICR3838 (103), 9 October 2007, 1281 VPL.2000.0003.2867; See also Exhibit RC0281 ICR3838 (104), 10 October 2007, 1283 VPL.2000.0003.2869; See also discussion in October 2006 about the suggestion that Mr Ketch had recommended to Mr Keene that he engage Ms Gobbo to act for him: see Exhibit RC0281, ICR3838 (051), 24 October 2006, 520, VPL.2000.0003. 2106; Exhibit RC0281 ICR 3838 (051), 26 October 2006, 523, VPL.2000.0003. 2100.

²⁹ Exhibit RC0281 ICR3838 (029), 25 April 2006, 269-70, VPL.2000.0003.1854-55.

[REDACTED]

³¹ Exhibit RC0281 ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1854.

[REDACTED]

- 13.3. At 8:20pm, Messrs Green and Sandy White observed a male arriving at Wheat Bistro.³³ It appears that Ms Gobbo then met the male,³⁴ and at 8:30pm, Ms Gobbo called her handlers and provided information which appears to have come from the meeting with “ARCH”.³⁵ The relevant ICR entry records as follows:³⁶

The male was Mr Keene who was at Milad’s house and was just released from Brunswick Police station

He is worried about himself Horty told him it was alright to talk to source.

Mr Keene was worried about a glove he was wearing and left at the house

Mr Keene was worried that Cooper was a give up as [REDACTED]

- 13.4. At 1:19am on 26 April 2006, Ms Gobbo attended a meeting with Messrs Sandy White and Green, during which they further discussed Mr Keene.³⁷ The ICRs record that Ms Gobbo provided information (which she appears to have obtained second or third hand) to the following effect: “Keene brought over the heat sealing machine in the box to Milad’s house and is worried his prints are on it and he had hidden his gloves behind the couch.” The note in the ICR records that “Op Purana advised”.³⁸ It appears, however, from the transcript of the conversation between Ms Gobbo and her handlers that the police had already seized the gloves by that stage.³⁹ Moreover, it appears that, during the execution of the search warrant on 25 April 2006, Mr Keene was observed by one of the police members removing the gloves and hiding them in or near a couch. On this basis it does not appear that the information provided by Ms Gobbo actually led to the gloves being sized or tested, or otherwise advanced the case against him.⁴⁰
14. Between Mr Keene’s first arrest on 25 April 2006 and his second arrest on 16 June 2006, he continued to occasionally feature in communications between Ms Gobbo and her handlers.⁴¹
15. Further, certain information that Ms Gobbo provided to police during this period in relation to Mr Keene was used to obtain telephone intercept warrants

³³ See Exhibit RC0281, ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1854.

³⁴ See Exhibit RC0567 Mr Green diary, 25 April 2006, 126, VPL.2000.0001.4760 @ .4885.

³⁵ See Exhibit RC0281 ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1854.

³⁶ See Exhibit RC0281 ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1854.

³⁷ See Exhibit RC0281 ICR3838 (029), 26 April 2006, 270, VPL.2000.0003.1855; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Mr Sandy White and Mr Green, 26 April 2006, 8, VPL.0005.0097.0505 @ 0512; See also audio recording of this meeting: VPL.2000.0002.4227.

³⁸ Exhibit RC0281 ICR3838 (029), 26 April 2006, 270, VPL.2000.0003.1855; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Mr Sandy White and Mr Green, 26 April 2006, 8, VPL.0005.0097.0505 @ 0512; See also audio recording of this meeting: VPL.2000.0002.4227.

³⁹ See Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Mr Sandy White and Mr Green, 26 April 2006, 8, VPL.0005.0097.0505 @ 0512; See also audio recording of this meeting: VPL.2000.0002.4227.

⁴⁰ See Un-tendered Reasons for Sentence, *R v Mr Keene* [2019] VCC (unrevised), 23 June 2008, 3-4 [6], COR.1011.0001.0048 @ .0003-4.

⁴¹ See: Exhibit RC0281 ICR3838 (031), 9 May 2006, 292 VPL.2000.0003.1878 (“Mr Keene’s phone number is [REDACTED]. (D/I O’Brien adv 10/05/06) I/R REQUIRED !!!!!”); Transcript of Mr James (Jim) O’Brien, 9 September 2019, 5876-5877; Exhibit RC0281 ICR3838 (031), 10 May 2006, 294, VPL.2000.0003.1880; Exhibit RC0281, ICR3838 (033), 1 June 2006, 314 VPL.2000.0003.1900.

targeting him. For example, on 18 May 2006, Victoria Police obtained a telephone intercept warrant, under the *Telecommunications (Interception) Act 1979*, targeting any telecommunications service used by Mr Keene.⁴² The affidavit, dated 18 May 2006, which appears to have been relied upon in support of the application for the warrant, makes express reference to information obtained by Ms Gobbo (as “Informer 21803838”) on 10 May 2006⁴³ as well as her broader assistance to Operation Posse.⁴⁴ In connection to this, on 9 May 2006, the ICRs record that Ms Gobbo provided information to her handlers about Mr Keene’s telephone number, which was passed onto Mr O’Brien.⁴⁵

Upon Arrest on 16 June 2006

16. As noted above, on 16 June 2006, Ms Gobbo provided advice to Mr Keene when he was arrested and interviewed.⁴⁶ The evidence indicates that Ms Gobbo, her handlers, and Mr Kelly were in ongoing contact whilst these events unfolded. The relevant events and communications surrounding the arrest may be summarised as follows:
 - 16.1. At 10:55pm on 16 June 2006, Mr Kelly arrested Mr Keene at an address in Coburg.⁴⁷ Immediately after, Mr Kelly contacted Ms Gobbo (among others) at Mr Keene’s request.⁴⁸
 - 16.2. At 11:00pm, the ICRs record that Ms Gobbo telephoned her handler, Mr Green, and reported that, inter alia, she had been contacted by Mr Kelly in relation to Mr Keene’s arrest.⁴⁹ At the same time, the ICRs record that Mr Green received an update directly from Mr Kelly, including the fact that he would try to contact Ms Gobbo in relation to the arrest.⁵⁰
 - 16.3. At 11.50pm, the ICRs record that Mr Green telephoned Ms Gobbo, who reported that she had been contacted by Mr Horthy Mokbel and that he had demanded she attend St Kilda Rd Police Station to “sort [the] matter out.”⁵¹ In response, Mr Green “advised [Ms Gobbo] to comply with this request in the normal manner.”⁵² The ICR entry further indicates that Mr Kelly was “advised” of this by Mr Green.⁵³

⁴² See reference to Warrant D02758 in Schedule A, Affidavit of Sergeant Darren Hamilton-Scott, dated 10 November 2006, unsworn at 56, VPL.0098.0134.0001.

⁴³ See Affidavit of Detective Senior Sergeant Russell Fletcher, dated 18 May 2006, unsworn at [54] VPL.0100.0147.6108.

⁴⁴ See Affidavit of Detective Senior Sergeant Russell Fletcher, dated 18 May 2006, unsworn at [55] VPL.0100.0147.6108.

⁴⁵ Exhibit RC0281, ICR3838 (031), 9 May 2005, 292, RCMP.0050.0001.0001 @_0292.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- 19.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Keene (among others).
20. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Keene, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Keene may have been deprived of any opportunity to object to the admissibility of this evidence.
21. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁶² where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁶³

Submissions under Terms of Reference 1 and 2 in relation to Mr Keene

22. It is submitted that it is open to the Commissioner to find that the case of Mr Keene may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
23. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions at Chapter 11.
24. The extent to which the case of Mr Keene may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

25. First, Category 1A⁶⁴ applies in that, on 16 June 2006,⁶⁵ Ms Gobbo acted for Mr Keene in relation to the case while she was a human source,⁶⁶ and did not disclose same to him.⁶⁷
26. Secondly, Category 1B⁶⁸ applies in that, between 25 April 2006 and 16 June 2006, which was before and upon the date that Ms Gobbo acted for Mr Keene relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁶⁹ Further, on 25 April 2006, prior to acting for him on 16 June 2006, Ms Gobbo attempted to assist the investigation or prosecution in relation to Mr Keene by providing information to police about possible DNA evidence on gloves he was allegedly

⁶² See Legal Principles Submissions at [210].

⁶³ See Legal Principles Submissions at [222].

⁶⁴ See Legal Principles Submissions at [249].

⁶⁵ See above analysis at [10].

⁶⁶ See Legal Principles Submissions at [20].

⁶⁷ See Legal Principles Submissions at [239].

⁶⁸ See Legal Principles Submissions at [249].

⁶⁹ See above analysis at [12]-[17].

wearing at the time of the offending.⁷⁰ It is noted, however, as addressed above, that it appears that the information did not in fact advance the case as the police appear to have already been alive to the issue.⁷¹

27. Thirdly, Category 2A⁷² applies in that evidence relied upon by the prosecution in the case against Mr Keene, namely the evidence of Mr Cooper⁷³ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁷⁴
28. Fourthly, Category 2B⁷⁵ applies in that Ms Gobbo had knowledge of the circumstances founding the above [27] and failed to disclose same to her client, Mr Keene, thereby depriving him of the ability to object to its admission.
29. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷⁶
30. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

31. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷⁷
 - 31.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Keene;
 - 31.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Keene, appropriate disclosure was made; or alternatively

⁷⁰ See above analysis at [13].

⁷¹ See above analysis at [13].

⁷² See Legal Principles Submissions at [249].

⁷³ See above analysis at [6], [19]-[20].

⁷⁴ See Legal Principles Submissions at [196]-[222].

⁷⁵ See Legal Principles Submissions at [249].

⁷⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁷⁷ See Legal Principles Submissions at [384] and [452]-[457].

- 31.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
32. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [31.1] were taken, and accordingly there was the potential for the right of Mr Keene to a fair trial to have been interfered with.
33. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Keene and/or his legal representatives.
34. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁸
35. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷⁹
36. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁸⁰
37. Category 3A⁸¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
38. Category 3B⁸² applies in that, during the period Ms Gobbo acted for Mr Keene, she provided information in relation to him to members of Victoria Police,⁸³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
39. Category 4A⁸⁴ applies in that, as noted above at [27], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
40. Category 4B⁸⁵ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁷⁸ See Legal Principles Submissions at [380]-[385].

⁷⁹ See Legal Principles Submissions at [351], [362]-[373].

⁸⁰ See Legal Principles Submissions at [351], [374].

⁸¹ See Legal Principles Submissions at [465].

⁸² See Legal Principles Submissions at [465].

⁸³ See above analysis at [26].

⁸⁴ See Legal Principles Submissions at [465].

⁸⁵ See Legal Principles Submissions at [465].

41. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: MR KETCH (A PSEUDONYM)

The Relevant Case of Mr Ketch

1. The one relevant case of Mr Ketch concerns his convictions before the County Court in July 2008 for five counts of obtaining a financial advantage by deception and two counts of making a false document.¹
2. On 4 October 2006, Mr Ketch was arrested and charged with deception offences following the execution of search warrants at his residence and at his office.²
3. At the time of his arrest, Mr Ketch was the sole director of [REDACTED], a mortgage brokering business.³ He assisted clients by submitting loan applications on their behalf, together with supporting documentation, to obtain finance for loans from various lending institutions.⁴
4. In relation to Counts 1, 4, 5 and 7 on Presentment number U02374347, the prosecution case was that in September 2005 and November 2005, Mr Ketch was involved in the preparation of false employment documents in support of loan applications, which he submitted to the lender on behalf of his client, Mr Mohammed Mohrez, and his wife, [REDACTED].⁵ The lender, Perpetual Trustees Company Ltd, relied upon the false documents to approve mortgage loans in the sums of \$191,250 and \$567,450.⁶
5. In relation to Count 2, the prosecution case was that Mr Ketch's employee, [REDACTED] purchased a property at [REDACTED], Coburg on behalf of Mr Ketch.⁷ On 20 September 2005, that property was transferred into Mr Ketch's wife's name, [REDACTED].⁸ The Crown alleged that the transfer was completed

¹ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [29]-[30], RCMP1.0042.0003.0006 at 11; Record of order made, 16 July 2008: RCMP1.0042.0003.0003; Un-tendered Victoria Police Criminal History Report, Mr Ketch, 14 December 2019, 3, VPL.0099.0193.2886 @.2888.

² Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [19], RCMP1.0042.0003.0006 at 5; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [13], OPP.0095.0001.0022 @ 58.

³ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [7], RCMP1.0042.0003.0006 at 2; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [1], OPP.0095.0001.0022 @ 54.

⁴ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [7], RCMP1.0042.0003.0006 at 2; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [1], OPP.0095.0001.0022 @ 54.

⁵ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [8], RCMP1.0042.0003.0006 at 2; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [2], OPP.0095.0001.0022 @ 54.

⁶ Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [2], OPP.0095.0001.0022 @ 54.

⁷ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [10], RCMP1.0042.0003.0006 at 3; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [2], OPP.0095.0001.0022 @ 54.

⁸ Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [4], OPP.0095.0001.0022 @ 55.

through a false representation by Mr Ketch that Ms Kline was the wife [REDACTED] and that the transfer was for 'natural love and affection'.⁹

6. Similarly, in relation to Count 3, a property at [REDACTED], Port Melbourne was purchased by the partner of [REDACTED], on behalf of Mr Ketch.¹⁰ The Crown alleged that the transfer of this property into Mr Ketch's own name was completed through a false representation that [REDACTED] was the wife of Mr Ketch and that the transfer was for 'natural love and affection'.¹¹ As a result of Mr Ketch's actions in relation to Counts 2 and 3, no stamp duty was paid in relation to either property, thus resulting in the obtaining of a financial advantage by deception.¹²
7. In relation to Count 6, the Crown alleged that Mr Ketch dishonestly obtained a mortgage loan in the sum of \$336,000 from Perpetual Trustees in relation to a property at [REDACTED], Pascoe Vale.¹³ The prosecution case was that Mr Ketch falsely stated on the loan application that the [REDACTED] property was a personal asset, despite Ms Kline being the sole proprietor and mortgagor.¹⁴
8. The case depended on various documents, including the loan applications, supporting documentation, contract of sale and certificate of title searches. Significantly, the prosecution also relied upon the evidence of [REDACTED].¹⁵
9. Following contested committal proceedings on 3 September 2007, Mr Ketch was committed to stand trial on five counts of obtaining a financial advantage by deception and two counts of making a false document.
10. He ultimately pleaded guilty to those charges in July 2008.¹⁶
11. [REDACTED]

⁹ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [11], RCMP1.0042.0003.0006 at 3; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [5], OPP.0095.0001.0022 @ 55.

¹⁰ Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [9], OPP.0095.0001.0022 @ 57.

¹¹ Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [10], OPP.0095.0001.0022 @ 57.

¹² Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [10], OPP.0095.0001.0022 @ 57.

¹³ Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [11], OPP.0095.0001.0022 @ 57.

¹⁴ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [17], RCMP1.0042.0003.0006 at 5; Un-tendered Prosecution Opening, *R v Mr Ketch*, undated, [10], OPP.0095.0001.0022 @ 57.

¹⁵ Un-tendered Presentment No. U02374347, undated, *R v Mr Ketch*, OPP.0095.0001.0022 @ 11.

¹⁶ Un-tendered Presentment No. U02374347, 3 July 2008, *R v Mr Ketch*, RCMP1.0042.0003.0001.

[REDACTED]

12. On the 16 July 2008, Mr Ketch was sentenced to a total effective sentence of two years and two months' imprisonment, which was wholly suspended for a period of two years and two months.²⁰ He was sentenced as a continuing criminal enterprise offender.²¹

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

[REDACTED]

²⁰ Un-tendered Reasons for Sentence, *The Queen v Mr Ketch*, [2019] VCC (Unreported, County Court of Victoria, Judge Hicks, 16 July 2008), [29]-[30], RCMPI.0042.0003.0006 at 11; Un-tendered Record of order made, 16 July 2008, RCMPI.0042.0003.0003; Un-tendered Victoria Police Criminal History Report, Mr Ketch, 14 December 2019, 3, VPL.0099.0193.2886 @.2888.

²¹ Un-tendered Reasons for Sentence, *R v Mr Ketch*, [2019] VCC, RCMPI.0042.0003.0006.

²³ Un-tendered Draft email from Catherine Gobbo to Rod Wilson, 27 October 2009, MIN.5000.0001.7484.

[REDACTED]

16. [REDACTED]

17. [REDACTED]

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Ketch

18. It appears that Ms Gobbo was acquainted with Mr Ketch since at least November 2005, when she commenced providing information to police about him. Ms Gobbo recalled that she met Mr Ketch 'when she sold her car and he made a mistake with the purchaser's finance'.²⁷ It is clear that she often interacted with Mr Ketch in a social setting,²⁸ and Mr Ketch even asked Ms Gobbo to be the godmother to his child, and named his child's middle name after her.²⁹ It is also clear that Ms Gobbo provided Mr Ketch with ongoing legal representation in relation to the abovementioned case and in relation to other unrelated proceedings.
19. Prior to his arrest on 4 October 2006, Ms Gobbo provided legal representation to Mr Ketch in relation to at least two unrelated matters. On 6 February 2006, she told her handlers that she had a conference with Mr Ketch concerning a driving-related matter (which ultimately proceeded at the Broadmeadows Magistrates' Court on 19 September 2007).³⁰ She conducted further conferences with Mr Ketch in May 2006 (apparently concerning restraining orders)³¹ and appeared at Melbourne Magistrates' Court on his behalf on 17 July 2006.³² Ms Gobbo continued to represent Mr Ketch in both those matters following his arrest, until at least March 2007.³³

²⁶ Un-tendered *The Queen v Zaharoula Mokbel*, [2009] VCC 1817, [29].

²⁷ Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704.

²⁸ For example: on 22 July 2006 Ms Gobbo attended Mr Ketch's birthday party – Exhibit RC0281 ICR3838 (039), 37 July 2006, 366 VPL.2000.0003.1952; on 15 October 2006, 19 November 2006 and 4 December 2006 she was invited away on trips with Mr Ketch – Exhibit RC0281 ICR3838 (049), 15 October 2006, 488, VPL.2000.0003.2074; Exhibit ICR3838 (053), 19 November 2016, 560, VPL.2000.0003.2146; Exhibit RC0281 ICR3838 (055), 4 December 2006, 573, VPL.2000.0003.2159; on 8 November 2006 she was invited to attend the Oaks Day races with Mr Ketch – Exhibit RC0281 ICR3838 (052), 8 November 2006, 545, VPL.2000.0003.2131; and they went out for dinner together on other occasions – Exhibit RC0281 ICR3838 (098), 31 March 2007, 1181, VPL.2000.0003.2767.

²⁹ Exhibit RC0281 ICR3838 (069), 8 March 2007, 682, VPL.2000.0003.2268.

³⁰ Exhibit RC0281 ICR3838 (017), 6 February 2006, 144, VPL.2000.0003.1730; Exhibit RC1568 Ms Nicola Gobbo fee book, 22 July 2006, 98, MIN.5000.7000.0001 @.0098; Exhibit RC0281 ICR3838 (101), 19 September 2007, 1235, VPL.2000.0003.2821.

³¹ Exhibit RC1568 Ms Nicola Gobbo fee book, 12 May 2006, 96, MIN.5000.7000.0001 @.0096; Exhibit RC0281 ICR3838 (031), 9 May 2006, 291, VPL.2000.0003.1877; [REDACTED]

³² Exhibit RC1568 Ms Nicola Gobbo fee book, 17 July 2006, 98, MIN.5000.7000.0001 @.0098.

³³ See, in relation to the driving matter, Exhibit RC0281 ICR3838 (048), 13 October 2006, 478, VPL.2000.0003.2064; Exhibit RC1568 Ms Nicola Gobbo fee book, 16 October 2006, 100, MIN.5000.7000.0001 @.0100; Exhibit RC1568 Ms Nicola Gobbo fee book, 21 December 2006, 102, MIN.5000.7000.0001 @.0102; Exhibit RC1568 Ms Nicola Gobbo fee book, 24 January 2007, 102, MIN.5000.7000.0001 @.0102; Exhibit RC0281 ICR3838 (063), 22 January 2007, 612, VPL.2000.0003.2198; In relation to the Restraining order proceedings: Exhibit RC1568 Ms Nicola Gobbo fee book, 6 October 2006, 99, MIN.5000.7000.0001 @.0099; Exhibit RC1568 Ms Nicola Gobbo

20. On [REDACTED] 2006, Ms Gobbo was informed by handlers of the planned arrest of Mr Ketch.³⁴ On 4 October 2006, Mr Ketch was arrested and contacted Ms Gobbo from the police station.³⁵ Ms Gobbo expressed a desire to visit Mr Ketch at the station and to attend court for his bail application, but was advised by police not to attend.³⁶ Ultimately Ms Gobbo spoke to Mr Ketch over the phone and attended court to assist Mr Ketch's solicitor, but left before the commencement of the bail application.³⁷
21. In his telephone conversation with Ms Gobbo on 4 October 2006, Mr Ketch told Ms Gobbo that she was 'the only person he trusts'³⁸ and discussed with her his suspicion that an informer was involved in providing information against him.³⁹ Ms Gobbo later told handlers that she would need to 'ween' Mr Ketch off reliance on her,⁴⁰ but nevertheless stated that she would speak to Mr Ketch's solicitor about taking over the case.⁴¹
22. Despite being advised by police on numerous occasions between October 2006 and January 2008 to avoid representing Mr Ketch,⁴² Ms Gobbo continued to have regular communication with Mr Ketch in relation to his legal proceedings, appeared at court on his behalf and involved herself in the negotiation of his plea deal [REDACTED].
23. Ms Gobbo told her handlers that she reviewed Mr Ketch's brief of evidence,⁴³ conducted conferences,⁴⁴ had regular discussions with Mr Ketch⁴⁵ and had numerous discussions with Mr Ketch's solicitor⁴⁶ in relation to the charges.
24. Ms Gobbo appeared on behalf of Mr Ketch at the Melbourne Magistrates' Court on 16 February 2007 for an application⁴⁷ and on 3 September 2007 for a committal hearing.⁴⁸

fee book, 8 December 2006, 101, MIN.5000.7000.0001 @.0101; Exhibit RC1568 Ms Nicola Gobbo fee book 2, 23 February 2007, 2, MIN.5000.7000.0103 @.0104; Exhibit RC1568 Ms Nicola Gobbo fee book 2, 9 March 2007, 3, MIN.5000.7000.0103 @.0105.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁹ Exhibit RC0281 ICR3838 (047), 4 October 2006, 449, VPL.2000.0003.2035.

⁴¹ Exhibit RC0281 ICR3838 (047), 4 October 2006, 449, VPL.2000.0003.2035.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴³ Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644; Exhibit RC0281 ICR3838 (094), 13 August 2007, 1083, VPL.2000.0003.2669.

[REDACTED]; Exhibit RC0281 ICR3838 (069), 6 March 2007, 676, VPL.2000.0003.2262.

⁴⁵ Exhibit RC0281, ICR3838 (086), 30 June 2007, 957, VPL.2000.0003.2543; Exhibit RC0281 ICR3838 (098), 3 September 2007, 1189, VPL.2000.0003.2775: Ms Gobbo and Mr Ketch 'appear to talk daily now'.

[REDACTED]
[REDACTED]

⁴⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 February 2007, 65, OPP.0001.0004.0025 @.0089 (details of application unknown).

⁴⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 3 September 2007, 70, OPP.0001.0004.0025 @.0094, Note: Exhibit RC0281 ICR3838

25. In the weeks leading up to the committal hearing, Ms Gobbo was involved in the negotiation of a plea deal with the Office of Public Prosecutions (OPP).⁴⁹ On 13 August 2007, Ms Gobbo advised Mr Fox that there were issues with the brief which would prevent Mr Ketch pleading guilty to all charges, and that she would discuss this with 'her client'.⁵⁰ On 16 August 2007, Ms Gobbo met with Mr Jim Coghlan and the informant, Detective Senior Constable Gerard Walsh, for the apparent purpose of negotiating Mr Ketch's charges.⁵¹ It does not appear that Mr Ketch's solicitor was aware of this meeting until the following day.⁵² She again spoke to Mr Coghlan on 21 August 2007 in relation to Mr Ketch's matter,⁵³ and had conferences with Mr Ketch on 24 August 2007⁵⁴ and 26 August 2007.⁵⁵ The plea deal was confirmed on 30 August 2007, when Detective Senior Constable Walsh advised Ms Gobbo of the resolution of the charges, which Ms Gobbo then relayed to her handler.⁵⁶
26. Although Ms Gobbo did not represent Mr Ketch at his plea hearing, based on the following circumstances, it is submitted that it can be inferred that she continued to provide ostensible representation to him, in assisting and advising in preparation for the hearing:
- 26.1. On [redacted] December 2007, Ms Gobbo told her handler that she was [redacted] and provided advice to him [redacted].⁵⁷
- 26.2. The following day, she told her handler that she was ringing Mr Coghlan to advise as to matters [redacted].⁵⁸
- 26.3. In February 2008, Ms Gobbo told her handler that she was asked to provide a character reference for Mr Ketch (which it does not appear she provided)⁵⁹ and stated that although Mr Ketch had alternate legal representation for the court hearing, she would 'do all the written work for it.'⁶⁰

(098), 2 September 2007, 1186, VPL.2000.0003.2772 refers to it as a 'plea'; Exhibit RC1568 Ms Nicola Gobbo fee book 2, 12 September 2007, 9, MIN.5000.7000.0103 @.0111.

⁴⁹ Un-tendered Judgement, *AB & EF v CD* [2017] VSC 350, [367], COR.1000.0001.0002 @.0109; Un-tendered Confidential Affidavit of John Ross Champion, 2 August 2016, 25-26 [154]–[161], COR.1000.0001.0116 @.0026-.0026.

⁵⁰ Exhibit RC0281 ICR3838 (094), 13 August 2007, 1083, VPL.2000.0003.2669.

[redacted]
[redacted]
[redacted]
[redacted]

⁵⁶ Exhibit RC0281 ICR3838 (097), 30 August 2007, 1173, VPL.2000.0003.2759.

[redacted]
[redacted]
[redacted]

⁵⁹ Exhibit RC0281 ICR2958 (004), 15 February 2008, 45, VPL.2000.0003.0785.

[redacted]

The Conduct of Ms Gobbo as a Human Source in relation to Mr Ketch

27. Ms Gobbo regularly provided information to Victoria Police concerning Mr Ketch, between at least December 2005 and January 2008. The information provided during that period included the following:

General Categories of Information

28. From 13 December 2005, Ms Gobbo provided information relating to Mr Ketch's background, including his employment,⁶¹ nationality,⁶² marital status,⁶³ interests⁶⁴ and nickname.⁶⁵
29. On at least seven occasions between November 2005 and January 2008, Ms Gobbo provided police with Mr Ketch's phone number.⁶⁶
30. Between January 2006 and May 2006, she provided the car registration and make of the vehicle driven by Mr Ketch,⁶⁷ and details of a bank account held by Mr Ketch.⁶⁸ Prior to his arrest, Ms Gobbo regularly provided information relating to Mr Ketch's properties and finances,⁶⁹ including the fact that he had 'serious financial issues',⁷⁰ was forced to refinance loans and had sought advice in

⁶¹ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 12 January 2006, VPL.2000.0003.8462, 'Dissemination: Officer in Charge, Purana Task Force, Attention D/A/I O'Brien...'

⁶² Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 12 January 2006, VPL.2000.0003.8462, 'Dissemination: Officer in Charge, Purana Task Force, Attention D/A/I O'Brien...'

⁶³ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 12 January 2006, VPL.2000.0003.8462, 'Dissemination: Officer in Charge, Purana Task Force, Attention D/A/I O'Brien...'; Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704.

⁶⁴ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 12 January 2006, VPL.2000.0003.8462, 'Dissemination: Officer in Charge, Purana Task Force, Attention D/A/I O'Brien...'

⁶⁵ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 12 January 2006, VPL.2000.0003.8462, 'Dissemination: Officer in Charge, Purana Task Force, Attention D/A/I O'Brien...'; Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704; Exhibit RC0281 ICR3838 (022), 23 February 2006, 186, VPL.2000.0003.1772; Exhibit RC0281 ICR3838 (098), 4 September 2007, 1191, VPL.2000.0003.2777.

⁶⁶ Exhibit RC0281 ICR38383 (008), 3 November 2005, 51, VPL.2000.0003.1637; Exhibit RC0283 Information Report SID302, 25 November 2005, VPL.2000.0003.8428; Exhibit RC0281 ICR3838 (016), 23 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0283 Information Report SID365, 27 January 2006, VPL.2000.0003.8481; Exhibit RC0281 ICR3838 (021), 7 March 2006, 179, VPL.2000.0003.1765; Exhibit RC0283 Information Report SID469, 7 March 2006, VPL.2000.0003.8585; Exhibit RC0281 ICR3838 (055), 3 December 2006, 571, VPL.2000.0003.2157; Exhibit RC0281 ICR3838 (071), 20 March 2007, 722, VPL.2000.0003.2308, 'Not a true report from MR KETCH in relation to surveillance – Intel re new phone and office address was verbally disseminated to Purana Task Force'; Exhibit RC0281 ICR3838 (082), 5 June 2007, 880, VPL.2000.0003.2466; Exhibit RC0281 ICR3838 (118), 3 January, 1560, VPL.2000.0003.3146.

⁶⁷ Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704; Exhibit RC0281 ICR3838 (016), 23 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0283 Information Report SID365, 27 January 2006, VPL.2000.0003.8481; Exhibit RC0281 ICR3838 (022), 10 March 2006, 183, VPL.2000.0003.1769; Exhibit RC0283 Information Report SID516, 12 March 2006, VPL.2000.0003.8617; [REDACTED]

⁶⁸ Exhibit RC0281 ICR3838 (017), 8 February 2006, 145, VPL.2000.0003.1731; Exhibit RC0283 Information Report SID371, 16 February 2006, VPL.2000.0003.8487.

⁶⁹ [REDACTED]; Exhibit RC0281, ICR3838 (045), 13 September 2006, 423, VPL.2000.0003.2009.

⁷⁰ Exhibit RC0281 ICR3838 (043), 29 August 2006, 410, VPL.2000.0003.1996.

relation to bankruptcy.⁷¹ On 19 May 2006, Ms Gobbo provided information about a court order obtained by American Express against Mr Ketch. As a result of that discussion, the relevant Informer Contact Report (ICR) entry records that Sandy White and James (Jim) O'Brien were advised and Detective Inspector O'Brien was 'to tell AmEx NOT to lift Court Order against Mr Ketch.'⁷²

31. Ms Gobbo continued to provide information relating to Mr Ketch's financial circumstances following his arrest.⁷³

Tasking

32. Between December 2005 and April 2006, Ms Gobbo received various taskings from her handlers relating to the gathering of information from, or in connection to, Mr Ketch.
33. On 23 December 2005, Ms Gobbo was tasked to 'gather current criminal intelligence on Mr Ketch and report back.'⁷⁴ She reported that Mr Ketch had arranged cheques for Mr Antonios (Tony) Mokbel in relation to funding for his trial, and was subsequently tasked by police to identify any cheques deposited and the drawers.⁷⁵ On 12 January 2006, Ms Gobbo provided photocopies of the three cheques produced, one of which was drawn by Mr Ketch's company, Equitycorp,⁷⁶ and was provided with a further general tasking by her handlers to 'obtain more detail re Mr Ketch.'⁷⁷
34. On 19 January 2006, Ms Gobbo advised her handlers that Mr Ketch was required to pay a deposit for four horses he had purchased to the owner of a restaurant. Ms Gobbo told her handlers she would meet Mr Ketch at the restaurant and was given a specific tasking to 'obtain company name/bank re any cheques handed over'.⁷⁸ The next day, Ms Gobbo reported back to her handlers about the meeting and provided information in relation to Mr Ketch's business and finances.⁷⁹
35. On 15 April 2006, Ms Gobbo told her handlers she was about to meet with Mr Ketch and asked police what questions they wanted her to ask him. The handler replied, '... re properties and any laundering techniques he recommends.'⁸⁰ The next day, she reported information relating to the location

⁷¹ Exhibit RC0281 ICR3838 (042), 23 August 2006, 404, VPL.2000.0003.1990.

⁷² Exhibit RC0281 ICR3838 (032), 19 May 2006, 303, VPL.2000.0003.1889.

⁷³ [REDACTED]
VPL.2000.0003.2050; Exhibit RC0281 ICR3838 (052), 2 November 2006, 538-539, VPL.2000.0003.2124, VPL.2000.0003.2125; Exhibit RC0281 ICR3838 (098), 4 September 2007, 119, VPL.2000.0003.2776; * 'Action: Verbally disseminated above information to Gavin Ryan and Jim Coughlin at Purana'; Exhibit RC0281 ICR3838 (101), 24 September 2007, 1240, VPL.2000.0003.2826; Exhibit RC0281 ICR3838 (107), 29 October 2007, 1328, VPL.2000.0003.2914.

⁷⁴ Exhibit RC0281 ICR3838 (013), 23 December 2005, 97, VPL.2000.0003.1683.

⁷⁵ Exhibit RC0281 ICR3838 (013), 23 December 2005, 96, VPL.2000.0003.1682.

⁷⁶ Exhibit RC0281 ICR3838 (015), 12 January 2006, 116, VPL.2000.0003.1702; Exhibit RC0282 Information Report SID350, 21 January 2006, VPL.2000.0003.8468; Exhibit RC0283 Information Report SID351, 21 January 2006, VPL.2000.0003.8469.

⁷⁷ Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704.

⁷⁸ Exhibit RC0281 ICR3838 (016), 19 January 2006, 127-128, VPL.2000.0003.1713, VPL.2000.0003.1714

⁷⁹ Exhibit RC0281 ICR3838 (016), 20 January 2006, 128, VPL.2000.0003.1714; Exhibit RC0283 Information Report SID365, 27 January 2006, VPL.2000.0003.8481.

⁸⁰ Exhibit RC0281 ICR3838 (027), 15 April 2006, 245, VPL.2000.0003.1831.

of properties owned by Mr Ketch and the fact that the properties were in other persons' names on behalf of Mr Mokbel.⁸¹

36. On 12 May 2006 Ms Gobbo was told to ask Mr Ketch about personal matters and matters of importance to him.⁸² On 14 May 2006, after attending Mr Ketch's address the previous night, Ms Gobbo told her handlers that 'one of Mr Ketch's biggest concerns is not being able to work as finance broker if convicted of anything, plus worried about losing his drivers licence.'⁸³

Information relating to the Offending, including Properties the Subject Matter of the Charges

37. Between March 2006 and August 2006, Ms Gobbo provided information to her handlers relating to Mr Ketch's [REDACTED] address, which was the subject matter of Counts 2, 4 and 7. It was also the address upon which a search warrant was executed on 4 October 2006, resulting in the arrest of Mr Ketch.
38. On 10 March 2006, Ms Gobbo provided her handlers, Mr Green and Mr Sandy White, with a piece of paper containing details of the two properties on [REDACTED], Coburg.⁸⁴ On 23 March 2006, Ms Gobbo told her handlers that Mr Ketch had provided her with rate notices for both properties at [REDACTED] and [REDACTED], Coburg. Ms Gobbo advised police that the property of [REDACTED], Coburg was in the name of [REDACTED] [REDACTED] subsequently provided a statement to police in January 2007 and was listed as a prosecution witness.⁸⁶
39. On other occasions Ms Gobbo reported to her handlers that the [REDACTED] [REDACTED] property was in another person's name 'on behalf of Tony Mokbel'⁸⁷, had been 'bought with Tony Mokbel's money'⁸⁸ and was being occupied by Eddie Radi.⁸⁹
40. Ms Gobbo also provided information regarding the other address upon which a search warrant was executed; that is, Mr Ketch's office address at [REDACTED], Coburg. On 16 April 2006 she told her handlers that Mr Ketch owned a property on [REDACTED], which was in another person's name on behalf of Mr Mokbel.⁹⁰ In the same conversation she referred to other properties held by Mr Ketch in Port Melbourne, which appear to have been the subject matter of Counts 3 and 6.
41. In relation to Count 3, Ms Gobbo informed her handler that 'a property in [REDACTED] Port Melbourne that Mr Ketch owned, believed to be an apartment,

⁸¹ Exhibit RC0281 ICR3838 (027), 16 April 2006, 246, VPL.2000.0003.1832.

⁸² Exhibit RC0281 ICR3838 (031), 12 May 2006, 296, VPL.2000.0003.1882.

⁸³ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883.

⁸⁴ Exhibit RC0281 ICR3838 (022), 10 March 2006, 183, VPL.2000.0003.1769.

⁸⁵ Exhibit RC0283 Information Report SID540, 23 March 2006, VPL.2000.0003.8646; Exhibit RC0281 ICR3838 (023), 23 March 2006, 205, VPL.2000.0003.1791: 'Action: D/S/S O'Brien Op Purana adv 23/03/06'

⁸⁶ Un-tendered Statement of [REDACTED], undated, VPL.0202.0001.0090; Un-tendered Statement of [REDACTED], 17 January 2007, VPL.0202.0001.0093.

⁸⁷ Exhibit RC0281 ICR3838 (027), 16 April 2006, 246, VPL.2000.0003.1832); Exhibit RC0281 ICR3838 (032), 20 May 2006, 304, VPL.2000.0003.1890 *D/Sgt Flynn adv of above on 21/05/06'; [REDACTED]

⁸⁸ Exhibit RC0281 ICR3838 (034), 4 June 2008, 318, VPL.2000.0003.1904.

⁸⁹ Exhibit RC0281 ICR3838 (032), 20 May 2006, 304, VPL.2000.0003.1890; Exhibit RC0281 ICR3838 (034), 4 June 2008, 318, VPL.2000.0003.1904.

⁹⁰ Exhibit RC0281 ICR3838 (027), 16 April 2006, 246, VPL.2000.0003.1832.

and where Solicitor 2 was living, was originally acquired in the name of [REDACTED] by Tony Mokbel.⁹¹ She also advised that the water rates for the premises were in [REDACTED] name.⁹² [REDACTED] subsequently provided a statement to police in January 2007, and was listed as a prosecution witness.⁹³

42. Between March 2006 and August 2006, Ms Gobbo provided information regarding the address at [REDACTED], Pascoe Vale, which was the subject matter of Count 6. She told police that the property was held on behalf of Mr Mokbel,⁹⁴ and later provided information as to the proposed sale of that property (and advised that the proceeds of the sale was to go towards funding of Mr Mokbel's trial).⁹⁵
43. Further, Ms Gobbo provided information to her handlers which appears to have been relevant to the alleged offending. On 13 March 2006, Ms Gobbo provided her handler with general information relating to Mr Ketch's avoidance of stamp duty.⁹⁶ On 9 June, she provided information relating to fraudulent files held by Mr Ketch and the use of pro-forma employment records for applicants,⁹⁷ as was the conduct alleged in Counts 1 and 4. However, further detail was provided on 24 July 2006, when Ms Gobbo advised that Mr Ketch had a method of money laundering, whereby 'Mr Ketch gets them to transfer the house in to spouse's name, then wait a few months and Mr Ketch associate, solicitor first name Ali, does conveyancing, makes sure Ali includes disbursement to include stamp duty, the transfer is listed as "for love and affection" therefore no stamp duty paid and pocket this.'⁹⁸ This information appeared to have been particularly relevant in relation to Counts 2 and 3.

Other Information which May Have Led Police to Focus Attention on Mr Ketch and His Eventual Arrest

44. Ms Gobbo provided information to her handlers concerning Mr Ketch's relationship with known associates, including Mr Mokbel and Mr Rabie (Rob) Karam, and criminal activity being conducted by Mr Ketch, both in connection with, and separate to, those associates.
45. From November 2005 Ms Gobbo provided information regarding the relationship between Mr Ketch and Mr Mokbel. She stated that Mr Ketch was a 'finance broker',⁹⁹ was acting as Mr Mokbel's 'finance guy'¹⁰⁰, had arranged loans for Milad, Horty and Tony Mokbel¹⁰¹ and had arranged for the purchase of

⁹¹ Exhibit RC0281 ICR3838 (030), 3 May 2006, 282, VPL.2000.0003.1868. * 'D/I O'Brien ad'

⁹² Exhibit RC0281 ICR3838 (051), 5 May 2006, 287-288, VPL.2000.0003.1873, VPL.2000.0003.1874

⁹³ Un-tendered Statement of [REDACTED], 17 January 2007, VPL.0202.0001.0098; Un-tendered Statement of [REDACTED], undated, VPL.0202.0001.0101. See also Un-tendered Presentment No. U02374347, *R v Mr Ketch*, 2008, RCMPPI.0042.0003.0001.

⁹⁴ Exhibit RC0281 ICR3838 (024), 25 March 2006, 212, VPL.2000.0003.1798; Exhibit RC0283 Information Report SID583, 26 May 2006, VPL.2000.0003.8685; Exhibit RC0281 ICR3838 ICR032, 20 May 2006, 304, VPL.2000.0003.1890.

⁹⁵ Exhibit RC0281 ICR3838 (036), 19 June 2006, 335, VPL.2000.0003.1921; Exhibit RC0281 ICR3838 (041), 11 August 2006, 391, VPL.2000.0003.1977; Exhibit RC0283 Information Report SID772, 11 August 2006, VPL.2000.0003.8774.

⁹⁶ Exhibit RC0281 ICR3838 (022), 13 March 2006, 185, VPL.2000.0003.1771.

⁹⁷ Exhibit RC0281 ICR3838 (034), 9 June 2006, 323 VPL.2000.0003.1909.

⁹⁸ Exhibit RC0281 ICR3838 (039), 24 July 2006, 369, VPL.2000.0003.

⁹⁹ Exhibit RC0281 ICR3838 (008), 3 November 2005, 51, VPL2000.0003.1637; Exhibit RC0283 Information Report SID302, 25 November 2005, VPL.2000.0003.8428.

¹⁰⁰ Exhibit RC0281 ICR3838 (008), 3 November 2005, 51, VPL2000.0003.1637.

¹⁰¹ Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0283 Information Report SID344, 25 November 2005, VPL.2000.0003.8428.

properties in other people's names for Mr Mokbel.¹⁰² She also provided information in relation to payments made by Mr Ketch towards Mr Mokbel's legal fees,¹⁰³ including the fact that he had provided cheques in the vicinity of \$50,000 - \$100,000, and that 'there should be a trail for all the mortgages he takes out with properties'.¹⁰⁴ On 7 July 2006, Mr Ketch told Ms Gobbo that he had been subpoenaed by the Australian Federal Police to produce documents and give evidence in relation to Mr Mokbel's properties.¹⁰⁵ There is no information currently before the Commission as to the outcome of that matter.

46. She further provided information in relation to Mr Ketch's relationship with other known associates,¹⁰⁶ including [REDACTED],¹⁰⁷ who she suggested may be [REDACTED].¹⁰⁸

Information regarding Alleged Misconduct Committed by Mr Ketch

47. Ms Gobbo provided information to her handlers regarding various criminal activities being conducted by Mr Ketch, both before and after his arrest.
48. From at least November 2006, Ms Gobbo provided information in relation to the relationship between Mr Ketch and Mr Karam, stating that the reason they shared a close relationship was because they were involved in criminal activity together,¹⁰⁹ which included the doping of race horses.¹¹⁰ In January 2008 she told her handler that Mr Ketch was involved in acquiring a 'bodgy home loan'¹¹¹ for Mr Karam through the use of false documents,¹¹² and implied that they were both involved in drug trafficking.¹¹³
49. In addition, on 23 March 2007 she advised her handler that Mr Ketch intended to break into the restrained property at [REDACTED] in order to recover items.¹¹⁴ On 25 March 2007 and 18 October 2006 she provided information

¹⁰² Exhibit RC0281 ICR3838 (012), 13 December 2005, 87, VPL.2000.0003.1673; Exhibit RC0282 Information Report SID344, 12 January 2006, VPL.2000.0003.8462: 'Action: Forward to Det. S/Sgt O'Brien Op Purana by hand. Report Forwarded to: Hand delivered to S/C Spargo Purana TF by S/C 31690 on 19/1/06'; Exhibit RC0281 ICR3838 (022), 13 March 2006, 185, VPL.2000.0003.1771; Exhibit RC0283 Information Report SID516, 12 March 2006, VPL.2000.0003.8617; [REDACTED] Exhibit RC0281 ICR3838 (118) 7 January 2008, 1556, VPL.2000.0003.3142.

¹⁰³ Exhibit RC0281 ICR2958 (016), 23 April 2008, 211-212, VPL.2000.0003.0951, VPL.2000.0003.0952

¹⁰⁴ Exhibit RC0281 ICR3838 (022), 10 March 2006, 183, VPL.2000.0003.1769; Exhibit RC0283 Information Report SID398, 23 February 2006, VPL.2000.0003.8514.

¹⁰⁵ Exhibit RC0281 ICR3838 (037), 352, 7 July 2006, VPL.2000.0003.1938.

¹⁰⁶ Mr Keene: [REDACTED]

¹⁰⁷ Exhibit RC0281 ICR3838 (008), 3 November 2005, 51, VPL.2000.0003.1637; Exhibit RC0283 Information Report SID344, 25 November 2005, VPL.2000.0003.8428.

¹⁰⁸ [REDACTED]
¹⁰⁹ Exhibit RC0281 ICR3838 (052), 4 November 2006, 543 VPL.2000.0003.2129.

¹¹⁰ Exhibit RC0281 ICR3838 (053), 16 November 2006, 557, VPL.2000.0003.2143; Exhibit RC0281 ICR3838 (056), 8 December 2006, 579, VPL.2000.0003.2165; Exhibit RC0281 ICR3838 (057), 11 December 2006, 581 VPL.2000.0003.2167; [REDACTED]; Exhibit RC0281 ICR3838 (058), 24 December 2006, 594, VPL.2000.0003.2180; Exhibit RC0281 ICR3838 (063), 22 January 2007, 611, VPL.2000.0003.2197; Exhibit RC0281 ICR3838 (118), 1549, 3 January 2008, VPL.2000.0003.3135.

¹¹¹ Exhibit RC0281 ICR3838 (118), 3 January 2008, 1549, VPL.2000.0003.3135.

¹¹² Exhibit RC0281 ICR3838 (118), 9 January 2008, 1559, VPL.2000.0003.3145.

¹¹³ Exhibit RC0281 ICR3838 (118), 7 January 2008, 1556, VPL.2000.0003.3142.

¹¹⁴ Exhibit RC0281 ICR3838 (071), 23 March 2007, 728, VPL.2000.0003.2314: 'Purana Task Force Advised Re Same'.

relating to alleged tax evasion by Mr Ketch.¹¹⁵ She also provided information regarding an apparent perjury,¹¹⁶ falsification of documents,¹¹⁷ theft,¹¹⁸ and an attempt to defraud the police to facilitate the return of his restrained vehicle.¹¹⁹

50. On occasion, Mr Ketch sought to involve Ms Gobbo in his criminal activities, including an attempt to pervert court the course of justice (by requesting Ms Gobbo speak to a witness in an attempt to get the witness not to make a statement against Mr Ketch)¹²⁰ and an attempt to breach a restraining order (by 'hiding' his vehicle required to be returned to police at Ms Gobbo's premises).¹²¹ Based on the material reviewed, there is no suggestion that Ms Gobbo participated in this misconduct.
51. Between January 2006 and March 2007, Ms Gobbo advised police that Mr Ketch was driving unlicensed¹²² and was involved in submitting fraudulent declarations in order to avoid speeding fines.¹²³ On a number of occasions, she seemed to suggest that Mr Ketch wanted her to witness the signing of the declarations.¹²⁴ On 19 February 2007, she told her handlers that Mr Ketch had been involving her in the signing of the false declarations, and she suggested that Mr Ketch should be charged with perjury in relation to the declarations.¹²⁵
52. Between May 2006 and December 2007 Ms Gobbo regularly provided information to her handlers concerning Mr Ketch's drug use.¹²⁶ On at least two occasions she provided information as to who was apparently providing the

¹¹⁵ Exhibit RC0281 ICR3838 (024), 25 March 2006, 212, VPL.2000.0003.1798; Exhibit RC0283 Information Report SID583, 26 May 2006, VPL.2000.0003.8685; Exhibit RC0281 ICR3838 (049), 18 October 2006, 496, VPL.2000.0003.2082.

¹¹⁶ [REDACTED]

¹¹⁷ Exhibit RC0281 ICR3838 (044), 12 September 2006, 422, VPL.2000.0003.2008.

¹¹⁸ Exhibit RC0281 ICR3838 (057), 14 December 2006, 586, VPL.2000.0003.2172.

¹¹⁹ Exhibit RC0281 ICR3838 (069), 10 March 2007, 687, VPL.2000.0003.2273.

¹²⁰ [REDACTED]

¹²¹ Exhibit RC0281 ICR3838 (048), 13 October 2006, 478, VPL.2000.0003.2064; Exhibit RC0281 ICR3838 (048), 13 October 2006, 480-481, VPL.2000.0003.2066, VPL.2000.0003.2067.

¹²² Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704; Exhibit RC0281 ICR3838 (071), 20 March 2007, 721 VPL.2000.0003.2307.

¹²³ Exhibit RC0281 ICR3838 (063), 27 January 2007, 617, VPL.2000.0003.2203; Exhibit RC0281 ICR3838 (064), 29 January 2007, 618, VPL.2000.0003.2204; Exhibit RC0281 ICR3838 (069), 5 March 2007, 672 VPL.2000.0003.2258; Exhibit RC0281 ICR3838 (071), 20 March 2007, 719, VPL.2000.0003.2305; Exhibit RC0281 ICR3838 (071), 22 March 2007, 726, VPL.2000.0003.2312; Exhibit RC0281 ICR3838 (071), 23 March 2007, 729, VPL.2000.0003.2315.

¹²⁴ Exhibit RC0281 ICR3838 (071), 22 March 2007, 726 VPL.2000.0003.2312; Exhibit RC0281 ICR3838 (071), 23 March 2006, 727-728, VPL.2000.0003.2313, VPL.2000.0003.2314.

¹²⁵ Exhibit RC0281 ICR3838 (067), 19 February 2007, 642-643, VPL.2000.0003.2228, VPL.2000.0003.2229 * 'DDI O'Brien advised of these fines'

¹²⁶ [REDACTED]

[REDACTED]; Exhibit RC0281 ICR3838 (036), 19 June 2006, 335, VPL.2000.0003.1921; Exhibit RC0281 ICR3838 (039), 31 July 2006, 376-377 VPL.2000.0003.1962, VPL.2000.0003.1963; Exhibit RC0281 ICR3838 (041), 17 August 2006, 397-398, VPL.2000.0003.1983, VPL.2000.0003.1984; Exhibit RC0281 ICR3838 (044), 3 September 2006, 414, VPL.2000.0003.2000); Exhibit RC0281 ICR3838 (051), 24 October 2006, 520, VPL.2000.0003.2106; Exhibit RC0281 ICR3838 (051), 27 October 2006, 527, VPL.2000.0003.2113; Exhibit RC0281 ICR3838 (053), 13 November 2006, 553, VPL.2000.0003.2139; Exhibit RC0281 ICR3838 (060), 7 January 2007, 597 VPL.2000.0003.2183; Exhibit RC0281 ICR3838 (063), 25 January 2007, 614, VPL.2000.0003.2200; Exhibit RC0281 ICR3838 (088), 8 July 2007, 997, VPL.2000.0003.2583; Exhibit RC0281 ICR3838 (101), 24 September 2007, 1240, VPL.2000.0003.2826; Exhibit RC0281 ICR3838 (113), 1 December 2007, 1489, VPL.2000.0003.3075.

60. Ms Gobbo also told her handlers that Mr Ketch's solicitor would [REDACTED],¹⁵⁵ which would [REDACTED].¹⁵⁶
61. In January 2008, Ms Gobbo continued to update her handler as to the status of [REDACTED].¹⁵⁷ At one stage she reported that Mr Ketch had [REDACTED] other known associates.¹⁵⁸ On [REDACTED] February 2008, she told police that she was compiling [REDACTED] associates, with documents which had been provided to her by [REDACTED].¹⁵⁹ It is not clear as to whether [REDACTED] was ever finalised and, based on the material reviewed by Counsel Assisting, there is nothing to suggest that [REDACTED].

Information Provided by Ms Gobbo upon Mr Ketch's Arrest

62. On [REDACTED] October 2006, Ms Gobbo was asked for feedback in relation to the police raids on Mr Ketch. She stated '...they didn't miss anything. Mr Ketch's phone was not seized.'¹⁶⁰ However, later, on [REDACTED] October 2006, she told her handler of Mr Ketch's belief that investigators failed to find further evidence in his filing cabinets that had been seized under warrant, and which he had been told were available for collection.¹⁶¹ The record indicates this information was verbally disseminated to Mr Coghlan of Purana.
63. Thereafter, she provided information to police in relation to defence tactics¹⁶² and, after reviewing the brief of evidence, provided information relating to the strength of the evidence and quality of the brief provided.¹⁶³ For example, on 24 July 2007, Ms Gobbo told her handler, Mr Fox, that there were 'flaws in the brief', discussed the 'hole's [sic] she sees in the fraud brief' and the 'legal issues re his fraud case', and stated that she was 'going down the track of witnesses not being credible'.¹⁶⁴ She told Mr Fox that irrespective of the poor quality of the brief, Mr Ketch had 'a lot of problems' and she was 'confident that he will eventually plea to these charges'.¹⁶⁵ This information is recorded as

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵⁸ Exhibit RC0281 ICR2958 (001), 29 January 2008, 10, VPL.2000.0003.0750.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]: 'Information to Purana Task Force Verbally – D/Sgt COGHLAN'.

¹⁶² Exhibit RC0281 ICR3838 (060), 16 January 2007, 605, VPL.2000.0003.2191.

¹⁶³ Exhibit RC0281 ICR3838 (087), 2 July 2007, 969, VPL.2000.0003.2555; Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644 - * 'Action: Verbally disseminated above information to Jin O'Brien and Jim Coughlin [sic]'; Exhibit RC0281 ICR3838 (094), 13 August 2007, 1083, VPL.2000.0003.2669; [REDACTED]

¹⁶⁴ Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644 - * 'Action: Verbally disseminated above information to Jin O'Brien and Jim Coughlin [sic]'.
¹⁶⁵ Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644 - * 'Action: Verbally disseminated above information to Jin O'Brien and Jim Coughlin [sic]'.

having been 'verbally disseminated' by Mr Fox to Mr O'Brien and Mr Coghlan.¹⁶⁶

64. Mr O'Brien conceded in evidence to the Commission that Ms Gobbo had been supplying information related to Mr Ketch which was being used in his investigation. He agreed she was completely conflicted and should not have been involved in any way in his representation.¹⁶⁷ Mr O'Brien was asked whether he and Mr Coghlan discussed any concerns about Ms Gobbo providing advice to Mr Ketch. He said he did not believe so. When asked why that was Mr O'Brien said that Mr Coghlan was the crew Sergeant who had carriage of that particular job.¹⁶⁸
65. Ms Gobbo also advised her handlers as to Mr Ketch's attitude towards resolution of the charges.¹⁶⁹ On 26 October 2006 she stated that Mr Ketch's solicitor believed he had a defence to the charges.¹⁷⁰ On 27 August 2007, she told her handler that he wanted to plead guilty to the charges.¹⁷¹ The following day, she had a 'general talk' with her handler, Mr Fox, regarding 'Mr Ketch's instructions for the charges on the brief.'¹⁷² Whilst this information is recorded as being 'not disseminated', Ms Gobbo told Mr Fox that she would tell Detective Senior Constable Walsh 'what problems he has with the brief and what needs to be done to fix it. She says this is being fair. She expects a resolution tomorrow anyway.'¹⁷³
66. On 30 June 2007 and 2 July 2007, she queried why Mr Ketch had not been charged with perjury in relation to signing false declarations, and stated that 'this would mean she would be a witness as she witnessed the documents and therefore could not represent Mr Ketch.'¹⁷⁴ She also queried why police had not investigated Mr Ketch's solicitor, stating that police should have executed warrants on him as 'he is the common denominator for documents taken out by Mr Ketch for some loans.'¹⁷⁵
67. Between October 2006 and August 2007, she regularly advised her handlers that [REDACTED].¹⁷⁶ She suggested that he should be banned from race courses¹⁷⁷ and was 'furious that Purana would even think [REDACTED].'¹⁷⁸ At the same time, she was providing legal advice and representation to Mr Ketch, was involved in plea

¹⁶⁶ Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644 - * 'Action: Verbally disseminated above information to Jin O'Brien and Jim Coughlin [sic].'

¹⁶⁷ Transcript of James (Jim) O'Brien, 9 September 2019, 5879, RC_MPI_09Sep19_provisional.

¹⁶⁸ Transcript of James (Jim) O'Brien, 9 September 2019, 5880-5881, RC_MPI_09Sep19_provisional.

¹⁷⁴ Exhibit RC0281, ICR3838 (086), 30 June 2007, 957, VPL.2000.0003.2543; Exhibit RC0281 ICR3838 (087), 2 July 2007, 969, VPL.2000.0003.2555.

¹⁷⁵ Exhibit ICR3838 (092), 24 July 2007, 1058, VPL.2000.0003.2644 - * 'Action: Verbally disseminated above information to Jin O'Brien and Jim Coughlin [sic].'

¹⁷⁷ Exhibit RC0281 ICR3838 (054), 20 November 2006, 562, VPL.2000.0003.2148.

negotiations with the OPP and was aware that [REDACTED]
[REDACTED] securing a plea deal and obtaining a sentencing discount.

68. From 4 April 2008 Ms Gobbo indicated to her handler that the reason she remained close to Mr Ketch was because of his tendency to gossip, which meant that she was able to inadvertently pass messages through him to his associates,¹⁷⁹ and obtain intelligence as to 'what the Mokbel's are thinking'.¹⁸⁰ She stated that 'this way she can put a dampener on rumours circulating about her. She is also able to hear what everyone else is thinking through him'.¹⁸¹
69. Later, in July 2008, (following the cessation of her representation to Mr Ketch) Ms Gobbo conveyed her disgust when the prosecutor agreed that a non-custodial sentence was appropriate,¹⁸² stated that she was 'bitter'¹⁸³ and 'infuriated'¹⁸⁴ that Mr Ketch received a wholly suspended sentence and described him as 'an untrustworthy wretch'.¹⁸⁵

Information Provided by Ms Gobbo Suggesting Persons who May Inform against Mr Ketch

70. Both prior to and following Mr Ketch's arrest, Ms Gobbo told police the names of associates of Mr Ketch who would be in a position to provide information regarding his criminal conduct, and advised as to the likelihood of them assisting police.¹⁸⁶ Two persons identified by Ms Gobbo were approached by police and later made statements against Mr Ketch; being Mr Ketch's [REDACTED] [REDACTED] [REDACTED].¹⁸⁸
71. Ms Gobbo suggested to police on [REDACTED] April 2006, that police should look into [REDACTED]. She stated that he had been charged with [REDACTED] offences, was concerned about facing jail time, and that a 'possible opportunity awaits'.¹⁸⁹ See: Case Study of [REDACTED] for whom Ms Gobbo acted on several occasions between June and September 2006.¹⁹⁰
72. Ms Gobbo was actively involved in identifying [REDACTED] as a potential source of information,¹⁹¹ and provided the following information to her handlers concerning same:
- 72.1. On 25 January 2007 Ms Gobbo told her handler that she met with [REDACTED] [REDACTED] for an hour. Ms Gobbo conveyed the contents of the discussion

¹⁷⁹ Exhibit RC0281 ICR2958 (012), 4 April 2008, 133, VPL.2000.0003.0873.

¹⁸⁰ Exhibit RC0281 ICR2958 (017), 1 May 2008, 256, VPL.2000.0003.0996.

¹⁸¹ Exhibit RC0281 ICR2958 (012), 4 April 2008, 133, VPL.2000.0003.0873.

[REDACTED]
[REDACTED]
[REDACTED].

¹⁸⁵ Exhibit RC0281 ICR2958 (029), 20 July 2008, 499, VPL.2000.0003.1239.

[REDACTED] Exhibit RC0281 ICR3838 (058), 18 December 2006, 590, VPL.2000.0003.2176; [REDACTED]

¹⁸⁷ Un-tendered Statement of [REDACTED], 11 October 2006, VPL.0202.0001.0106; Un-tendered Statement of [REDACTED], 11 October 2006, VPL.0202.0001.0108; Un-tendered Statement [REDACTED], 17 October 2006, VPL.0202.0001.0104.

¹⁸⁸ Un-tendered, Statement of [REDACTED], 16 March 2007, VPL.0202.0001.0087.

¹⁹⁰ See Case Study of [REDACTED] Volume 3

¹⁹¹ Exhibit RC0281 ICR3838 (022), 13 March 2006, 185, VPL.2000.0003.1771.

she had with [REDACTED], stating that [REDACTED] was 'concerned about her legal obligations re frauds and is at the end of her tether.'¹⁹²

- 72.2. On 6 February 2007, Ms Gobbo suggested that the police should take a 'gentle approach' to gain [REDACTED]' assistance.¹⁹³
- 72.3. On 10 February 2007, Ms Gobbo advised her handler that [REDACTED] was keen to make a statement against Mr Ketch.¹⁹⁴
- 72.4. On 19 February 2007, Ms Gobbo advised that [REDACTED] had decided to make a statement against Mr Ketch 'after advice was given by 3838 about what the police may do if she refuses to make the requested statement.'¹⁹⁵
- 72.5. Despite being told by police to avoid being involved in this matter,¹⁹⁶ she continued to discuss the statement with [REDACTED],¹⁹⁷ reviewed the draft statement,¹⁹⁸ 'was involved in the wording and finalisation of the statement with Gerard Walsh'¹⁹⁹ and 'returned [the statement] to Purana for amendments.'²⁰⁰
- 72.6. Mr O'Brien was asked about these matters and said that it may be something he was completely unaware of. He was asked if someone as conflicted as Ms Gobbo was involved in the wording and finalisation of statements, what that said about how things were working at the Purana Taskforce. Mr O'Brien said that he did not believe he was aware of it and that perhaps Mr Coghlan could shed more light on it.²⁰¹ Mr Coghlan stated that he does not recall having any awareness of Ms Gobbo providing information to Victoria Police about information or assistance that could be given by [REDACTED].²⁰²

Knowledge as to Conflict

73. At various times, Ms Gobbo acknowledged an awareness of, and discussed with her handlers, areas of conflict which could arise, or had arisen, through her representation of Mr Ketch, including:
- 73.1. Upon Mr Ketch's arrest on 4 October 2006, Ms Gobbo discussed with her handlers potential issues of conflict which could arise in representing Mr Ketch, due to her representation of Mr Cooper. She acknowledged that Mr Cooper had mentioned Mr Ketch in about one and a half pages of his statements,²⁰³ and it is clear that she was involved in the process of Mr Cooper assisting police and providing those statements. Mr Cooper's name does not appear on the

¹⁹² Exhibit RC0281 ICR3838 (063), 25 January 2007, 614, VPL.2000.0003.2200.

¹⁹³ Exhibit RC0281 ICR3838 (065), 6 February 2007, 628, VPL.2000.0003.2214.

¹⁹⁴ Exhibit RC0281 ICR3838 (065), 10 February 2007, 631, VPL.2000.0003.2217.

¹⁹⁵ Exhibit RC0281 ICR3838 (067), 19 February 2007, 641, VPL.2000.0003.2227.

¹⁹⁶ Exhibit RC0281 ICR3838 (067), 19 February 2007, 641, VPL.2000.0003.2227.

¹⁹⁸ Exhibit RC0281 ICR3838 (067), 22 February 2007, 651, VPL.2000.0003.2237.

¹⁹⁹ Exhibit RC0281 ICR3838 (067), 19 February 2007, 642, VPL.2000.0003.2228.

²⁰⁰ Exhibit RC0281 ICR3838 (067), 22 February 2007, 651, VPL.2000.0003.2237.

²⁰¹ Transcript of Mr O'Brien, 9 September 2019, 5883, RC_MPI_09Sep19_provisional.

²⁰² Un-tendered Statement of Detective Sergeant Jim Coghlan, 8 April 2020, 5 [20], VPL.0014.0086.0022 @ .0026.

²⁰³ Exhibit RC0281 ICR3838 (047), 4 October 2006, 449, VPL.2000.0003.2035.

presentment. He was not called as a witness in the case against Mr Ketch.²⁰⁴

- 73.2. On 20 November 2006 Ms Gobbo became concerned about a proposed application by Mr Ketch's solicitor, seeking a copy of the affidavit in support of the restraining order made against Mr Ketch. Apparently the OPP would not release the affidavit as it contained informer information.²⁰⁵ There is a suggestion that this information was originally provided by Ms Gobbo, given her concerns that the affidavit may contain information highlighting her role.²⁰⁶ It appears that, following those concerns, steps were taken to ensure Ms Gobbo's role was not compromised.²⁰⁷ On 1 December 2006, Ms Gobbo was instructed 'to proceed with normal procedure' in making the proposed application, on the basis that Purana would 'concede and hand over [a] sanitised version' of the material to defence.²⁰⁸ On 4 December 2006, Ms Gobbo told her handler that she had a copy of the 'sanitised version' of the affidavit and had a discussion with her handlers about its contents, including the fact that it highlighted the involvement of an informer.²⁰⁹
- 73.3. Later, in January 2008, Ms Gobbo discussed the fact that she did not want to appear on behalf of Mr Ketch at his plea hearing due to 'ethical problems'²¹⁰ and that if Horthy Mokbel became aware that she had assisted [REDACTED] he 'may sue HS via Legal Ombudsman b/c of conflict.'²¹¹

Other Relevant Proceedings

74. As a consequence of being charged and convicted of the aforementioned offences, automatic forfeiture orders were made on 9 March 2010 in relation to a number of properties and vehicles, and \$88,000 cash.²¹² The assets forfeited as a result of those orders had a gross value of approximately \$2.86 million.²¹³

Submissions under Terms of Reference 1 and 2 in relation to Mr Ketch

75. It is submitted that it is open to the Commissioner to find that the case of Mr Ketch may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

²⁰⁴ Un-tendered Presentment No. U02374347, undated, *R v Mr Ketch*, OPP.0095.0001.0022 @ 11, 12.

²⁰⁵ Exhibit RC0281 ICR3838 (054), 20 November 2006, 562, VPL.2000.0003.2148.

²⁰⁶ Exhibit RC0281 ICR3838 (054), 29 November 2006, 568, VPL.2000.0003.2154.

²⁰⁷ Exhibit RC0281 ICR3838 (054), 29 November 2006, 568, VPL.2000.0003.2154.

²⁰⁸ Exhibit RC0281 ICR3838 (055), 1 December 2006, 570, VPL.2000.0003.2156.

²⁰⁹ Exhibit RC0281 ICR3838 (055), 4 December 2006, 573, VPL.2000.0003.2159.

²¹⁰ Exhibit RC0281 ICR2958 (001), 24 January 2008, 3, VPL.2000.0003.0743.

[REDACTED] – '(DDI RYAN adv 01/02/08 -COGGHLAN to liaise w. WOLF to S/T HS direct)'.
²¹² Un-tendered, Restraining Order, In the matter of the Confiscation Act 1997, Mr Ketch and Ms Kline v DPP (Supreme Court of Victoria, Justice Beach, 9 March 2010), ACO.0002.0001.0221.

²¹³ Un-tendered, Master ACO Production of Documents to the Royal Commission into the Management of Police Informants, 8 May 2019, 1 ACO.0001.0001.0001.

76. These submissions should be read in conjunction with the Narrative Submissions, Chapters 10, 15 and 17, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Ketch.
77. The extent to which the case of Mr Ketch may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

78. First, Category 1A²¹⁴ applies in that, between October 2006 and February 2008,²¹⁵ Ms Gobbo acted for Mr Ketch while she was a human source,²¹⁶ and did not disclose same to him.²¹⁷
79. Secondly, Category 1B²¹⁸ applies in that, between December 2005 and January 2008, which was before and during the period that Ms Gobbo acted for Mr Ketch in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution, and did not disclose same to him.²¹⁹
80. Thirdly, Category 2A²²⁰ applies in that evidence relied upon by the prosecution in Mr Ketch's case, namely the evidence of ██████████²²¹ and ██████████,²²² may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²²³
81. Fourthly, Category 2B²²⁴ applies in that Ms Gobbo had knowledge of the circumstances founding the above [80] and failed to disclose same to her client, Mr Ketch, thereby depriving him of the ability to object to the admission of that evidence.
82. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²²⁵ Further, in certain instances identified above,²²⁶ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²²⁷
83. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the

²¹⁴ See Legal Principles Submissions at [249].

²¹⁵ See above analysis at [20]-[26].

²¹⁶ See Legal Principles Submissions at [20].

²¹⁷ See Legal Principles Submissions at [239].

²¹⁸ See Legal Principles Submissions at [249].

²¹⁹ See above analysis at [28]-[67], [70] – [73].

²²⁰ See Legal Principles Submissions at [249].

²²¹ See above analysis at [70],[72].

²²² See above analysis at [70]-[71].

²²³ See Legal Principles Submissions at [196]-[222].

²²⁴ See Legal Principles Submissions at [249].

²²⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²²⁶ See above analysis at [29], [31], [48] – [53], [57], [58], [59] – [67], [70] – [73].

²²⁷ See Legal Principles Submissions at [310]-[319] and [301]-[306].

evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

84. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²²⁸
 - 84.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Ketch
 - 84.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Ketch, appropriate disclosure was made; or alternatively
 - 84.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
85. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [84.1] were taken, and accordingly there was the potential for the right of Mr Ketch to a fair trial to have been interfered with.
86. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Ketch and/or his legal representatives.
87. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²²⁹
88. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²³⁰
89. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²³¹
90. Category 3A²³² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of

²²⁸ See Legal Principles Submissions at [384] and [452]-[457].

²²⁹ See Legal Principles Submissions at [380]-[385].

²³⁰ See Legal Principles Submissions at [351], [362]-[373].

²³¹ See Legal Principles Submissions at [351] and [374].

²³² See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

91. Category 3B²³³ applies in that, between December 2005 and January 2008, which was before and during the period that Ms Gobbo acted for Mr Ketch in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution,²³⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
92. Category 4A²³⁵ applies in that, as noted above at [80], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
93. Category 4B²³⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
94. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²³³ See Legal Principles Submissions at [465].

²³⁴ See above analysis at [28]-[67], [70] – [73].

²³⁵ See Legal Principles Submissions at [465].

²³⁶ See Legal Principles Submissions at [465].

CASE STUDY: MOHAMMAD KHODR

The Relevant Cases of Mohammad Khodr

1. The two relevant cases of Mr Mohammad Khodr concern his convictions in 2010 for:
 - 1.1. one charge of possessing substances and equipment with the intention of using them for the purpose of trafficking in a drug of dependence;¹
 - 1.2. one charge of trafficking in not less than a commercial quantity of a drug of dependence, namely methylamphetamine;² and
 - 1.3. one charge of possession of cocaine.³
2. The offending occurred between May 2006 and October 2006.⁴ On 9 October 2006, Mr Mohammad Khodr was arrested and interviewed in relation to the matter.⁵ On 10 October 2006, he was charged with the offending and brought before the Magistrates' Court for a filing hearing.⁶ The charges emerged from three investigations undertaken by Victoria Police and Australia Federal Police, namely: Operation Analogy, Operation Tool, and Operation Dotard.⁷ The offending concerned alleged activities in relation to drug trafficking and items found at two premises in Pascoe Vale.⁸
3. On 19 June 2010, following a trial before the Supreme Court, a jury found Mr Khodr, along with his co-accused Mr Stephen Gavanas,⁹ guilty of the trafficking

¹ *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [1]; *Gavanas and Khodr v The Queen* [2013] VSCA 178 [1]. Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13 RCMPI.0095.0001.0001 @ _0009-0013.

² *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [1]; *Gavanas and Khodr v The Queen* [2013] VSCA 178 [1]. Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMPI.0095.0001.0001, @ _0009-0013.

³ The three charges form two cases because the third charge of possession of cocaine was the subject of a separate presentment to that on which the other two charges were brought: See *Gavanas and Khodr v The Queen* [2013] VSCA 178 [1]; *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [1]. As addressed below, whilst the first two charges proceeded to trial, Mr Khodr pleaded guilty to the third charge. Notably, the possession of cocaine charge was originally placed on the same presentment as the other charges: see Un-tendered Presentment No. C0605383, *R v Gavanas, Mokbel and Khodr*, 2008, and Presentment No. C0605383.2B, *R v Gavanas and Khodr*, Undated, 2-8, RCMPI.0095.0001.0001 @ _0002-0008. Moreover, it appears that the possession of cocaine charge was based on evidence obtained at the execution of a search warrant which led to evidence being obtained in relation to the other charges. In addition, the charge was filed at the same time, and together with, the balance of the charges (see: Un-tendered Summary of Charges, *Police v Mokbel, Khodr and Gavanas*, 16-17, 30, RCMPI.0095.0001.0001 @ _0016-0017, 0030. Given the factual and procedural relationship between the possession of cocaine charge and the other two charges, the two cases are treated jointly for the purposes of these submissions.

⁴ Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMPI.0095.0001.0001, @ _0009-0013. See also *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [18], regarding the count of possession of cocaine.

⁵ *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [3]; Un-tendered Summary of Charges, *Police v Harty Mokbel, Mohammad Khodr, Stephen Gavanas*, RCMPI.0070.0001.0009 @ _0016.

⁶ Un-tendered Summary of Charges, *The Police v Harty Mokbel, Mohammad Khodr, Stephen Gavanas*, RCMPI.0070.0001.0009 @ _0016.

⁷ See Case Study of Stephen Gavanas.

⁸ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [12]. For a full summary see [13]-[43].

⁹ See Case Study of Stephen Gavanas.

offending.¹⁰ On 13 September 2010, Mr Khodr also pleaded guilty to the possession of cocaine charge.¹¹ The prosecution case against Mr Khodr included reliance upon the evidence of Mr Cooper,¹² [REDACTED],¹³ [REDACTED], [REDACTED], [REDACTED].¹⁷ The informant or primary investigator in the case was Mr Kelly.¹⁸ In addition, notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Graham Evans, Mr Craig Hayes, and Mr Dale Flynn.¹⁹

4. On 8 November 2010, Mr Khodr was sentenced in the Supreme Court to a total effective sentence of six years and eight months' imprisonment, with a non-parole period of four years.²⁰ In 2013, Mr Khodr brought an appeal against conviction and sentence in the Court of Appeal.²¹ While the Court refused Mr Khodr's appeal against conviction,²² it upheld his appeal against sentence.²³ The grounds of appeal did not concern Ms Gobbo.²⁴ In allowing the appeal, the Court imposed a new total effective sentence of five years and six months' imprisonment, with a non-parole period of three years and six months.²⁵

Ms Gobbo's Legal Representation of Mr Khodr

5. Material before the Commission indicates that Ms Gobbo acted for Mr Khodr in relation to the case on one occasion only, namely on 10 October 2006, when she appeared on his behalf in his filing hearing before the Magistrates' Court.²⁶

¹⁰ *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [1].

¹¹ *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [1].

¹² See, eg: Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013. *Gavanas and Khodr v The Queen* [2013] VSCA 178 regarding witness 'FQ'. See also See Un-tendered Response to Applicant's written case, *The Queen v Stephen Gavanas*, 8 October 2012, OPP.0053.0001.0005_0764-6; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001.

¹³ See Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013

¹⁴ See Un-tendered Response to Applicant's written case, *The Queen v Stephen Gavanas*, 2012, 766 – 777, OPP.0053.0001.0005 @_0766-7. Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013

¹⁵ See Un-tendered Response to Applicant's written case, *The Queen v Stephen Gavanas*, 2012, 767 – 778, OPP.0053.0001.0005 @_0767-8. Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013.

¹⁶ Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013.

¹⁷ Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @_0009-0013.

¹⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090. See also [REDACTED], [REDACTED].

¹⁹ See Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 1-5, RCMP.0095.0001.0001, @_0009-0013.

²⁰ *DPP v Gavanas and Khodr (Sentence)* [2010] VSC 433, [60]-[63], esp [62]; Un-tendered Presentment No. C0605383.3B, *R v Gavanas and Khodr*, 2010, 9-13, RCMP.0095.0001.0001, @.0009-0013; Un-tendered Victoria Police Criminal History Report, Mohamad Khodr, 14 December 2019, 2, VPL.0099.0193.2900 @.2901.

²¹ *Gavanas and Kohdr v The Queen* [2013] VSCA 178.

²² *Gavanas and Khodr v The Queen* [2013] VSCA 178, [91].

²³ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [124], [129]-[131].

²⁴ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [9] and [92].

²⁵ *Gavanas and Khodr v The Queen* [2013] VSCA 178, [129]-[131].

²⁶ See Exhibit RC0281, ICR (48), 10 October 2010, 464-465, VPL.2000.0003.2050; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 10 October 2006, 100, MIN.5000.7000.0001 @.0100; Exhibit RC1569 Meldrum & Hyland Barristers Clerk Nicola Gobbo Tax Invoice. 11 October 2006, 39, GMH.0001.0001.0008 @_0039. Cf. Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090.

On that day, she marked fees of \$770 in the matter of “*Police v M. Khodr & S. Gavanoas*”, for a “[b]rief to appear at Melb. Mag. Court”, addressed to Mr Stephen Andrianakis, solicitor.²⁷

The Conduct of Ms Gobbo as a Human Source in relation to Mr Khodr

6. Mr Khodr does not appear to have been the subject of communications between Ms Gobbo and Victoria Police prior to his arrest on 9 October 2006.²⁸ Notably, however, according to Mr Kelly, the primary investigator in the matter, intelligence had been received from the Source Development Unit in the course of Operation Dotard that he believed had originated with Ms Gobbo.²⁹
7. On 9 and 10 October 2006, Ms Gobbo and her handlers engaged in a series of communications about Mr Khodr,³⁰ which may be summarised as follows:
 - 7.1. At 2:45pm, Mr Anderson recorded in the Informer Contact Reports (ICRs) that he had “called [Ms Gobbo] at the request of Purana Taskforce – Detective Sergeant Jason Kelly regarding pending arrests re Operation Do[t]ard”.³¹ Mr Anderson noted that “[i]nformation [was] required on Mohamad Kodhr [sic]”, among others.³²
 - 7.2. At 5:42pm, Ms Gobbo told Mr Anderson that the person by the name of “Mohammed Khoder” or “Mohamad Khodr” was not known to her.³³
 - 7.3. At 7:15pm, immediately after Mr Anderson learnt of the arrest of Mr Mohammad Khodr, he telephoned Ms Gobbo and provided her with an “update ... regarding the status of Operation Dotard”.³⁴ It can be inferred that that update included reference to the arrest of Mr Khodr.
 - 7.4. At 9:43pm, Ms Gobbo and Mr Anderson again discussed the Operation Dotard arrests, and Ms Gobbo clarified her knowledge of Mr Mohammad Khodr, before providing specific information about him.³⁵ The ICRs record:³⁶

3838 stated that Horty referred to Mohammed KHODER as ‘Ponch’, Initially 3838 stated that she did not know Mohammed KHODER, but ‘Ponch’ is known to her. 3838 only knows Ponch by his nickname.

²⁷ See Exhibit RC1568 Ms Nicola Gobbo fee book 02, 10 October 2006, 100, MIN.5000.7000.0001 @.0100. The fees were paid in full on 16 October 2006: Exhibit RC1569 Meldrum & Hyland Barristers Clerk Nicola Gobbo Tax Invoice. 11 October 2006, 39, GMH.0001.0001.0008 @_0039. Exhibit RC1569 Meldrum & Hyland, Statement of Account of Ms Gobbo Statement of Account’, 07 March 2019, 41, GMH.0001.0001.0002 @_0041.

²⁸ [REDACTED]: “Khodr, Mohamad ... Not Known to source.” While a “Mohamed Khodr” is mentioned at Exhibit RC0281 ICR3838 (39), 28 July 2006, 374, VPL.2000.0003.1960, it appears that he was raised by the handlers, not Ms Gobbo, and that there was no discussion about him. See [REDACTED]

²⁹ [REDACTED]

³⁰ See Exhibit RC0281 ICR3838 (48), 9-10 October 2006, 457-465, VPL.2000.0003.2043 - VPL.2000.0003.2051.

³³ Exhibit RC0281 ICR3838 (48), 9 October 2006, 458, VPL.2000.0003.2044.

³⁴ Exhibit RC0281 ICR3838 (48), 9 October 2006, 460, VPL.2000.0003.2046.

³⁵ Exhibit RC0281 ICR3838 (48), 9 October 2006, 462, VPL.2000.0003.2048.

³⁶ Exhibit RC0281 ICR3838 (48), 9 October 2006, 462, VPL.2000.0003.2048.

3838 stated that Ponch has been running for Horty MOKBEL for many years and would have knowledge of Horty MOBKELS activities.

- 7.5. The next morning, on 10 October 2006, at 7:46am, Ms Gobbo informed Mr Anderson that Mr Andrianakis had requested that she appear at the filing hearing of Mr Khodr.³⁷ Notably, in response, it appears that Mr Anderson urged Ms Gobbo *not* to appear at the hearing.³⁸
- 7.6. Notwithstanding Mr Anderson's advice to the contrary, Ms Gobbo did appear at the filing hearing, and afterwards confirmed to Mr Anderson that she had done so, reportedly suggesting that she "did not speak personally to either offender".³⁹ She did, however, tell Mr Anderson that Mr Khodr would be making an application for bail within the week.⁴⁰
8. Thereafter, Mr Khodr continued to feature in communications between Ms Gobbo and Victoria Police through until May 2008.⁴¹

Relevant Conduct in relation to Mr Cooper

9. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Khodr's case. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 9.1. the discovery of the offending the subject of Operation Posse;
 - 9.2. Mr Cooper being arrested in Operation Posse;
 - 9.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 9.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Khodr (among others).
10. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Khodr, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Khodr may have been deprived of any opportunity to object to the admissibility of this evidence.
11. Further, as set out in case studies of [REDACTED], it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and to those persons' respective subsequent decisions to do so.

³⁷ Exhibit RC0281 ICR3838 (48), 9 October 2006, 464, VPL.2000.0003.2050.

³⁸ Exhibit RC0281 ICR3838 (48), 9 October 2006, 464, VPL.2000.0003.2050.

³⁹ Exhibit RC0281 ICR3838 (48), 9 October 2006, 465, VPL.2000.0003.2051.

⁴⁰ Exhibit RC0281 ICR3838 (48), 9 October 2006, 465, VPL.2000.0003.2051.

⁴¹ See Un-tendered Summary of Extracts for Mohammad Khodr, Undated, VPL.4164.0001.0001.

12. On this basis, it may be argued that the evidence of [REDACTED] [REDACTED] relied upon in the prosecution of Mr Khodr, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.
13. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁴² where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁴³

Submissions under Terms of Reference 1 and 2 in relation to Mr Khodr

14. It is submitted that it is open to the Commissioner to find that the two cases of Mr Khodr may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. These cases are linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, Chapter 11.
16. The extent to which the two cases of Mr Khodr may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

17. First, Category 1A⁴⁴ applies in that, on 10 October 2006,⁴⁵ Ms Gobbo acted for Mr Khodr while she was a human source,⁴⁶ and did not disclose same to him.⁴⁷
18. Secondly, Category 1B⁴⁸ applies in that, between 9 and 10 October 2006, which was before and during the period that Ms Gobbo acted for Mr Khodr in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴⁹
19. Thirdly, Category 2A⁵⁰ applies in that evidence relied upon by the prosecution in the cases against Mr Khodr, namely the evidence of Mr Cooper,⁵¹ [REDACTED] [REDACTED] [REDACTED] may have been obtained in

⁴² See Legal Principles Submissions at [210].

⁴³ See Legal Principles Submissions at [222].

⁴⁴ See Legal Principles Submissions at [249].

⁴⁵ See above analysis at [5].

⁴⁶ See Legal Principles Submissions at [20].

⁴⁷ See Legal Principles Submissions at [239].

⁴⁸ See Legal Principles Submissions at [249].

⁴⁹ See above analysis at [7].

⁵⁰ See Legal Principles Submissions at [249].

⁵¹ See above analysis at [3] and [9]-[10].

⁵² See above analysis at [3] and [11]-[12].

⁵³ See above analysis at [3] and [11]-[12].

⁵⁴ See above analysis at [3] and [11]-[12].

consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁵⁵

20. Fourthly, Category 2B⁵⁶ applies in that Ms Gobbo had knowledge of the circumstances founding the above [19] and failed to disclose same to her client, Mr Khodr, thereby depriving him of the ability to object to the admission of that evidence.
21. The above conduct by Ms Gobbo under Categories 1A and 1B together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁷
22. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

23. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁸
 - 23.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Khodr;
 - 23.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Khodr, appropriate disclosure was made; or alternatively
 - 23.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
24. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [23.1] were taken, and accordingly there was the potential for the right of Mr Khodr to a fair trial to have been interfered with.

⁵⁵ See Legal Principles Submissions at [249].

⁵⁶ See Legal Principles Submissions at [249].

⁵⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵⁸ See Legal Principles Submissions at [384] and [452]-[457].

25. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Khodr and/or his legal representatives.
26. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁹
27. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁶⁰
28. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial and guilty plea.⁶¹
29. Category 3A⁶² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. Category 3B⁶³ applies in that, between 9 and 10 October 2006, which was before and during the period that Ms Gobbo acted for Mr Khodr in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police,⁶⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
31. Category 4A⁶⁵ applies in that, as noted above at [19], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
32. Category 4B⁶⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
33. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁹ See Legal Principles Submissions at [380]-[385].

⁶⁰ See Legal Principles Submissions at [351], [362]-[373].

⁶¹ See Legal Principles Submissions at [351] and [374].

⁶² See Legal Principles Submissions at [465].

⁶³ See Legal Principles Submissions at [465].

⁶⁴ See above analysis at [7].

⁶⁵ See Legal Principles Submissions at [465].

⁶⁶ See Legal Principles Submissions at [465].

CASE STUDY: DIMITRIOS KONDALIS

The Relevant Case of Mr Kondalis

1. The one relevant case of Mr Dimitrios Kondalis concerns his convictions before the County Court in June 2008.¹
2. On 10 February 2007, Mr Kondalis was involved in a motorcycle accident. He was conveyed to hospital and his belongings were searched by police to confirm his identity.² As a result of that search, a quantity of methylamphetamine was located and Mr Kondalis was arrested.³
3. On 11 February 2007, he was charged following the execution of a search warrant at his address.⁴
4. On 27 November 2007, Mr Kondalis was arraigned and entered a plea of guilty to:
 - 4.1. one count of trafficking in methylamphetamine;
 - 4.2. Three counts of dishonestly handling stolen goods; and
 - 4.3. one count of possession of cannabis.⁵
5. A plea hearing was conducted on 20 June 2008.⁶
6. On 26 June 2008, Mr Kondalis was sentenced to 21 months' imprisonment, with 15 months of the sentence suspended for a period of two years.⁷

¹ Un-tendered Reasons for Sentence, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 39 [32]–[41], RCMP1.0119.0001.0015 @.0039; Un-tendered Victoria Police Criminal History Report, Dimitrios Kondalis, 14 December 2019, 1 VL.0099.0193.3024 @.3024.

² Un-tendered Reasons for Sentence, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 32 [2]–[3], RCMP1.0119.0001.0015 @.0032; Un-tendered Summary of Prosecution Opening, *R v Dimitrios Kondalis*, 3 July 2008, 27[1] – 28 [6e], RCMP1.0119.0001.0015 @ .0027- .0028; Un-tendered Summary of Prosecution Opening with Handwritten Amendments, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 1[1]- 2[6e]. COR.1016.0001.0024 @ .0001-.0002.

³ Un-tendered Reasons for Sentence, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 32 [2]–[3], RCMP1.0119.0001.0015 @.0032; Un-tendered Summary of Prosecution Opening, *R v Dimitrios Kondalis*, 3 July 2008, 27[1] – 28 [6e], RCMP1.0119.0001.0015 @ .0027- .0028; Un-tendered Summary of Prosecution Opening with Handwritten Amendments, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 1[1]- 2[6e], COR.1016.0001.0024 @.0001-.0002.

⁴ Un-tendered Summary of Prosecution Opening, *R v Dimitrios Kondalis*, 3 July 2008, 28[12] – 29 [15i], RCMP1.0119.0001.0015 @.0028- .0029; Un-tendered Summary of Prosecution Opening with Handwritten Amendments, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 2[12]- 3[15i], COR.1016.0001.0024 @.0002-.0003.

⁵ Un-tendered Reasons for Sentence, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 32 [1], RCMP1.0119.0001.0015 @ .0032; Un-tendered Presentment No. W00331371 with Handwritten Amendments, *R v Dimitrios Kondalis*, 10, RCMP1.0119.0001.0015 @ .0010.

⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 20 June 2008, 67, OPP.0001.0004.0025 @.0091.

⁷ Un-tendered Reasons for Sentence, *R v Dimitrios Kondalis* (County Court of Victoria, Judge Patrick, 26 June 2008), 39 [32]–[41], RCMP1.0119.0001.0015 @ .0039; Un-tendered Victoria Police Criminal History Report, Dimitrios Kondalis, 14 December 2019, 1 VL.0099.0193.3024 @ .3024.

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Kondalis

7. Ms Gobbo provided legal representation to Mr Kondalis between at least April 2007 and June 2008.
8. Ms Gobbo appeared in court on behalf of Mr Kondalis on the following occasions:
 - 8.1. on 13 April 2007, at the Melbourne Magistrates' Court for a bail application;⁸
 - 8.2. on 16 August 2007, for a committal hearing;⁹ and
 - 8.3. on 20 June 2008, at the Melbourne County Court for a plea hearing.¹⁰
9. Ms Gobbo charged fees for those appearances.¹¹ In addition, on 17 April 2007, she charged fees for a brief to draft a Form 8A.¹²
10. Based on the material reviewed, there is nothing to suggest that Ms Gobbo continued to provide legal representation to Mr Kondalis following the hearing on 20 June 2008.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Kondalis

11. Ms Gobbo provided information to Victoria Police concerning Mr Kondalis prior to and during her representation of him, on at least the following three occasions:
 - 11.1. On 11 February 2007, Ms Gobbo told her handler that Mr Kondalis had been arrested and provided some information concerning the circumstances of his arrest, including items found in his possession.

⁸ Exhibit RC1841 Magistrates Court of Victoria Record of Persons Represented by Ms Gobbo, 12 April 2019, 20, MCV.0001.0001.0001 @.0018; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 April 2007, 67, OPP.0001.0004.0025 @.0091.

⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 August 2007, 67, OPP.0001.0004.0025 @.0091.

¹⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 20 June 2008, 67, OPP.0001.0004.0025 @.0091.

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 13 April 2007, 3, MIN.5000.7000.0103 @.0105; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 17 August 2007, 8, MIN.5000.7000.0103 @.0110; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 17 August 2007, 19, MIN.5000.7000.0103 @.0121; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 27, 33, GMH.0001.0001.0002 @.0027, .0033; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 13 April 2007, 31, GMH.0001.0001.0007 @.0031; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 16 August 2007, 62, GMH.0001.0001.0006 @.0062; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 24 June 2008, 1, GMH.0001.0001.0005 @.0001.

¹² Exhibit RC1568 Ms Nicola Gobbo fee book 02, 17 April 2007, 4, MIN.5000.7000.0103 @.0106; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 17 March 2019, 33, GMH.0001.0001.0002 @.0033; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 17 April 2007, 29, GMH.0001.0001.0007 @.0029.

She stated that Mr Kondalis was a 'runner' for Mr Shannon and provided the name of his solicitor.¹³

- 11.2. On 12 February 2007, Ms Gobbo provided further information concerning the circumstances of Mr Kondalis' arrest, including the fact that he had been involved in an accident on the Bolte Bridge whilst riding a Harley Davidson, and detailing other items found in his possession. She again advised that Mr Chiodo would represent Mr Kondalis at a bail application and stated that his legal fees would be paid for by Mr Shannon.¹⁴
- 11.3. On 12 April 2007, Ms Gobbo told her handler that she had read material relating to Mr Kondalis' case, and advised that she was confident she would be able to identify the supplier of the drugs that were found in Mr Kondalis' possession.¹⁵ She also advised that Mr Kondalis would be making an application for bail the following day.¹⁶

Submissions under Terms of Reference 1 and 2 in relation to Mr Kondalis

12. It is submitted that it is open to the Commissioner to find that the case of Mr Kondalis may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
13. The extent to which the case of Mr Kondalis may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

14. First, Category 1A¹⁷ applies in that, between April 2007 and June 2008,¹⁸ Ms Gobbo acted for Mr Kondalis while she was a human source,¹⁹ and did not disclose same to him.²⁰
15. Secondly, Category 1B²¹ applies in that, between February 2007 and April 2007, which was before and during the period that Ms Gobbo acted for Mr Kondalis in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²²
16. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²³

¹³ Exhibit RC281, ICR3838 (065), 11 February 2007, 632, VPL.2000.0003.2218.

¹⁴ Exhibit RC281, ICR3838 (065), 12 February 2007, 634, VPL.2000.0003.2220.

¹⁵ Exhibit RC281, ICR3838 (074), 12 April 2007, 783, VPL.2000.0003.2369.

¹⁶ Exhibit RC281, ICR3838 (074), 12 April 2007, 783, VPL.2000.0003.2369; Exhibit RC1590 Mr Anderson diary, 12 April 2007, 178, VPL.2000.0001.7059 @.7236.

¹⁷ See Legal Principles Submissions at [249].

¹⁸ See above analysis at [8]–[9].

¹⁹ See Legal Principles Submissions at [20].

²⁰ See Legal Principles Submissions at [239].

²¹ See Legal Principles Submissions at [249].

²² See above analysis at [11].

²³ See Legal Principles Submissions at [320]–[329] and [307]–[309].

Further, in certain instances identified above,²⁴ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁵

17. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

18. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁶
 - 18.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Kondalis;
 - 18.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Kondalis, appropriate disclosure was made; or alternatively
 - 18.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
19. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [18.1] were taken, and accordingly there was the potential for the right of Mr Kondalis to a fair trial to have been interfered with.
20. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Kondalis and/or his legal representatives.
21. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁷
22. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

²⁴ See above analysis at [11].

²⁵ See Legal Principles Submissions at [310]-[319] and [301]-[306].

²⁶ See Legal Principles Submissions at [384] and [452]-[457].

²⁷ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.²⁸

23. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁹
24. Category 3A³⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
25. Category 3B³¹ applies in that, before and during the period Ms Gobbo acted for Mr Kondalis, she provided information in relation to him to members of Victoria Police,³² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁸ See Legal Principles Submissions at [351], [362]-[373].

²⁹ See Legal Principles Submissions at [351], [374].

³⁰ See Legal Principles Submissions at [465].

³¹ See Legal Principles Submissions at [465].

³² See above analysis at [11].

CASE STUDY: IBRAHIM KURNAZ

The Relevant Case of Mr Kurnaz

1. The one relevant case of Mr Ibrahim Kurnaz concerns his conviction and sentence before the County Court on 20 March 2012 for one charge of trafficking in methylamphetamine between 1 September 2002 and 11 April 2003 (the case).¹ The matter arose from Operation Matchless.
2. In brief terms, the basis of the charge was that between the said dates, on about 15 occasions, Mr Kurnaz bought quantities of methyl-amphetamine from Mr Cooper, to on-sell the product to other people.² Mr Kurnaz's role in the broader enterprise was at a low level and on the periphery.³ The evidence of Mr Cooper was central to the prosecution case.⁴ The evidence of Mr Thomas⁵ and ██████████,⁶ among others, also appears to have been relied upon as part of the prosecution case. Notably, members of Victoria Police who were involved in the prosecution of Mr Kurnaz as police witnesses included Mr Dale Flynn, Mr Paul Rowe, and Mr Craig Hayes.⁷
3. In July 2008, Mr Kurnaz was charged with the offending.⁸ In June 2009, following committal proceedings before the Magistrates' Court, Mr Kurnaz and co-accused were committed for trial to the Supreme Court.⁹ The case was later transferred to the County Court.¹⁰ In January 2012, following negotiations between the parties, the matter resolved to a plea of guilty.¹¹ On 20 March 2012, Mr Kurnaz was sentenced in the County Court to nine months' imprisonment, which was directed to be wholly suspended for 18 months.¹²

¹ See Un-tendered Presentment No. X02089713.1, *R v Ibrahim Kurnaz*, 2012, OPP.0043.0001.0004 @.0011-.0013; Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [1], COR.1011.0001.0053 @.0002.

² Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [3], COR.1011.0001.0053 @.0002. For a broader summary of the offending see [4]-[8].

³ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [32], COR.1011.0001.0053 @.0010-.0011.

⁴ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [8]-[9], COR.1011.0001.0053 @.0003. See also Un-tendered Presentment No. X02089713.1, *R v Ibrahim Kurnaz*, 2012, OPP.0043.0001.0004 @.0011-.0013; Transcript of Mr Dale Flynn, 6668-9; See, eg, Un-tendered Statement of Mr Cooper, 2 December 2009, 7-15, RCMP.0028.0002.0001 @.0007-.0015; Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

⁵ It appears that Mr Thomas is named as a witness on the presentment by the pseudonym "Mr Thomas": see Un-tendered Presentment No. X02089713.1, *R v Ibrahim Kurnaz*, 2012, OPP.0043.0001.0004 @.0011-.0013. Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001

⁶ See Un-tendered Presentment No. X02089713.1, *R v Ibrahim Kurnaz*, 2012, OPP.0043.0001.0004 @.0011-.0013.

⁷ The involvement of these members of police is inferred from their inclusion as witnesses on the presentment: see Un-tendered Presentment No. X02089713.1, *R v Ibrahim Kurnaz*, 2012, OPP.0043.0001.0004 @.0011-.0013.

⁸ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [10], COR.1011.0001.0053 @.0004.

⁹ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [10], COR.1011.0001.0053 @.0004.

¹⁰ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [11], COR.1011.0001.0053 @.0004.

¹¹ Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [12], COR.1011.0001.0053 @.0004.

¹² Un-tendered *DPP v Ibrahim Kurnaz* [2019] VCC 726, [36], COR.1011.0001.0053 @.0010-.0011.

Whether Ms Gobbo Acted as Mr Kurnaz's Lawyer

4. While it appears that Ms Gobbo acted on behalf of Mr Kurnaz between 2000 and 2001 in respect of unrelated matters,¹³ there is no evidence before the Commission to suggest that Ms Gobbo acted as a legal representative for Mr Kurnaz in relation to the impugned case. In fact, it appears that, in August 2008, Ms Gobbo declined to accept a brief to act on behalf of Mr Kurnaz in the case.¹⁴

The Conduct of Ms Gobbo as a Human Source in relation to Mr Kurnaz

Information in relation to Mr Kurnaz

5. Between 2006 and 2008, Mr Kurnaz was the subject of numerous communications between Ms Gobbo and her handlers at Victoria Police.¹⁵ Based on the material reviewed, it does not appear that any of those communications was productive of any directly incriminating evidence being obtained against Mr Kurnaz in relation to the case. However, the conduct of Ms Gobbo and members of Victoria Police in relation to both Mr Cooper and Mr Thomas is relevant to the assessment of Mr Kurnaz's case.

Relevant Conduct in relation to Mr Cooper

6. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Kurnaz's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 6.1. the discovery of the offending the subject of Operation Posse;
 - 6.2. Mr Cooper being arrested in Operation Posse;
 - 6.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 6.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Kurnaz (among others).

¹³ Exhibit RC1568 Nicola Gobbo fee book 01, 1 October 2000, 25, MIN.5000.7000.0001 @.0025; Exhibit RC1568 Nicola Gobbo fee book 01, 2 October 2000, 25, MIN.5000.7000.0001 @.0025; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 4 October 2000, 82, OPP.0001.0004.0025 @.0106; Exhibit RC1568 Nicola Gobbo fee book 01, 4 October 2000, 25, MIN.5000.7000.0001 @.0025; Exhibit RC1568 Nicola Gobbo fee book 01, 23 February 2001, 32, MIN.5000.7000.0001 @.0032.

¹⁴ See Exhibit RC0281 ICR2958 (030), 4 August 2008, 534, VPL.2000.0003.1274.

¹⁵ See, eg, Exhibit RC0281 ICR3838 (038), 19 July 2006, 361, VPL.2000.0003.1947; Exhibit RC0281 ICR3838 (051), 30 October 2006, 533, VPL.2000.0003.2119; Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2639; Exhibit RC0281 ICR3838 (119), 23 January 2008, 1586, VPL.2000.0003.3172. Exhibit RC0281 ICR2958 (025), 19 June 2008, 467, VPL.2000.0003.1207; Exhibit RC0281 ICR3838 (029), 20 July 2008, 501-502, VPL.2000.0003.1241-VPL.2000.0003.1242; Exhibit RC0281 ICR2958 (029), 21 July 2008, 502-503, VPL.2000.0003.1242-VPL.2000.0003.1243; Exhibit RC0281 ICR2958 (030), 4 August 2008, 534, VPL.2000.0003.1274. See also Exhibit RC0283 Information Report SID1562, 25 June 2008, 3, VPL.2000.0003.5923 @.5925.

7. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Kurnaz, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Kurnaz may have been deprived of any opportunity to object to the admissibility of this evidence.
8. Further, as set out in the Case Study of [REDACTED], it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Kurnaz, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.
9. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁶ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁷

Relevant Conduct in relation to Mr Thomas

10. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is also relevant to an assessment of Mr Kurnaz’s matter. As set out in the Narrative Submissions at Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led Mr Thomas to his decision to assist and co-operate with authorities. As with Mr Cooper, such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr Kurnaz, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Kurnaz may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions under Terms of Reference 1 and 2 in relation to Mr Kurnaz

11. It is submitted that it is open to the Commissioner to find that the case of Mr Kurnaz may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

¹⁶ See Legal Principles Submissions at [210].

¹⁷ See Legal Principles Submissions at [222].

12. This case is linked to the cases of Mr Cooper and Mr Thomas and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapters 11 (concerning Mr Cooper) and 7 (concerning Mr Thomas).
13. The extent to which the case of Mr Kurnaz may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

14. Category 2A¹⁸ applies in that evidence relied upon by the prosecution in the case against Mr Kurnaz, namely the evidence of Mr Cooper,¹⁹ ██████████, ██████████,²⁰ and Mr Thomas,²¹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²²
15. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²³
 - 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Kurnaz;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Kurnaz, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Mr Kurnaz to a fair trial to have been interfered with.
18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Kurnaz and/or his legal representatives.

¹⁸ See Legal Principles Submissions at [249].

¹⁹ See [2] and [6]-[7] above.

²⁰ See [2] and [8] above.

²¹ See [2] and [10] above.

²² See Legal Principles Submissions at [196]-[222].

²³ See Legal Principles Submissions at [384] and [452]-[457].

19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁴
20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁵
21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁶
22. Category 4A²⁷ applies in that, as noted above at [14], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
23. Category 4B²⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
24. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁴ See Legal Principles Submissions at [380]-[385].

²⁵ See Legal Principles Submissions at [351], [362]-[373].

²⁶ See Legal Principles Submissions at [351], [374].

²⁷ See Legal Principles Submissions at [465].

²⁸ See Legal Principles Submissions at [465]

CASE STUDY: MR LINLEY (A PSEUDONYM)

The Relevant Case of Mr Linley

1. The one relevant case of Mr Linley concerns his convictions before the County Court in February 2008, which arose from Operation Eayed.¹
2. In July 2005, the Major Drug Investigation Division commenced Operation Eayed, which was an investigation into the apparent trafficking of ecstasy by Mr Linley and four co-accused.²
3. On 8 December 2005, Mr Linley was intercepted by police whilst driving, and subsequently searched and arrested.³ A search warrant was also executed at his home address, locating various quantities of ecstasy, heroin and methamphetamine.⁴ Mr Linley was subsequently charged with drug trafficking related offences.
4. The prosecution alleged that Mr Linley supplied quantities of drugs to others, including to two co-accused, Co-accused 1 (a pseudonym) and Co-accused 2 (a pseudonym), who then sold the drugs to an undercover officer.⁵ The prosecution case relied on surveillance evidence and telephone intercepts.⁶
5. On 27 July 2007, Mr Linley was arraigned and entered a plea of guilty to:
 - 5.1. one count of trafficking in not less than a commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA); and

¹ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008) , 49-50 [47], OPP.0095.0001.0024 @.0049-.0050; Un-tendered Victoria Police Criminal History Report, Mr Linley, 14 December 2019, 4, VPL.0099.0193.3200 @.3203.

² Un-tendered Statement of Material Facts *Police v Mr Linley, Co-accused 2, Co-accused 1, Co-accused 3 (a pseudonym) & Co-accused 4*, undated, 4, OPP.0095.0001.0024 @.0004; Un-tendered Prosecution Opening, Mr Linley, Co-accused 2, Co-accused 1 and Co-accused 4, undated, 33, OPP.0095.0001.0024 @.0033.

³ Un-tendered Prosecution Opening, Mr Linley, Co-accused 2, Co-accused 1 and Co-accused 4, undated, 36, OPP.0095.0001.0024 @ .0036; Un-tendered Statement of Material Facts *Police v Mr Linley, Co-accused 2, Co-accused 1, Co-accused 3 & Co-accused 4*, undated, 10, OPP.0095.0001.0024 @ .0010.

⁴ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008) , 40 [10], OPP.0095.0001.0024 @ .0040; Un-tendered Prosecution Opening, Mr Linley, Co-accused 2, Co-accused 1 and Co-accused 4, undated, 33, OPP.0095.0001.0024 @ .0036; Un-tendered Statement of Material Facts *Police v Mr Linley, Co-accused 2, Co-accused 1, Co-accused 3 & Co-accused 4*, undated, 10, OPP.0095.0001.0024 @.0010.

⁵ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008) , 40 [10], OPP.0095.0001.0024 @ .0040; Un-tendered Prosecution Opening, Mr Linley, Co-accused 2, Co-accused 1 and Co-accused 4, undated, 35, OPP.0095.0001.0024 @ .0035.

⁶ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008) , 40-41 [11], OPP.0095.0001.0024 @.0040-.0041; Un-tendered Prosecution Opening, Mr Linley, Co-accused 2, Co-accused 1 and Ian Co-accused 4, undated, 35, OPP.0095.0001.0024 @ .0035; Un-tendered Statement of Material Facts *Police v Mr Linley, Co-accused 2, Co-accused 1, Co-accused 3 & Co-accused 4*, undated, 12, OPP.0095.0001.0024 @ .0012.

- 5.2. one count of trafficking methylamphetamine.⁷
6. A plea hearing was conducted on 28 November 2007.⁸
7. On 28 February 2008, Mr Linley was sentenced to a total effective sentence of 36 months' imprisonment, with a non-parole period of 15 months.⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Linley

8. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo provided legal representation to Mr Linley regarding an earlier unrelated matter between October 2004 and December 2004.¹⁰
9. In relation to the abovementioned case, Ms Gobbo provided representation to Mr Linley between at least March 2007 and December 2007.¹¹
10. Ms Gobbo appeared in court on behalf of Mr Linley on the following occasions:
11. on 13 March 2007, for a committal hearing¹²
12. on 27 July 2007, for an arraignment¹³
13. on 28 November 2007, in the County Court for a plea hearing¹⁴
14. on 20 December 2007, in the County Court for further plea and sentencing.¹⁵

⁷ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008), 39 [1], OPP.0095.0001.0024 @ .0039; Un-tendered Annotated Presentment no: C0504906, *R v Mr Linley, Co-accused 2 and Co-accused 1*, 27 July 2007, 18, OPP.0095.0001.0024 @ .0018.

⁸ Un-tendered Annotated Presentment No. C0504906, *R v Mr Linley, Co-accused 2 and Co-accused 1*, 27 July 2007, 18, OPP.0095.0001.0024 @ .0018.

⁹ Un-tendered Reasons for Sentence, *R v Co-accused 1, Co-accused 2, Mr Linley & Co-accused 4* (County Court of Victoria, Judge Barnett, 28 February 2008), 49-50 [47], OPP.0095.0001.0024 @ .0049-.0050; Un-tendered Victoria Police Criminal History Report, Mr Linley, 14 December 2019, 4, VL.0099.0193.3200 @ .3203.

¹⁰ Exhibit RC1841 Magistrates Court of Victoria record of persons represented by Ms Gobbo, 12 April 2019, 17, 19, MCV.0001.0001.0001 @ .0017, .0019; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 21 December 2004, 84, MIN.5000.7000.0001 @ .0084; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 66, GMH.0001.0001.0002 @ .0067; Exhibit RC1569 & Hyland Barristers' Clerk, Nicola Gobbo Tax Invoice, 23 December 2004, 6, GMH.0001.0001.0012 @ .0006.

¹¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 March 2007, 61, OPP.0001.0004.0025 @ .0085.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 March 2007, 61, OPP.0001.0004.0025 @ .0085.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 30 July 2007, 7, MIN.5000.7000.0103 @ .0109; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 28, GMH.0001.0001.0002 @ .0028.

¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 28 November 2007, 12, MIN.5000.7000.0103 @ .0114; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 22, GMH.0001.0001.0002 @ .0022; Un-tendered Annotated Presentment no: C0504906, *R v Mr Linley, Co-accused 2 and Co-accused 1*, 27 July 2007, 18, OPP.0095.0001.0024 @ .0018.

¹⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 March 2007, 61, OPP.0001.0004.0025 @ .0085.

15. Ms Gobbo charged fees relating to her appearances at the committal hearing, arraignment and plea hearing.¹⁶ In addition, Ms Gobbo charged fees for provision of advice, preparation of defence reply, preparation and conferences.¹⁷
16. Based on the material reviewed, there is nothing to suggest that Ms Gobbo continued to provide legal representation to Mr Linley following the hearing on 22 December 2007.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Linley

17. Ms Gobbo provided information to Victoria Police concerning Mr Linley during her representation of him, on at least the following two occasions:
18. On [REDACTED] March 2007, Ms Gobbo had a 'general discussion' with her handlers regarding Mr Linley's case [REDACTED].¹⁸ She told her handlers [REDACTED], and provided her opinion that 'he will not deal with the informant [REDACTED] [REDACTED]'.¹⁹ The relevant Informer Contact Report entry records that Ms Gobbo was 'to advise if this becomes an option [REDACTED] [REDACTED]'.²⁰
19. On 13 March 2007, Ms Gobbo advised her handlers that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Submissions under Terms of Reference 1 and 2 in relation to Mr Linley

20. It is submitted that it is open to the Commissioner to find that the case of Mr Linley may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
21. The extent to which the case of Mr Linley may have been affected can be measured by virtue of the following matters.

¹⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 16 March 2007, 3, MIN.5000.7000.0103 @ .0105; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 30 July 2007, 7, MIN.5000.7000.0103 @ .0109; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 28 November 2007, 12, MIN.5000.7000.0103 @ .0114; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 22, 28, 34, GMH.0001.0001.0002 @ .0022, .0028, .0034.

¹⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 16 May 2007, 5, MIN.5000.7000.0103 @ .0107; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 30 July 2007, 7, MIN.5000.7000.0103 @ .0109; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 28 November 2007, 12, MIN.5000.7000.0103 @ .0114; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 22, 28, 31 GMH.0001.0001.0002 @ .0022, .0028, .0031.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conduct of Ms Gobbo

22. First, Category 1A²² applies in that, between March 2007 and December 2007,²³ Ms Gobbo acted for Mr Linley while she was a human source,²⁴ and did not disclose same to him.²⁵
23. Secondly, Category 1B²⁶ applies in that, in March 2007, which was during the period that Ms Gobbo acted for Mr Linley in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²⁷
24. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁸ Further, in certain instances identified above,²⁹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.³⁰
25. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

26. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³¹
 - 26.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Linley;
 - 26.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Linley, appropriate disclosure was made; or alternatively

²² See Legal Principles Submissions at [249].

²³ See above analysis at [10]-[15].

²⁴ See Legal Principles Submissions at [20].

²⁵ See Legal Principles Submissions at [239].

²⁶ See Legal Principles Submissions at [249].

²⁷ See above analysis at [17].

²⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁹ See above analysis at [17].

³⁰ See Legal Principles Submissions at [310]-[319] and [301]-[306].

³¹ See Legal Principles Submissions at [384] and [452]-[457].

- 26.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
27. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [26.1] were taken, and accordingly there was the potential for the right of Mr Linley to a fair trial to have been interfered with.
28. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Linley and/or his legal representatives.
29. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³²
30. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³³
31. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁴
32. Category 3A³⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
33. Category 3B³⁶ applies in that, during the period Ms Gobbo acted for Mr Linley, she provided information in relation to him to members of Victoria Police,³⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
34. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³² See Legal Principles Submissions at [380]-[385].

³³ See Legal Principles Submissions at [351], [362]-[373].

³⁴ See Legal Principles Submissions at [351], [374].

³⁵ See Legal Principles Submissions at [465].

³⁶ See Legal Principles Submissions at [465].

³⁷ See above analysis at [17].

CASE STUDY: JOSEPH PARISI; MR LUXMORE (A PSEUDONYM)

1. In October 2000, Taskforce Kayak commenced, targeting the drug operations of Mr Antonios (Tony) Mokbel and his associates.¹
2. Operation 1 was a major drug investigation into the importation, manufacture and distribution of various drugs including ecstasy, cocaine, amphetamine, lysergic acid diethylamide (LSD) and ephedrine.² The investigation identified Mr Mokbel as the head of the syndicate, and he was assisted by Mr Luxmore and Mr Joseph Parisi.³
3. During the course of the investigation police utilised a registered informer who attended meetings with Mr Mokbel and Mr Luxmore.⁴ The prosecution case was that Mr Mokbel met with the informer in October 2000, whom he offered to sell a large quantity of ecstasy.⁵ Pursuant to the arrangement, Mr Luxmore, on behalf of Mr Mokbel, met with the informer at various times and supplied him with quantities of methylamphetamine, 3,4-Methylenedioxymethamphetamine (MDMA) and cocaine, in return for payments which were made to Mr Mokbel.⁶
4. The prosecution case depended on tape recorded conversations ██████████ ██████████.⁷
5. The investigation culminated in the arrest of Antonios (Tony) Mokbel, Robrabih Karam, Luxmore and Joseph Parisi on 24 August 2001.⁸
6. Ultimately charges were withdrawn in relation to Milad Mokbel and Mr Karam,⁹ and a nolle prosequi announced with respect to the charges against Tony Mokbel.¹⁰ The case pertaining to Mr Parisi and Mr Luxmore will be addressed below.

¹ Exhibit RC0559 Legal Conflict Report Registered Human Source #21803838, Information supplied relating to the arrest of Mr Cooper, 15 September 2004, 1 [5], VPL.0008.0001.0466.

² Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1, RCMP.0010.0005.0001 @.0008.

³ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1, RCMP.0010.0005.0001 @.0008.

⁴ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1, RCMP.0010.0005.0001 @.0008.

⁵ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1-11, RCMP.0010.0005.0001 @.0008-.0019

⁶ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1-11, RCMP.0010.0005.0001 @.0008-.0019; Un-tendered Statement of Facts, *R v Antonios Mokbel*, undated, 1-4, RCMP.0010.0005.0001 @.0020-.0023.

⁷ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 1-11, RCMP.0010.0005.0001 @.0008-.0019.

⁸ Un-tendered Summary of Evidence, Mokbel, Mr Luxmore, Parisi & Karam, undated, 9, RCMP.0010.0005.0001 @.0017.

⁹ Exhibit RC1130 Issue Cover Sheet and Conflict Report Example Three concerning Rob Karam, 25 September 2014, 2, VGSO.2000.1501.0263 @.0266.

¹⁰ Exhibit RC1131 Issue Cover Sheet and Conflict Report Example Five concerning Antonios Mokbel, 25 September 2014, 6, VGSO.2000.1501.0231 @.0238.

JOSEPH PARISI

The Relevant Cases of Mr Parisi

7. On 15 February 2005, Mr Parisi's matter resolved.¹¹ However, he was nevertheless committed to stand trial in the County Court and reserved his plea.¹² According to Ms Gobbo, this was done pursuant to a deal brokered between the Director of Public Prosecutions (DPP) and Mr Parisi, Mr Luxmore and Tony Mokbel. On 21 May 2007, Ms Gobbo told her handlers that at the end of their committal proceedings, the three aforementioned co-accused all pleaded guilty to their drug trafficking charges.¹³ Ms Gobbo said that due to concern of adverse publicity concerning Mr Mokbel's other outstanding matters, a deal was made with the DPP that the guilty pleas of the co-accused would not be recorded. Mr Parisi reserved his plea, and, according to Ms Gobbo, she (together with barristers for the co-accused) gave an undertaking that despite the reserved plea Mr Parisi was pleading guilty. Ms Gobbo told her handlers that part of the agreement was that if the accused later changed their plea to not guilty the barrister who had provided the undertaking would be a witness against them.¹⁴
8. On 3 July 2007, Ms Gobbo provided further detail as to the undertaking she provided to the court in relation to Mr Parisi's plea of guilty. Ms Gobbo advised her handlers that Mr Parisi had retained Solicitor 2 as his solicitor and had subsequently decided to change his plea to 'not guilty'.¹⁵ Ms Gobbo stated that the DPP had asked her whether she would make a statement and provide evidence against Mr Parisi concerning the change of his plea. Ms Gobbo indicated to her handlers that if she saw Mr Parisi, she would tell him to stick to his original guilty plea.¹⁶ Based on the material reviewed, it is not clear as to whether this advice was ultimately provided by Ms Gobbo to Mr Parisi.
9. On 2 August 2007, following an amendment to the presentment, Mr Parisi was arraigned and pleaded guilty to three counts of trafficking various drugs of dependence; namely, lysergic acid diethylamide (LSD), pseudoephedrine and diazepam.¹⁷

¹¹ Un-tendered Summary of Proceedings, *R v Joseph Parisi*, 7 November 2007, 2 [5], RCMP1.0010.0005.0001 @.0069.

¹² Un-tendered Summary of Proceedings, *R v Joseph Parisi*, 7 November 2007, 3 [6], RCMP1.0010.0005.0001 @.0070. NB Nicola Gobbo later tells police handlers that Joseph Parisi pleaded guilty at committal proceedings, but that due to a deal between Antonios Mokbel and the DPP this was not recorded so as to prevent the guilty plea affecting Antonios Mokbel's other matters.

¹³ Exhibit RC0281 ICR3838 (080), 20 May 2007, 843, VPL.2000.0003.2429; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Anderson, 21 May 2007, 85-89, VPL.0005.0137.0001 @.0085-.0089.

¹⁴ Exhibit RC0281 ICR3838 (080), 20 May 2007, 841, VPL.2000.0003.2427; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Anderson, 21 May 2007, 85-89, VPL.0005.0137.0001 @.0085-.0089.

¹⁵ Exhibit RC0281 ICR3838 (087), 3 July 2007, 960, VPL.2000.0003.2546; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Fox and Sandy White, 3 July 2007, 329-343, VPL.0005.0136.0001 @.0329-.0343.

¹⁶ Exhibit RC0281 ICR3838 (087), 3 July 2007, 960, VPL.2000.0003.2546; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Fox and Sandy White, 3 July 2007, 329-343, VPL.0005.0136.0001 @.0329-.0343.

¹⁷ Un-tendered Reasons for Sentence, *R v Joseph Frank Parisi* [2007] VCC 1123, 1 [2], COR.1011.0001.0082, @.0002 [Restricted]; See also Un-tendered Particulars of Offence, *R v Joseph Parisi*, undated, 1, RCMP1.0010.0005.0001 @.0044.

10. A plea hearing was conducted on 24 August 2007.¹⁸
11. On 31 August 2007, Mr Parisi was sentenced to a total effective sentence of three years' imprisonment.¹⁹ The sentencing judge directed that two years and three months of the sentence be suspended for a period of three years, leaving an immediate term of nine months' imprisonment.²⁰
12. Mr Parisi made an application for leave to appeal against sentence, and leave was granted on 26 October 2007.²¹ He subsequently made an application for leave to abandon his appeal, which was granted on 13 November 2007.²²

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Parisi

13. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo provided legal representation to Mr Parisi between around June 2002 and May 2006.
14. Ms Gobbo appeared at court on behalf of Mr Parisi on the following occasions:
 - 14.1. on 25 June 2002, for a special mention (to adjourn committal hearing);²³
 - 14.2. on 27 June 2002, for a special mention (to adjourn committal hearing);²⁴
 - 14.3. on 28 August 2002, at the Melbourne Magistrates' Court for a committal mention;²⁵

¹⁸ Un-tendered Summary of Proceedings, *R v Joseph Parisi*, 7 November 2007, 5 [13], RCMPI.0010.0005.0001 @.0072.

¹⁹ Un-tendered Reasons for Sentence, *R v Joseph Frank Parisi* [2007] VCC 1123, 5 [19], COR.1011.0001.0082 @.0006; Un-tendered Return of Prisoners Convicted at the Sittings of the County Court held at Melbourne, sentenced on 31 August 2007, Joseph Frank Parisi, undated, 1, RCMPI.0010.0005.0001 @.0063; Un-tendered Victoria Police Criminal History Report, Joseph Parisi, 16 December 2019, VPL.0099.0193.4104.

²⁰ Un-tendered Reasons for Sentence, *R v Joseph Frank Parisi* [2007] VCC 1123, 5 [19], COR.1011.0001.0082 @.0006; Un-tendered Return of Prisoners Convicted at the Sittings of the County Court held at Melbourne, sentenced on 31 August 2007, Joseph Frank Parisi, undated, 1, RCMPI.0010.0005.0001 @.0063; Un-tendered Victoria Police Criminal History Report, Joseph Parisi, 16 December 2019, VPL.0099.0193.4104.

²¹ Un-tendered Application for Leave to Appeal pursuant to s 582 of the *Crimes Act 1958* (Cth), *R v Joseph Parisi*, 26 October 2007, 2 [1], COR.1015.0001.0006 @.0002.

²² Un-tendered Application for Leave to Abandon the Appeal, *R v Parisi* (Supreme Court of Victoria, Court of Appeal, Maxwell P and Nettle and Dodds-Streeton JJA, 13 November 2007), COR.1015.0001.0005; Un-tendered Notification of Result of Appeal or Application, *R v Joseph Parisi*, 13 November 2007, COR.1015.0001.0008.

²³ Exhibit RC1568 Nicola Gobbo fee book 01, 24 July 2002, 52, MIN.5000.7000.0001 @.0052; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 26 July 2002, 5, GMH.0001.0001.0015 @.0005; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

²⁴ Exhibit RC1568 Nicola Gobbo fee book 01, 24 July 2002, 52, MIN.5000.7000.0001 @.0052; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 26 July 2002, 5, GMH.0001.0001.0015 @.0005; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

²⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 August 2002, 22, OPP.0001.0004.0025 @.0046; Un-tendered Summary of Proceedings, *R v Joseph Parisi*, 7 November 2007, 2 [4], RCMPI.0010.0005.0001 @.0069.

- 14.4. on 25 November 2002, at the Melbourne Magistrates' Court for a committal mention;²⁶
- 14.5. on 23 May 2003, at the Melbourne Magistrates' Court for a committal mention;²⁷
- 14.6. on 20 November 2003, at the Melbourne Magistrates' Court for a committal mention;²⁸
- 14.7. on 31 January 2005, 1 February 2005, 2 February 2005, 9 February 2005 and 15 February 2005, at the Melbourne Magistrates Court for a committal hearing;²⁹
- 14.8. on 29 July 2005, at the County Court of Victoria for a mention;³⁰
- 14.9. on 1 August 2005, at the County Court of Victoria for a plea hearing;³¹ and
- 14.10. on 19 April 2006, at the County Court of Victoria for a directions hearing.³²
15. In addition, Ms Gobbo charged fees for the appearances detailed above at [14.1], [14.2], [14.7] and [14.10].³³
16. In addition, on 14 May 2006, Ms Gobbo told her handler that Mr Parisi had discussed his matter with her and had complained about his solicitor (Ms Solicitor 2). According to Ms Gobbo, she told Mr Parisi to 'either fight the charges or help police'.³⁴ It is submitted that, in circumstances where Ms Gobbo had been formally retained as his lawyer, it is open to the

²⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 November 2002, 22, OPP.0001.0004.0025 @.0046; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 25 November 2002, 13, MCV.0001.0001.0001 @.0011.

²⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 May 2003, 22, OPP.0001.0004.0025 @.0046.

²⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 20 November 2003, 22, OPP.0001.0004.0025 @.0046; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 20 November 2003, 15, MCV.0001.0001.0001 @.0013.

²⁹ Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 31 January to 15 February 2002, 17, MCV.0001.0001.0001 @.0015; Un-tendered Nicola Gobbo Fee Book 01, 18 February 2005, 85, MIN.5000.7000.0001 @.0085; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 23 February 2005, 65, GMH.0001.0001.0002 @.0064.

³⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 July 2005, 22, OPP.0001.0004.0025 @.0046.

³¹ NB: there is no other material before the Commission suggesting that the matter proceeded as a plea hearing on this date. Based on the Summary of Proceedings filed with the Court of Appeal, Mr Parisi was arraigned on 2 August 2007 and the plea hearing was conducted on 24 August 2007. Based on LEAP records, nothing to suggest this concerned a separate matter. Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 July 2005, 22, OPP.0001.0004.0025 @.0046.

³² Exhibit RC1568 Nicola Gobbo fee book 01, 30 April 2006, 95, MIN.5000.7000.0001 @.0095; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 1 May 2006, 49, GMH.0001.0001.0002 @.0048; Un-tendered Summary of Proceedings, *R v Joseph Parisi*, 7 November 2007, 2 [4], RCMPI.0010.0005.0001 @.0069.

³³ Exhibit RC1859 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 1 May 2006, 49, GMH.0001.0001.0002 @.0048; Un-tendered Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 23 February 2005, 65, GMH.0001.0001.0002 @.0064; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

³⁴ See "DDI O'Brien adv above 15/05/2008" at Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883.

Commissioner to infer that the advice provided by Ms Gobbo on that date constituted legal advice.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Parisi

17. Ms Gobbo provided information to Victoria Police concerning Mr Parisi during her representation of him, between at least September 2005 and around May 2006. The information provided during that period included:
 - 17.1. Mr Parisi's phone number,³⁵ and the fact that he had two mobile phones³⁶
 - 17.2. Mr Parisi's nickname³⁷
 - 17.3. information concerning Mr Parisi's finances,³⁸ including information concerning payment of his legal fees³⁹
 - 17.4. Identification of Mr Parisi from photographs obtained at Mr Cooper's party on [REDACTED] 2006⁴⁰
 - 17.5. information concerning the nature of the offending and involvement of co-accused⁴¹
 - 17.6. information concerning the strength of the evidence against a co-accused (Mr Mokbel), including the fact that the tape recordings capturing conversations on listening devices were 'devastating' and that Mr Mokbel intended to 'attack the police officers who turn the tapes on and off'⁴²
 - 17.7. that Mr Parisi had said he was not happy having Ms Solicitor 2 as his solicitor⁴³
 - 17.8. information concerning Mr Parisi's court proceedings and instructions, including the fact that he wanted an adjournment for his case,⁴⁴ and the fact that she had 'confidentially negotiated' that Mr Parisi would be pleading guilty to certain charges;⁴⁵

³⁵ Exhibit RC0281 ICR3838 (023), 22 March 2006, 203, VPL.2000.0003.1789; Exhibit RC0283 Information Report SID539, 26 April 2006, 1, VPL.2000.0003.8645.

³⁶ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883. This relevant ICR entry indicates that this information was disseminated to then DDI O'Brien.

³⁷ Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 01 October 2005, 21, VPL.0005.0087.0068 @.0088.

³⁸ Exhibit RC0281 ICR3838 (016), 13 January 2006, 123, VPL.2000.0003.1709.

³⁹ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883. This relevant ICR entry indicates that this information was disseminated to then DDI O'Brien.

⁴⁰ Exhibit RC0281 ICR3838 (023), 20 March 2009, 199, VPL.2000.0003.1785.

⁴¹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

⁴² Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

⁴³ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883. This relevant ICR entry indicates that this information was disseminated to then DDI O'Brien.

⁴⁴ Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 01 October 2005, 21, VPL.0005.0087.0068 @.0088.

⁴⁵ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 01 October 2005, 50-51, VPL.0005.0087.0068 @.0117-.0118.

- 17.9. advice provided by Ms Gobbo to Mr Parisi, including that he should 'either fight the charges of help Police'⁴⁶
 - 17.10. information concerning further misconduct, including the fact that Mr Parisi had apparently received amphetamines from Cooper⁴⁷
 - 17.11. Mr Parisi's relationship with Mr Ketch⁴⁸
 - 17.12. information concerning communication between Mr Parisi, Mr Luxmore, Milad Mokbel and Tony Mokbel, including the fact that the co-accused were not permitted to have contact with each other without a legal representative present. Ms Gobbo told her handlers they would all meet with her as a group once a week to discuss the case and Tony Mokbel's bail application.⁴⁹
18. Ms Gobbo continued to provide information to police concerning Mr Parisi following her representation, until at least 1 December 2007. The information provided by Ms Gobbo during this period included:
- 18.1. Mr Parisi's phone number⁵⁰
 - 18.2. Mr Parisi's association with known associates, including Mr Ketch,⁵¹ Mr Bayeh,⁵² Horty Mokbel,⁵³ Andrew Yamouni⁵⁴
 - 18.3. her opinion [REDACTED]
 - 18.4. Further misconduct being committed by Mr Parisi, including the fact he was using drugs himself⁵⁷ and trafficking drugs to others,⁵⁸ including to Mr Ketch⁵⁹

⁴⁶ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883. This relevant ICR entry indicates that this information was disseminated to then DDI O'Brien.

⁴⁷ Exhibit RC0281 ICR3838 (016), 13 January 2006, 123, VPL.2000.0003.1709.

⁴⁸ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883. This relevant ICR entry indicates that this information was disseminated to then DDI O'Brien.

⁴⁹ Exhibit RC0281 ICR3838 (002), 21 September 2005, 9, VPL.2000.0003.1595; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 21 September 2005, 152-153, VPL.0005.0051.0136 @.0287-.0288.

⁵⁰ Exhibit RC0281 ICR3838 (047), 4 October 2006, 447, VPL.2000.0003.2034. This is disseminated via Exhibit RC0283 Information Report SID901, 13 October 2006, 1, VPL.2000.0003.8895.

⁵¹ Exhibit RC0281 ICR3838 (039), 29 July 2006, 375, VPL.2000.0003.1961; Exhibit RC0281 ICR3838 (040), 1 August 2006, 379, VPL.2000.0003.1965; Exhibit RC0281 ICR3838 (052), 3 November 2006, 540, VPL.2000.0003.2126.

⁵² Exhibit RC0281 ICR3838 (042), 21 August 2006, 402, VPL.2000.0003.1988.

⁵³ Exhibit RC0281 ICR3838 (040), 1 August 2006, 379, VPL.2000.0003.1965; Exhibit RC0281 ICR3838 (049), 19 October 2006, 505, VPL.2000.0003.2091.

⁵⁴ Exhibit RC0281 ICR3838 (068), 2 March 2007, 668, VPL.2000.0003.2254; Exhibit RC0281 ICR3838 (113), 1 December 2007, 1490, VPL.2000.0003.3076.

[REDACTED]

⁵⁷ Exhibit RC0281 ICR3838 (041), 14 August 2006, 393, VPL.2000.0003.1979; Exhibit RC0281 ICR3838 (049), 19 October 2006, 505, VPL.2000.0003.2091; Exhibit RC0281 ICR3838 (052), 10 November 2006, 552, VPL.2000.0003.2138; Exhibit RC0281 ICR3838 (064), 30 January 2007, 619, VPL.2000.0003.2205.

⁵⁸ Exhibit RC0281 ICR3838 (070), 14 Mar, 337, VPL.2000.0003.1923.

⁵⁸ Exhibit RC0281 ICR3838 (070), 14 March 2007, 703, VPL.2000.0003.2289; Exhibit RC0281 ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2334; Exhibit RC0281 ICR3838 (070), 14 March 2007, 707, VPL.2000.0003.2293.

⁵⁹ Exhibit RC0281 ICR3838 (036), 21 June 2006, 337, VPL.2000.0003.1923.

- 18.5. information concerning Mr Parisi's legal representatives⁶⁰ and payment of legal fees⁶¹
- 18.6. the outcome of his court hearing (ie sentence imposed).⁶²

Submissions under Terms of Reference 1 and 2 in relation to Mr Parisi

19. It is submitted that it is open to the Commissioner to find that the case of Mr Parisi may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
20. The extent to which the case of Mr Parisi may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

21. First, Category 1A⁶³ applies in that, between June 2002 and May 2006,⁶⁴ Ms Gobbo acted for Mr Parisi while she was a human source,⁶⁵ and did not disclose same to him.⁶⁶
22. Secondly, Category 1B⁶⁷ applies in that, between September 2005 and May 2006, which was during the period that Ms Gobbo acted for Mr Parisi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁶⁸
23. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁶⁹
24. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁶⁰ Exhibit RC0281 ICR3838 (070), 14 March 2007, 703, VPL.2000.0003.2289; Exhibit RC0281 ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2334.

⁶¹ Exhibit RC0281 ICR3838 (070), 14 March 2007, 703, VPL.2000.0003.2289; Exhibit RC0281 ICR3838 (098), 3 September 2007, 1188, VPL.2000.0003.2774.

⁶² Exhibit RC0281 ICR3838 (098), 31 August 2007, 1179, VPL.2000.0003.2765; Exhibit RC0281 ICR3838 (098), 31 August 2007, 1181, VPL.2000.0003.2767.

⁶³ See Legal Principles Submissions at [249].

⁶⁴ See above analysis at [14]-[16].

⁶⁵ See Legal Principles Submissions at [20].

⁶⁶ See Legal Principles Submissions at [249].

⁶⁷ See Legal Principles Submissions at [249].

⁶⁸ See above analysis at [17].

⁶⁹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

25. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷⁰
 - 25.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Parisi;
 - 25.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Parisi, appropriate disclosure was made; or alternatively
 - 25.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
26. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [25.1] were taken, and accordingly there was the potential for the right of Mr Parisi to a fair trial to have been interfered with.
27. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Parisi and/or his legal representatives.
28. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VG SO and then possibly a court.⁷¹
29. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷²
30. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁷³
31. Category 3A⁷⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁷⁰ See Legal Principles Submissions at [384] and [452]-[457].

⁷¹ See Legal Principles Submissions at [380]-[385].

⁷² See Legal Principles Submissions at [351], [362]-[373].

⁷³ See Legal Principles Submissions at [351], [374].

⁷⁴ See Legal Principles Submissions at [465].

32. Category 3B⁷⁵ applies in that, between September 2005 and May 2006, which was during the period that Ms Gobbo acted for Mr Parisi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁷⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
33. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁵ See Legal Principles Submissions at [465].

⁷⁶ See above analysis at [17].

MR LUXMORE (A PSEUDONYM)

The Relevant Cases of Mr Luxmore

34. On 22 May 2006, Mr Luxmore was arraigned and pleaded guilty to:
 - 34.1. one count of trafficking 3,4-Methylenedioxymethamphetamine (MDMA);
 - 34.2. one count of trafficking methylamphetamine;
 - 34.3. one count of possession of cannabis; and
 - 34.4. one count of possession of methylamphetamine.⁷⁷
35. A plea hearing was conducted in 1 June 2006.⁷⁸
36. On 7 June 2006, Mr Luxmore was sentenced to a total effective sentence of 12 months' imprisonment, to be served by way of an Intensive Corrections Order.⁷⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Luxmore

37. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo provided legal representation to Mr Luxmore in relation to the abovementioned case between June 2002 and around June 2006.
38. Ms Gobbo appeared in court on behalf of Mr Luxmore on the following occasions:
 - 38.1. on 25 June 2002, for a special mention (to adjourn committal proceedings)⁸⁰
 - 38.2. on 27 June 2002, for a special mention (to adjourn committal proceedings)⁸¹
 - 38.3. on 28 August 2002, at the Melbourne Magistrates' Court⁸²

⁷⁷ Un-tendered Presentment No. P01885046, *R v Mark Anthony Mr Luxmore*, 22 May 2006, 1, 3, COR.1017.0004.0002 @.0001, .0003; *R v Mark Anthony Mr Luxmore* [2006] VSC 225, [1].

⁷⁸ Un-tendered Transcript of Proceedings, *R v Mark Anthony Mr Luxmore* (Supreme Court of Victoria, Gillard J, 1 June 2006), COR.1017.0004.0001.

⁷⁹ Un-tendered Presentment No. P01885046, *R v Mark Anthony Mr Luxmore*, 22 May 2006, 1, 3, COR.1017.0004.0002 @.0001; *R v Mark Anthony Mr Luxmore* [2006] VSC 225, [159]; Un-tendered Victoria Police Criminal History Report, Mark Anthony Barker, 14 December 2019, VPL.0099.0193.3215.

⁸⁰ Exhibit RC1568 Nicola Gobbo fee book 01, 24 June 2002, 52, MIN.5000.7000.0001 @.0052; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

⁸¹ Exhibit RC1569 Nicola Gobbo fee book 01, 24 June 2002, 52, MIN.5000.7000.0001 @.0052; Exhibit RC1568 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

⁸² Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 28 August 2002, 12, MCV.0001.0001.0001 @.0010.

- 38.4. on 25 November 2002, at the Melbourne Magistrates' Court for a committal mention⁸³
- 38.5. on 23 May 2003, for a committal mention⁸⁴
- 38.6. on 20 November 2003, for a committal mention⁸⁵
- 38.7. on 1 February 2006, for a mention⁸⁶
- 38.8. on 24 February 2006, for a mention.⁸⁷
39. In addition, she appeared on behalf of Mr Luxmore in an unrelated matter at the Broadmeadows' Magistrates' Court on 10 September 2003.⁸⁸
40. Ms Gobbo charged fees for her appearances on 25 June 2002 and 27 June 2002.⁸⁹
41. Whilst Ms Gobbo's representation of Mr Luxmore may not have been continuous throughout the period, it is submitted that it open to the Commissioner to find that Ms Gobbo provided representation to Mr Luxmore until around June 2006, when she submitted an invoice for fees concerning a 'brief to confer with senior counsel' in relation to Mr Luxmore's case.⁹⁰

The Conduct of Ms Gobbo as a Human Source in relation to Mr Luxmore

42. Ms Gobbo provided information to Victoria Police concerning Mr Luxmore during her representation of him, between at least September 2005 and May 2006. The information during that period included:
 - 42.1. Mr Luxmore's phone number (on at least four occasions)⁹¹ and the fact that he changes numbers regularly⁹²

⁸³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 November 2002, 23, OPP.0001.0004.0025 @.0047; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 25 November 2002, 13, MCV.0001.0001.0001 @.0011.

⁸⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23 May 2003, 23, OPP.0001.0004.0025 @.0047

⁸⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 20 November 2003, 23, OPP.0001.0004.0025 @.0047

⁸⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 1 February 2006, 23, OPP.0001.0004.0025 @.0047

⁸⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 24 February 2006, 23, OPP.0001.0004.0025 @.0047

⁸⁸ Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 10 September 2003, 14, MCV.0001.0001.0001 @.0012.

⁸⁹ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 26 July 2002, 89, GMH.0001.0001.0002 @.0088.

⁹⁰ Exhibit RC1568 Nicola Gobbo fee book 01, 1 June 2006, 96. MIN.5000.7000.0001 @.0096; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 3 June 2006, 23, GMH.0001.0001.0009, @.0023.

⁹¹ Exhibit RC0281 ICR3838 (002), 21 September, 10, VPL.2000.0003.1596; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476; Exhibit RC0281 ICR3838 (012), 10 December 2005, 80, VPL.2000.3000.1666; Exhibit RC281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476; See "DDI O'Brien advised" at Exhibit RC0281 ICR3838 (032), 23 May 2006, 306, VPL.2000.0003.1892.

⁹² See "HS Tasked – report Mr Luxmore change of phone number": Exhibit RC0281 ICR3838 (002), 21 September 2005, 10, VPL.2000.0003.1596.

- 42.2. information concerning the make of his car and personalized registration plates⁹³
- 42.3. Mr Luxmore's nickname⁹⁴
- 42.4. places frequented by Mr Luxmore,⁹⁵ including the location of his gym⁹⁶
- 42.5. information concerning to Mr Luxmore's finances⁹⁷
- 42.6. information regarding Mr Luxmore's relationship with known associates,⁹⁸ including his relationship with Solicitor 2⁹⁹
- 42.7. identification of Mr Luxmore from photographs obtained at Mr Cooper's party on [REDACTED] 2006¹⁰⁰
- 42.8. information concerning the strength of the evidence against a co-accused (Mr Mokbel), including the fact that the tape recordings capturing conversations on listening devices were 'devastating' and that Mr Mokbel intended to 'attack the police officers who turn the tapes on and off'¹⁰¹
- 42.9. that Ms Gobbo had met with Mr Luxmore and spoken to him about plea material¹⁰²
- 42.10. her opinion as to whether [REDACTED], including the fact that [REDACTED]¹⁰³
- 42.11. information regarding misconduct by Mr Luxmore, including:
 - 42.11.1. that he was apparently 'cooking' amphetamines for Mr Mokbel¹⁰⁴

⁹³ Exhibit RC0281 ICR3838 (002), 21 September 2005, 10, VPL.2000.0003.1596; Exhibit RC0281 ICR3838 (030), 2 May 2006, 279, VPL.2000.0003.1858; Exhibit RC0281 ICR3838 (032), 18 May 2006, 303, VPL.2000.0003.1889; Exhibit RC0281 ICR3838 (098), 31 August 2007, 1179, VPL.2000.0003.2765.

⁹⁴ Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606

⁹⁵ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15, VPL.2000.0003.1601.

⁹⁶ Exhibit RC281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476; Exhibit RC0281 ICR3838 (016), 13 January 2006, 123, VPL.2000.0003.1709; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476.

⁹⁷ Exhibit RC0281 ICR3838 (002), 21 September 2005, 10, VPL.2000.0003.1596; Exhibit RC0281 ICR3838 (015), 10 January 2006, 115, VPL.2000.0003.1701; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476.

⁹⁸ Exhibit RC0281 ICR3838 (003), 22 September 2005, 11, VPL.2000.0003.1597; Exhibit RC0283 Information Report SID358, 21 January 2006, 1, VPL.2000.0003.8476; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0281 ICR3838 (084), 13 April 2006, 242, VPL.2000.0003.1828.

⁹⁹ Exhibit RC0281 ICR3838 (002), 21 September 2005, 10, VPL.2000.0003.1596

¹⁰⁰ Exhibit RC0281 ICR3838 (023), 20 March 2006, 199, VPL.2000.0003.1785.

¹⁰¹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

¹⁰² Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606.

¹⁰⁴ Exhibit RC0281 ICR3838 (002), 21 September 2005, 9, VPL.2000.0003.1595; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0281 ICR3838 (011), 9 December 2005, 78, VPL.2000.0003.1664; Exhibit RC0281 ICR3838 (014), 29 December 2005, 103, VPL.2000.0003.1689; Exhibit RC0281 ICR3838 (019), 21 February 2006, 161, VPL.2000.0003.1747; See also Exhibit RC0281 ICR3838 (019), 23 February 2006, 163, VPL.2000.0003.1749; Exhibit RC0281 ICR3838 (021), 6 March 2006, 178, .0009.0001.1764.

- 42.11.2. that he was in breach of his bail conditions by not residing at the address stipulated by his undertaking of bail.¹⁰⁵
43. Ms Gobbo continued to provide information to police concerning Mr Luxmore following her representation of him, until at least 17 December 2008.¹⁰⁶ The information provided by Ms Gobbo during this period included:
- 43.1. Mr Luxmore's relationship with known associates¹⁰⁷
 - 43.2. Mr Luxmore's financial circumstances¹⁰⁸
 - 43.3. the fact that [REDACTED] could provide information regarding Mr Luxmore and his further misconduct¹⁰⁹
 - 43.4. his phone number¹¹⁰
 - 43.5. possible criminal activity being conducted by Mr Luxmore¹¹¹
 - 43.6. the fact that Mr Luxmore was one of five people who had sold properties belonging to Mr Mokbel and had not been charged¹¹²
 - 43.7. her opinion that Mr Luxmore 'definitely should be called to ACC [Australian Crime Commission] hearing to be examined',¹¹³ and the fact that Mr Luxmore was worried about being summonsed to a coercive hearing and having to justify his lifestyle while being unemployed¹¹⁴
 - 43.8. [REDACTED]
 - 43.9. That [REDACTED] would be able to implicate [REDACTED], Mr Finn and Mr Luxmore regarding Operation [REDACTED].¹¹⁶

Submissions under Terms of Reference 1 and 2 in relation to Mr Luxmore

44. It is submitted that it is open to the Commissioner to find that the case of Mr Luxmore may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

¹⁰⁵ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0281 ICR3838 (002), 21 September 2005, 9, VPL.2000.0003.1595.

¹⁰⁶ Exhibit RC0281 ICR2958 (049), 17 December 2008, 785, VPL.2000.0003.1525.

¹⁰⁷ Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907; Exhibit RC0281 ICR3838 (097), 27 August 2007, 1154, VPL.2000.0003.2740; Exhibit RC0281 ICR3838 (105), 17 October 2007, 1307, VPL.2000.0003.2893; Exhibit RC0281 ICR3838 (112), 24 November 2007, 1451, VPL.2000.0003.3037.

¹⁰⁸ Exhibit RC0281 ICR3838 (037), 8 July 2006, 352, VPL.2000.0003.1938; Exhibit RC0281 ICR3838 (114), 4 December 2007, 1501, VPL.2000.0003.3087.

¹⁰⁹ Exhibit RC0281 ICR3838 (047), 8 October 2006, 455, VPL.2000.0003.2041.

¹¹⁰ Exhibit RC0281 ICR3838 (050), 22 October 2006, 515, VPL.2000.0003.2101; Exhibit RC0283 Information Report SID966, 22 October 2006, VPL.0009.0002.0601.

¹¹¹ Exhibit RC0281 ICR3838 (058), 24 December 2006, 594, VPL.2000.0003.2180.

¹¹² Exhibit RC0281 ICR3838 (092), 24 July 2007, 1057, VPL.2000.0003.2643.

¹¹³ Exhibit RC0281 ICR3838 (096), 24 August 2007, 1145, VPL.2000.0003.2731.

¹¹⁴ Exhibit RC0281 ICR3838 (097), 27 August 2007, 1154, VPL.2000.0003.2740.

¹¹⁵ Exhibit RC0281 ICR2958 (001), 29 January 2008, 10, VPL.2000.0003.0750.

¹¹⁶ Exhibit RC0281 ICR2958 (049), 17 December 2008, 785, VPL.2000.0003.1525.

45. The extent to which the case of Mr Luxmore may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

46. First, Category 1A¹¹⁷ applies in that, between June 2002 and June 2006,¹¹⁸ Ms Gobbo acted for Mr Luxmore while she was a human source,¹¹⁹ and did not disclose same to him.¹²⁰
47. Secondly, Category 1B¹²¹ applies in that, between September 2005 and May 2006, which was during the period that Ms Gobbo acted for Mr Luxmore in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.¹²²
48. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹²³
49. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

50. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²⁴
- 50.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Luxmore;
- 50.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Luxmore, appropriate disclosure was made; or alternatively

¹¹⁷ See Legal Principles Submissions at [249].

¹¹⁸ See above analysis at [38], [40], [41].

¹¹⁹ See Legal Principles Submissions at [20].

¹²⁰ See Legal Principles Submissions at [239].

¹²¹ See Legal Principles Submissions at [249].

¹²² See above analysis at [42].

¹²³ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹²⁴ See Legal Principles Submissions at [384] and [452]-[457].

- 50.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
51. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [50.1] were taken, and accordingly there was the potential for the right of Mr Luxmore to a fair trial to have been interfered with.
52. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Luxmore and/or his legal representatives.
53. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²⁵
54. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²⁶
55. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹²⁷
56. Category 3A¹²⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
57. Category 3B¹²⁹ applies in that, between September 2005 and May 2006, which was during the period that Ms Gobbo acted for Mr Luxmore in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,¹³⁰ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
58. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²⁵ See Legal Principles Submissions at [380]-[385].

¹²⁶ See Legal Principles Submissions at [351], [362]-[373].

¹²⁷ See Legal Principles Submissions at [351], [374].

¹²⁸ See Legal Principles Submissions at [465].

¹²⁹ See Legal Principles Submissions at [465].

¹³⁰ See above analysis at [42].

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT PUBLISHED

CASE STUDY: GIUSEPPE MANNELLA

The Relevant Case of Mr Mannella

1. The case addressed in this case study arose for consideration as part of Stage 5 in the methodology of Counsel Assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 5 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
2. The one relevant case of Mr Mannella concerns his conviction before the Melbourne Magistrates' Court on 4 October 2007 in relation to possession of an unregistered general category handgun, and possession of a prohibited weapon without exemption or approval.¹ The offending took place on 21 April 2005.²
3. Mr Mannella was sentenced to a term of imprisonment of one month, and a forfeiture order was made.³

Ms Gobbo's Legal Representation of Mr Mannella

4. Material before the Commission indicates that Ms Gobbo represented Mr Mannella and appeared on his behalf on 4 October 2007.⁴

The Conduct of Ms Gobbo as a Human Source in relation to Mr Mannella

5. Material before the Commission records many hundreds of references to Mr Mannella in the context of Ms Gobbo's provision of information to police (in her capacity as a human source), from as early as 25 January 2006.⁵ Such information variously included references to Mr Mannella's association with other persons of interest to police,⁶ drug importation and other suspected

¹ Un-tendered Victoria Police Criminal History Report, Giuseppe Mannella, 14 December 2019, VPL.0099.0193.3441.

² Un-tendered Certified Extract of Court Order, *CDPP v Giuseppe Manella*, 4 October 2007, COR.1012.0001.0001.

³ Un-tendered Certified Extract of Court Order, *CDPP v Giuseppe Manella*, 4 October 2007, COR.1012.0001.0001; Un-tendered, Victoria Police Criminal History Report, Giuseppe Mannella, 14 December 2019, VPL.0099.0193.3441.

⁴ Exhibit RC1841 Magistrates' Court of Victoria Report Persons represented by Ms Nicola Gobbo, 16 July 2008, 20, MCV.0001.0001.0001 @.0018; Un-tendered Certified Extract of Court Order, *CDPP v Giuseppe Manella*, 4 October 2007, COR.1012.0001.0001.

⁵ Exhibit RC0281 ICR3838 (016), 25 January 2006, 134, VPL.2000.0003.1720.

⁶ Exhibit RC0281 ICR3838 (065), 7 February 2007, 628, VPL.2000.0003.2214; Exhibit RC0281 ICR3838 (098), 6 September 2007, 1197, VPL.2000.0003.2783.

criminal activity.⁷ On 3 October 2007, the day before she appeared on his behalf at the Melbourne Magistrates' Court, she is recorded as referring to his trial and association with drug importation activities in communication with her handler.⁸

Submissions under Terms of Reference 1 and 2 in relation to Mr Mannella

6. It is submitted that it is open to the Commissioner to find that the case of Mr Mannella may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
7. The extent to which the case of Mr Mannella may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

8. First, Category 1A⁹ applies in that, on 4 October 2007,¹⁰ Ms Gobbo acted for Mr Mannella while she was a human source,¹¹ and did not disclose same to him.¹²
9. Secondly, Category 1B¹³ applies in that, before and/or during the period that Ms Gobbo acted for Mr Mannella in relation to the case, she provided information in relation to him to members of Victoria Police.¹⁴
10. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁵
11. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷ Exhibit RC0281 ICR3838 (052), 5 November 2006, 541-542, VPL.2000.0003.2127-2128; Exhibit RC0281 ICR3838 (072), 27 March 2007, 738, VPL.2000.0003.2324; Exhibit RC0281 ICR3838 (075), 21 April 2007, 804 VPL.2000.0003.2390.

⁸ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1258, VPL.2000.0003.1720.

⁹ See Legal Principles Submissions at [249].

¹⁰ See above analysis at [4].

¹¹ See Legal Principles Submissions at [20].

¹² See Legal Principles Submissions at [239].

¹³ See Legal Principles Submissions at [249].

¹⁴ See above analysis at [5].

¹⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Conduct of Victoria Police

12. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁶
 - 12.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mannella;
 - 12.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mannella, appropriate disclosure was made; or alternatively
 - 12.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
13. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [12.1] were taken, and accordingly there was the potential for the right of Mr Mannella to a fair trial to have been interfered with.
14. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mannella and/or his legal representatives.
15. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁷
16. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁸
17. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.¹⁹
18. Category 3A²⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
19. Category 3B²¹ applies in that, before and/or during the period Ms Gobbo acted for Mr Mannella, she provided information in relation to him to members of

¹⁶ See Legal Principles Submissions at [384] and [452]-[457].

¹⁷ See Legal Principles Submissions at [380]-[385].

¹⁸ See Legal Principles Submissions at [351], [362]-[373].

¹⁹ See Legal Principles Submissions at [351], [374].

²⁰ See Legal Principles Submissions at [465].

²¹ See Legal Principles Submissions at [465].

Victoria Police,²² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

20. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²² See above analysis at [5].

CASE STUDY: GEORGINA MATTA; ROBIN TAYLOR

GEORGINA MATTA

The Relevant Cases of Ms Matta

1. As outlined below, as a result of the investigations concerning Operations Piler and Sword, Ms Matta and her husband were both arrested and charged with drug related offences.¹
2. As outlined below, the prosecution case against both Mr Taylor and Ms Matta relied on the evidence of Mr Bickley.²
3. On 31 July 2009, Ms Matta entered a plea of guilty to one count of trafficking anabolic and androgenic steroidal agents and one count of possession of cannabis.³
4. On the same date, she was sentenced to a total effective sentence of 12 months' imprisonment, with seven months of the sentence wholly suspended for a period of 12 months.⁴

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Ms Matta

5. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Ms Matta during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Ms Matta

6. In addition, there is nothing to suggest that Ms Gobbo provided any information to Victoria Police concerning Ms Matta.

¹ Un-tendered Summary of Evidence, *Police v Robin Taylor*, 25, RCMP.0070.0003.0016 @ 0025.

² Un-tendered Presentment W01641779.1, *Police v Robin Taylor*, 61, RCMP.0070.0003.0016 @ 0061; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, COM.0067.0001.0002 @ 0003.

³ Un-tendered, *The Queen v Georgina Alexandra Matta* [2009] VCC, 1 [1]-[2], RCMP.0070.0003.0006 @ 0093.

⁴ Un-tendered, *The Queen v Georgina Alexandra Matta* [2009] VCC, 7 [35], RCMP.0070.0003.0006 @ 0099; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', 'Georgina Matta', 14 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.3484.

7. However, as mentioned above, Mr Bickley was a prosecution witness against both Mr Taylor and Ms Matta.⁵

Relevant Conduct in relation to Mr Bickley

8. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Ms Matta's case. For the reasons set out in the Case Study in relation to Mr Bickley, it is submitted that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.
9. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.
10. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Ms Matta, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Ms Matta may have been deprived of any opportunity to object to the admissibility of this evidence.
11. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁶ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁷

Submissions under Terms of Reference 1 and 2 in relation to Ms Matta

12. It is submitted that it is open to the Commissioner to find that the case of Ms Matta may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
13. The extent to which the case of Ms Matta may have been affected can be measured by virtue of the following matters.

⁵ Un-tendered Presentment W01641779.1, *Police v Robin Taylor*, 61, RCMP1.0070.0003.0016 @ 0061; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, COM.0067.0001.0002 @.0003.

⁶ See Legal Principles Submissions at [210].

⁷ See Legal Principles Submissions at [212]-[213].

Conduct of Ms Gobbo

14. First, Category 2A⁸ applies in that evidence relied upon by the prosecution in Ms Matta's case, namely the evidence of Mr Bickley,⁹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁰
15. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹¹
 - 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Ms Matta;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Ms Matta, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Ms Matta to a fair trial to have been interfered with.
18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Ms Matta and/or her legal representatives.
19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²
20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹³

⁸ See Legal Principles Submissions at [249].

⁹ See above analysis at [7] and [8]-[10].

¹⁰ See Legal Principles Submissions at [196]-[222].

¹¹ See Legal Principles Submissions at [384] and [452]-[457].

¹² See Legal Principles Submissions at [384] and [452]-[457].

¹³ See Legal Principles Submissions at [351], [362]-[373].

21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her guilty plea.¹⁴
22. Category 4A¹⁵ applies in that, as noted above at [14], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
23. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁴ See Legal Principles Submissions at [351], [374].

¹⁵ See Legal Principles Submissions at [465].

ROBIN TAYLOR

The Relevant Case of Mr Taylor

24. In early 2005, the Major Drug Investigation Division of Victoria Police conducted an investigation into the trafficking of steroids, codenamed 'Operation Piler'.¹⁶
25. In early 2007, Purana Taskforce conducted an investigation into the trafficking of cocaine, codenamed 'Operation Sword'.¹⁷
26. As a result of these investigations, Mr Taylor and his wife, Ms Matta, were both arrested and charged with drug related offences.¹⁸ Mr Taylor was also charged with offences concerning the trafficking of steroids¹⁹ and importation of steroid related material.²⁰
27. The prosecution case against both Mr Taylor and Ms Matta relied on the evidence of Mr Bickley.²¹
28. On 28 October 2009, Mr Taylor was arraigned and pleaded guilty to:²²
 - 28.1. two counts of trafficking anabolic and androgenic steroidal agents;
 - 28.2. one count of trafficking cocaine;
 - 28.3. three counts of possession of methylamphetamine, ketamine and anabolic and androgenic steroidal agents;
 - 28.4. one count of being a prohibited person in possession of an unregistered firearm; and
 - 28.5. one count of importing Tier 1 goods (namely stanozolol, testosterone propionate, testosterone isocaproate, testosterone decanoate, and testosterone phenylpropionate) without approval (Commonwealth offence).²³

¹⁶ Un-tendered Statement of Agreed Facts, *The Queen v Georgina Matta*, 40, RCMP.0070.0003.0006 @.0040.

¹⁷ Un-tendered Summary of Evidence, *Police v Robin Taylor*, 20, RCMP.0070.0003.0016 @.0031.

¹⁸ Un-tendered Summary of Evidence, *Police v Robin Taylor*, 25, RCMP.0070.0003.0016 @.0025.

¹⁹ Un-tendered Summary of Evidence, *Police v Robin Taylor*, 20[5], RCMP.0070.0003.0016 @.0020.

²⁰ Un-tendered Crown Summary for Case Conference, *Police v Robin Taylor*, 81, RCMP.0070.0003.0016 @.0081; Un-tendered Summary of Prosecution Opening, *Police v Robin Taylor*, 110, RCMP.0070.0003.0016 @.0110.

²¹ Un-tendered Presentment W01641779.1, *Police v Robin Taylor*, 61, RCMP.0070.0003.0016 @.0061; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, COM.0067.0001.0002 @.0003.

²² Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, COM.0067.0001.0002 @.0003.

²³ Un-tendered Reasons for sentence, *DPP v Taylor, Robin* [2010] VCC 0914UR, 1 [2] - [5], COR.1011.0001.0117 @.0002.

29. On 15 January 2010, Mr Taylor was sentenced to a total effective sentence of seven years and eight months, with a non-parole period of four years' imprisonment and a recognisance release order on the Commonwealth count.²⁴

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Taylor

30. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Mr Taylor during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Taylor

31. In addition, there is nothing to suggest that Ms Gobbo provided any information to Victoria Police concerning Mr Taylor.
32. However, as mentioned above, Mr Bickley was a prosecution witness against both Mr Taylor and Ms Matta.²⁵

Relevant Conduct in relation to Mr Bickley

33. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Mr Taylor's matter. For the reasons set out in the Case Study in relation to Mr Bickley, it is submitted that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.
34. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.
35. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Mr Taylor, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Taylor may have been deprived of any opportunity to object to the admissibility of this evidence.
36. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a

²⁴ Un-tendered Reasons for sentence, *DPP v Taylor, Robin* [2010] VCC 0914UR, 22 [112], COR.1011.0001.0117 @ 0024; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', 'Robin James Keddie', 20 January 2020, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0098.0013.0185.

²⁵ Un-tendered Presentment W01641779.1, *Police v Robin Taylor*, 61, RCMP1.0070.0003.0016 @ 0061; Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, COM.0067.0001.0002 @ 0003.

matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,²⁶ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.²⁷

Submissions under Terms of Reference 1 and 2 in relation to Mr Taylor

37. It is submitted that it is open to the Commissioner to find that the case of Mr Taylor may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
38. The extent to which the case of Mr Taylor may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

39. First, Category 2A²⁸ applies in that evidence relied upon by the prosecution in Mr Taylor’s case, namely the evidence of Mr Bickley,²⁹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.³⁰
40. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

41. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³¹
 - 41.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Taylor;
 - 41.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Taylor, appropriate disclosure was made; or alternatively
 - 41.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor’s Office (VGSO) and then possibly a court.

²⁶ See Legal Principles Submissions at [210].

²⁷ See Legal Principles Submissions at [212]-[213].

²⁸ See Legal Principles Submissions at [249].

²⁹ See above analysis at [27] and [33]-[35].

³⁰ See Legal Principles Submissions at [249].

³¹ See Legal Principles Submissions at [384] and [452]-[457].

42. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [41.1] were taken, and accordingly there was the potential for the right of Mr Taylor to a fair trial to have been interfered with.
43. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Taylor and/or his legal representatives.
44. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³²
45. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³³
46. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁴
47. Category 4A³⁵ applies in that, as noted above at [39], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
48. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³² See Legal Principles Submissions at [380]-[385].

³³ See Legal Principles Submissions at [351], [362]-[373].

³⁴ See Legal Principles Submissions at [351], [374].

³⁵ See Legal Principles Submissions at [465].

CASE STUDY: ANTONIOS (TONY) MOKBEL

The Relevant Cases of Mr Mokbel

1. The relevant matters concerning Mr Antonios (Tony) Mokbel related to drug offences for which he was charged between 2001 and 2007, and comprised of the following three cases:
 - 1.1. Presentment (not numbered), arising from Operation Plutonium (Plutonium Case)¹
 - 1.2. Presentment C0907076, arising from Operation Orbital and Operation Quills (Orbital/Quills Case)²
 - 1.3. Presentment/indictment C0705786.11, arising from Operation Magnum (Magnum Case).³
2. Other relevant operations include Operation Kayak,⁴ Operation Landslip,⁵ Operation Matchless⁶ and Operation Spake.⁷
3. On 31 March 2006, following a finding of guilt at trial, Mr Mokbel was sentenced in relation to the Plutonium Case.⁸
4. On 3 July 2012, following the entry of a plea of guilty to various charges, he was sentenced in relation to the Orbital/Quills Case and the Magnum Case.⁹
5. As part of the plea deal, the prosecution announced a *nolle prosequi* in relation to charges in each of Operations Kayak, Landslip, Matchless, and Spake.¹⁰ That is, the resolution of the Orbital/Quills Case and the Magnum Case occurred in the context of charges arising from the four other operations being discontinued.

¹ *R v Mokbel* [2006] VSC 119; Un-tendered Indictment, *R v Antonios Mokbel*, 2005, RCMP.0009.0002.0075.

² *R v A Mokbel* (sentence) [2012] VSC 255; Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 1-5, RCMP.0010.0002.0002 @.0009-.0013.

³ *R v A Mokbel* (sentence) [2012] VSC 255; Un-tendered Presentment No. C0705786.11: *R v Antonios Mokbel*, 2010, 1-8, RCMP.0010.0002.0002 @.0001-0008.

⁴ Un-tendered Presentment No. P01884825, *R v Antonios Mokbel*, 2006, 1, RCMP.0010.0005.0001 @.0007

⁵ Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMP.0010.0005.0002 @.0001.

⁶ Un-tendered Ruling, *R v A Mokbel & Ors (Matchless) (Ruling)* [2011] VSC 14T, 1-6, RCMP.0010.0005.0003 @.0088-.0093.

⁷ *R v Mokbel, Finn & Finn (Spake) (Ruling)* [2011] VSC 17.

⁸ *R v Mokbel* [2006] VSC 119, [115].

⁹ *R v A Mokbel* (sentence) [2012] VSC 255, [96]-[101].

¹⁰ Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 12 [44], RCMP.0010.0002.0002 @.0127: The Crown will announce nolle prosequis for the Presentment Numbers P01884825 (Kayak), C0806384 (Matchless), C0806379 (Landslip) and C0706005.1 (Toolern Vale/Spake): RCMP.0010.0002.0002; *R v Mokbel (Change of Pleas)* [2012] VSC 86, [1], [79]; *R v A Mokbel* (sentence) [2012] VSC 255, [2]; Exhibit RC1899 Corrections Victoria Intelligence Service Remand Sentence History, Antonio Mokbel, 29 June 2017, CNS.0001.0009.0213; Un-tendered Confidential Affidavit of John Ross Champion SC, 2 August 2016, 31, COR.1000.0001.0116 @.0031. The transcript suggests that although the Crown announced the entry of a nolle in relation to the various matters, no formal document was filed, which was consistent with the practice at the time: Exhibit RC1909 Letter from Jason Ong of the Office of Public Prosecutions to Solicitors Assisting the Royal Commission into the Management of Police Informants, 29 May 2019, RCMP.0119.0003.0001.

The Plutonium Case

6. On 24 August 2001, Mr Mokbel was arrested and charged with being knowingly concerned in the importation of a trafficable quantity of cocaine from Mexico into Australia between 13 October 2000 and 1 December 2000.¹¹
7. The prosecution case was that Mr Mokbel was the principal organiser, financier and overseer of the joint criminal enterprise, involving four co-accused; namely, Mr U, Sonny Schmidt, Pale Schmidt and Ron Cassar.¹² The prosecution case relied on the evidence of Mr U, who gave an undertaking to give evidence against Mr Mokbel.¹³
8. Following committal proceedings in the Magistrates' Court in November 2004, Mr Mokbel entered a plea of not guilty and was committed to stand trial in the Supreme Court.¹⁴
9. On 1 February 2006, the trial commenced, and on 16 March 2006 the defence closed its case.¹⁵ Mr Mokbel was represented by Mr Con Heliotis QC and Ms Gobbo during the trial.¹⁶
10. On 20 March 2006, Mr Mokbel failed to appear at his trial and a warrant was issued for his arrest.¹⁷
11. On 28 March 2006, the jury returned a verdict of guilty.¹⁸
12. On 31 March 2006, he was sentenced, in absentia, to 12 years' imprisonment with a non-parole period of nine years.¹⁹
13. On 5 June 2007, Mr Mokbel was arrested in Greece and the Commonwealth Attorney-General made an application for his extradition to Australia.²⁰ Mr Mokbel made various applications seeking to avoid extradition.²¹ He was eventually extradited to Australia and arrived in Melbourne on 17 May 2008, at which time he commenced serving his sentence in relation to the Plutonium Case.²²
14. In October 2008, Mr Mokbel made an application for a stay of proceedings on the basis that there had been an abuse of process relating to his extradition, which was refused.²³ In May 2009, Mr Mokbel applied for leave to appeal

¹¹Un-tendered Indictment, *R v Antonios Mokbel*, 2005, RCMP1.0009.0002.0075; *R v A Mokbel (sentence)* [2012] VSC 255, [12]; Un-tendered Summary of Prosecution Opening, *R v Antonios Mokbel*, 28 January 2005, 1, RCMP1.0009.0002.0085 @.0085.

¹² Un-tendered Summary of Prosecution Opening, *R v Antonios Mokbel*, 28 January 2005, RCMP1.0009.0002.0085; *R v Mokbel* [2006] VSC 119, [26]; *R v Mokbel* [2010] VSCA 11, [47].

¹³ Un-tendered Indictment, *R v Antonios Mokbel*, 2005, RCMP1.0009.0002.0075.

¹⁴ *R v Mokbel* [2006] VSC 119, [65].

¹⁵ *R v Mokbel* [2006] VSC 119, [5].

¹⁶ See Chapter 10 of the Narrative Submissions.

¹⁷ *R v Mokbel* [2006] VSC 119, [6].

¹⁸ *R v Mokbel* [2006] VSC 119, [1].

¹⁹ *R v Mokbel* [2006] VSC 119, [111]- [115]; Un-tendered Victoria Police Criminal History Report, Anthony Mokbel, 12 December 2019, 3, VPL.0099.0193.3550 @.3552.

²⁰ Un-tendered Prosecution Opening (Facts) on Plea in relation to Operation Magnum, 21 May 2012, 34 [128], RCMP1.0010.0002.0002 @.0047; Un-tendered Prosecution Submissions on Plea, 23 May 2012, 7 [16], RCMP1.0010.0002.0002 @.0122.

²¹ *Mokbel v DPP (Vic) & Ors* [2008] VSC 433, [9].

²² See Chronology of Procedural History at Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 36, RCMP1.0010.0002.0002 @.0151.

²³ *Mokbel v DPP (Vic) & Ors* [2008] VSC 433.

against conviction and sentence before the Victorian Court of Appeal, which was dismissed.²⁴ In 2010, he applied for special leave to appeal before the High Court of Australia, which was refused.²⁵

The Orbital/Quills Case and the Magnum Case

The Relevant Case in relation to Operation Orbital

15. On 25 October 2005, Mr Mokbel was arrested and charged with incitement to import a commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA) between June and July 2005, arising from an Australian Federal Police (AFP) investigation (codenamed 'Operation Orbital').²⁶
16. The prosecution case was that Mr Mokbel sought to import MDMA through dealings with two persons, who were actually undercover AFP officers.²⁷ The case against him effectively depended on the evidence of the two undercover officers and the evidence obtained in Operation Quills.²⁸
17. On 10 July 2006, the committal proceedings were adjourned sine die. Mr Mokbel was ultimately committed to stand trial on the Orbital matter in March 2009.²⁹

The Relevant Case in relation to Operation Quills

18. In June 2007, Mr Mokbel was charged with trafficking MDMA in a large commercial quantity between February and August 2005,³⁰ being an offence arising from Operation Quills.³¹
19. Details of the prosecution case concerning Operation Quills is outlined in the case study of Mr Bickley. The prosecution case was that Mr Mokbel formed a relationship with Mr Bickley [REDACTED] the director and employee of a company manufacturing chemical products, and bought chemicals [REDACTED].³² It was alleged that Mr Mokbel arranged for the purchase and installation of two pills presses which were installed at the company's premises, and later arranged for the purchase of a third pill press [REDACTED].³³

²⁴ *R v Mokbel* [2010] VSCA 11.

²⁵ *Mokbel v The Queen* [2010] HCATrans 329.

²⁶ Un-tendered Prosecution Opening (Facts) on Plea Operations Quills and Orbital, 21 May 2012, 29 [116], RCMP.0010.0002.0002 @.0114; Chronology of Procedural History at Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 35, RCMP.0010.0002.0002 @.0150; Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 1-5, RCMP.0010.0002.0002 @.0009-.0013.

²⁷ Un-tendered Prosecution Opening (Facts) on Plea Operations Quills and Orbital, 21 May 2012, 16 [67], RCMP.0010.0002.0002 @.0101; Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 6-7 [16], RCMP.0010.0002.0002 @.0121-.0122.

²⁸ *R v A Mokbel (sentence)* [2012] VSC 255, [22]-[25], [82].

²⁹ See Chronology of Procedural History at Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 36, RCMP.0010.0002.0002 @.0151.

³⁰ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 1-5, RCMP.0010.0002.0002 @.0009-.0013; *R v A Mokbel (sentence)* [2012] VSC 255, [15].

³¹ See Chronology of Procedural History at Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 36, RCMP.0010.0002.0002 @.0151.

³² Un-tendered Prosecution Opening (Facts) on Plea Operations Quills and Orbital, 21 May 2012, 1-30, RCMP.0010.0002.0002 @.0086-.0115.

³³ Un-tendered Prosecution Opening (Facts) on Plea Operations Quills and Orbital, 21 May 2012, 1-30, RCMP.0010.0002.0002 @.0086-.0115.

20. The prosecution case against Mr Mokbel in relation to Operation Quills depended on the evidence of Mr Cooper,³⁴ Mr Bickley,³⁵ [REDACTED]
21. On 27 May 2009, Mr Mokbel was committed to stand trial on the Quills matter.³⁸

The Relevant Case in relation to Operation Magnum

22. In June 2007, Mr Mokbel was charged with drug trafficking offences arising from Operation Magnum, committed after he absconded from the trial regarding the Plutonium Case, and whilst his whereabouts was unknown.³⁹ There were fifteen co-accused in relation to that operation.⁴⁰
23. Details of the prosecution case concerning Operation Magnum are set out in the case study concerning Mr David Tricarico, Mr Elk and Mr Chafic Issa. The prosecution case was that Mr Mokbel managed the enterprise, and arranged for methylamphetamine to be manufactured and delivered to co-accused, Mr Joseph Mansour and Mr Bartholomew Rizzo, who then on sold it.⁴¹ The prosecution case relied on the evidence of [REDACTED]⁴² and a registered informer.⁴³
24. On 23 October 2009, Mr Mokbel was committed to stand trial on the Magnum matter.⁴⁴
25. Mr Mokbel made an application to permanently stay proceedings in the Orbital/Quills Case, which was subsequently refused in August 2010.⁴⁵ An

³⁴ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP.0010.0002.0002 @.0010; *R v Mokbel (Change of Pleas)* [2012] VSC 86, [42]-[43]; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001.

³⁵ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP.0010.0002.0002 @.0010; *R v Mokbel (Change of Pleas)* [2012] VSC 86, [42]-[43]; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 4, OPP.0056.0001.0001.

³⁶ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP.0010.0002.0002 @.0010.

³⁷ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP.0010.0002.0002 @.0010; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5, OPP.0056.0001.0001.

³⁸ See Chronology of Procedural History at Un-tendered Prosecution submissions on plea, *R v Antonios Mokbel*, 23 May 2012, 36, RCMP.0010.0002.0002 @.0151.

³⁹ Un-tendered Prosecution Submissions on Plea, 23 May 2012, 7 [16], RCMP.0010.0002.0002 @.0122; Un-tendered Presentment No. C0705786.11: *R v Antonios Mokbel*, 2010, 1-8, RCMP.0010.0002.0002 @.0001-0008; *R v A Mokbel (sentence)* [2012] VSC 255, [34]-[43].

⁴⁰ Namely; Bartholomew Rizzo, Joseph Mansour, Chafic Issa, Mr Elk, Andrew Ryan, Christopher Ferraro, David Tricarico, Jamie Saro, Robert Bendetti, Foula Pantazis, Evette Zeidan, Youseff Zeidan, Yvonne Warfe, Angela Nissirios and Bassillios Pantazis.

⁴¹ *R v A Mokbel (sentence)* [2012] VSC 255, [34]-[43]; Un-tendered Prosecution Opening (Facts) on Plea in relation to Operation Magnum, 21 May 2012, 2 [4]-[7], RCMP.0010.0002.0002 @.0015

⁴² Un-tendered Statement of [REDACTED], 27 February 2008, VPL.0201.0001.0324.

⁴³ Un-tendered Statement of [REDACTED], 25 April 2007, [REDACTED] refers to a [REDACTED], apparently maintained [REDACTED] *R v A Mokbel (sentence)* [2012] VSC 255, [35]-[36].

⁴⁴ Un-tendered Prosecution Submissions on Plea, 23 May 2012, 18 [66], RCMP.0010.0002.0002 @.0133; Chronology of Procedural History at Un-tendered Prosecution submissions on plea, *R v Antonios Mokbel*, 23 May 2012, 36-37, RCMP.0010.0002.0002 @.0151-0152.

⁴⁵ *DPP v A Mokbel (Orbital & Quills – Ruling No 1)* [2010] VSC 331; Chronology of Procedural History at Un-tendered Prosecution submissions on plea, *R v Antonios Mokbel*, 23 May 2012, 37, RCMP.0010.0002.0002 @.0152.

application to permanently stay proceedings in the Magnum Case was similarly made, and refused, in April 2011.⁴⁶

26. On 18 April 2011, Mr Mokbel was arraigned and entered a plea of guilty to the following three charges in relation to the Orbital/Quills Case and the Magnum Case:
 - 26.1. one count of trafficking in a not less than a large commercial quantity of methylamphetamine between 5 July 2006 and 5 June 2007 (pertaining to Operation Magnum);
 - 26.2. one count of trafficking in a not less than a large commercial quantity of MDMA between 1 February 2005 and 15 August 2005 (pertaining to Operation Quills); and
 - 26.3. one count of incitement to import a commercial quantity of MDMA between 29 June 2005 and 13 July 2005 (pertaining to Operation Orbital).⁴⁷
27. On 18 October 2011, Mr Mokbel made an application to change his plea, which was refused.⁴⁸
28. A plea hearing was subsequently conducted on 24 May 2012, during which the Director of Public Prosecutions (DPP) announced a *nolle prosequi* in relation to charges in each of Operations Landslip, Matchless, Spake and Kayak.⁴⁹
29. On 3 July 2012, Mr Mokbel was sentenced to a total effective sentence of 30 years' imprisonment, with a non-parole period of 22 years.⁵⁰
30. In November 2012, Mr Mokbel applied for leave to appeal against conviction and sentence before the Victorian Court of Appeal, which was dismissed in May 2013.⁵¹
31. On 6 December 2017, Mr Mokbel filed an application with the Court of Appeal for extension of time,⁵² together with a notice of application for leave to appeal

⁴⁶ *R v Mokbel (Magnum – Ruling No 2 – Stay)* [2011] VSC 128; Chronology of Procedural History at Un-tendered Prosecution submissions on plea, *R v Antonios Mokbel*, 23 May 2012, 37, RCMP1.0010.0002.0002 @.0152.

⁴⁷ Chronology of Procedural History at Un-tendered Prosecution submissions on plea, *R v Antonios Mokbel*, 23 May 2012, 37, RCMP1.0010.0002.0002 @.0152; Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP1.0010.0002.0002 @.0010.

⁴⁸ *R v Mokbel (Change of Pleas)* [2012] VSC 86.

⁴⁹ Un-tendered Confidential Affidavit of John Ross Champion SC, 2 August 2016, 31, COR.1000.0001.0116 @.0031. Although the Crown announced the entry of a *nolle prosequi* in relation to the various matters, it appears that no formal document was filed, which was apparently consistent with the practice at the time: Exhibit RC1909 Letter from Jason Ong of the Office of Public Prosecutions to Solicitors Assisting the Royal Commission into the Management of Police Informants, 29 May 2019, RCMP1.0119.0003.0001. See also Un-tendered Prosecution Submissions on Plea, *R v Antonios Mokbel*, 23 May 2012, 12 [44], RCMP1.0010.0002.0002 @.0127; *R v Mokbel (Change of Pleas)* [2012] VSC 86, [1], [79]; *R v A Mokbel (sentence)* [2012] VSC 255, [2]; Exhibit RC1899 Corrections Victoria Intelligence Service Remand Sentence History, Antonio Mokbel, 29 June 2017, CNS.0001.0009.0213; Un-tendered Confidential Affidavit of John Ross Champion SC, 2 August 2016, 31, COR.1000.0001.0116 @.0031.

⁵⁰ *R v A Mokbel (sentence)* [2012] VSC 255, [87]-[94]; Un-tendered Victoria Police Criminal History Report, Anthony Mokbel, 12 December 2019, 2-3, VPL.0099.0193.3550 @.3551-.3552.

⁵¹ *R v Mokbel* [2013] VSCA 118; Un-tendered Victoria Police Criminal History Report, Anthony Mokbel, 12 December 2019, 1-2, VPL.0099.0193.3550 @.3550-.3551.

⁵² Un-tendered Application for Extension of Time for Filing and Serving Notice of Application for Leave to Appeal, *Antonios Sajih Mokbel v CDPP & DPP*, 6 December 2017, COR.1003.0001.0001.

- 34.1. Mr Mokbel was charged with conspiring with Mr Cooper [REDACTED] [REDACTED] to manufacture methylamphetamine between February 2001 and August 2001.⁶²
- 34.2. The prosecution alleged that Mr Mokbel supplied glassware to Mr Cooper, who subsequently manufactured methylamphetamine for Mr Mokbel at a laboratory which was moved in November 2001 to [REDACTED] [REDACTED].⁶³ The prosecution case relied on the evidence of Mr Cooper, [REDACTED] and Mr Thomas.⁶⁴
- 34.3. Mr Mokbel was committed to stand trial in June 2009.⁶⁵
35. In relation to Operation Matchless:
 - 35.1. Mr Mokbel was charged with trafficking a large commercial quantity of methylamphetamine between September 2002 and April 2003.⁶⁶
 - 35.2. The prosecution alleged that Mr Cooper manufactured methylamphetamine for Mr Mokbel at a clandestine laboratory in Rye.⁶⁷ Mr Mokbel supplied chemicals to Mr Cooper and met with him to discuss the manufacturing process.⁶⁸ As with Operation Landslip, the prosecution case relied on the evidence of Mr Cooper and Mr Thomas.⁶⁹
 - 35.3. Mr Mokbel was committed to stand trial in June 2009.⁷⁰
36. In relation to Operation Spake:
 - 36.1. Mr Mokbel was charged with trafficking methylamphetamine and MDMA at Toolern Vale between December 2003 and March 2006.⁷¹

⁶² Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMP1.0010.0005.0002 @.0001.

⁶³ Un-tendered Prosecution Opening - Landslip, *R v Mokbel & Ors*, undated, 1-8, RCMP1.0010.0005.0002 @ @.0025-.0051.

⁶⁴ Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMP1.0010.0005.0002 @.0001; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5, OPP.0056.0001.0001.

⁶⁵ Annexure A.

⁶⁶ Un-tendered Presentment No. C0806384, *R v A Mokbel & Ors*, 2009, 1, RCMP1.0010.0005.0003 @.0003; *R v A Mokbel & Ors (Matchless) (Ruling)* [2011] VSC 14.

⁶⁷ Un-tendered Summary of Prosecution Opening Operation Matchless, *R v Mokbel & Ors*, 3 September 2010, 9-11 [33]-[41], RCMP1.0010.0005.0003 @.0019-0021; Un-tendered Revised Summary of Prosecution Opening Operation Matchless, *R v Mokbel & Ors*, 19 April 2011, 14-15 [55]-[58], RCMP1.0010.0005.0003 @.0165-.0166; Exhibit RC1928 Operation Matchless Report, undated, VPL.0203.0001.0090 @.0091.

⁶⁸ Un-tendered Summary of Prosecution Opening Operation Matchless, *R v Mokbel & Ors*, 3 September 2010, 9-11 [33]-[41], RCMP1.0010.0005.0003 @.0019-0021; Un-tendered Revised Summary of Prosecution Opening Operation Matchless, *R v Mokbel & Ors*, 19 April 2011, 14-15 [55]-[58], RCMP1.0010.0005.0003 @.0165-.0166; Exhibit RC1928 Operation Matchless Report, undated, VPL.0203.0001.0090 @.0091.

⁶⁹ Un-tendered Outline of Submissions on Behalf of the Crown in the Separate Trial Application by Kaban Mokbel, *R v Antonios Mokbel & Kaban Mokbel*, [REDACTED] 2010, 3, RCMP1.0010.0005.0002 @.0054; *R v A Mokbel & Ors (Matchless) (Ruling)* [2011] VSC 14; Annexure B at Un-tendered Summary of Prosecution Opening Operation Matchless, *R v Mokbel & Ors*, 3 September 2010, 9-11 [33]-[41], RCMP1.0010.0005.0003 @.0042-0052; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5, OPP.0056.0001.0001.

⁷⁰ *R v Mokbel (Change of Pleas)* [2012] VSC 86, [74].

⁷¹ *R v Mokbel, Finn & Finn (Spake) (Ruling)* [2011] VSC 17, [2]; Un-tendered Presentment No. C0706005.1, *R v Mokbel, Finn & Finn*, 2009, 4, RCMP1.0010.0005.0004 @.0548.

36.2. Details of the prosecution case concerning Operation Spake is outlined in the case study of Mr Matthew Finn and Mr Wayne Finn. The prosecution case was that that Mr Mokbel arranged for Cooper to manufacture methylamphetamine at a property in Toolern Vale, sourced chemicals and equipment for the enterprise through Mr Bickley, and arranged for Wayne Finn to be taught how to manufacture the drugs.⁷² The prosecution case relied on the evidence of Mr Cooper, [REDACTED] and Mr Bickley.⁷³

36.3. Mr Mokbel was committed to stand in March 2009.⁷⁴

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Mokbel

37. There is conflicting material before the Commission as to when Ms Gobbo commenced providing legal representation to Mr Mokbel. For example, Ms Gobbo told her handlers that she first started acting for Mr Mokbel in February 2002.⁷⁵ However, in the *AB & EF v CD* proceedings she admitted that she was appeared on Mr Mokbel's behalf between March 2002 and 29 March 2006, with no mention of any earlier retainer.⁷⁶ In fact, it appears that Ms Gobbo's professional relationship with Mr Mokbel may have commenced as early as September 2001, as she is recorded as having appeared on his behalf in the Melbourne Magistrates' Court on 5 September 2001 for a bail application.⁷⁷ In addition, she is recorded as having visited Mr Mokbel in custody in a professional capacity on 8 January 2002 and 12 January 2002.⁷⁸
38. Material before the Commission suggests that Ms Gobbo first became acquainted with Mr Mokbel in the late 1990's. On 16 September 2005, Ms Gobbo told her handlers that she was a Crown witness against Mr Mokbel in 1997 or 1998.⁷⁹ She said that Mr Mokbel was charged with perjury during that period, and that the prosecution alleged Mr Mokbel gave a false statement regarding ownership of a property whilst signing a surety for bail for Horthy Mokbel. According to Ms Gobbo, she was working for Law Firm 1 at the time and was instructed to attend the registry at the Magistrates' Court. She was asked to make a statement about the documents Mr Mokbel provided at the registry, and was subsequently a prosecution witness and cross-examined by Mr Heliotis at a committal hearing and at the trial. Later, during a meeting with

⁷² *R v Mokbel, Finn & Finn (Spake) (Ruling)* [2011] VSC 17; Un-tendered Summary of charges, *Police v Antonios Mokbel*, 21-22, VPL.0204.0010.0036 @.0051-.0052; Un-tendered Operation Spake/Toolern Vale Summary of Prosecution Opening, *R v Mokbel, Finn & Finn*, 3 September 2010, 1-18, RCMP.0010.0005.0004 @.0565-.0582. Mr Wayne Finn and Mr Matthew Finn pleaded guilty to charges in relation to this operation.

⁷³ Un-tendered Presentment No. C0706005.1, *R v Mokbel, Finn & Finn*, 2009, 4, RCMP.0010.0005.0004 @.0548; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2-3, OPP.0056.0001.0001.

⁷⁴ *R v Mokbel (Change of Pleas)* [2012] VSC 86, [74]

⁷⁵ Exhibit RC0281 ICR3838 (003), 26 September 2005, 14, VPL.2000.0003.1600.

⁷⁶ *AB & EF v CD* [2017] VSC 350, [378].

⁷⁷ Exhibit RC1922 Clause 1 – list of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDP between 1/01/1995 and 12/01/2009, undated, CDP.0001.0001.0070.

⁷⁸ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 8 January 2002, 12 January 2002, 8, CNS.0001.0003.0037 @.0044.

⁷⁹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

her handlers, Ms Gobbo stated that these circumstances would 'make the greatest story one day.'⁸⁰

39. It was submitted that Ms Gobbo provided ongoing legal advice and representation to him, on an informal retainer, between 2002 and 2011.⁸¹ It was submitted that his first contact with Ms Gobbo was when she visited him in custody in January or February 2002 and persuaded him to engage her to act as junior counsel.⁸² It was further submitted that Ms Gobbo would oversee his criminal matters and provide him with advice, even if he was represented by other counsel,⁸³ that he was not always provided with invoices and that he would often pay Ms Gobbo in cash.⁸⁴
40. Ms Gobbo appeared at various court hearings on behalf of Mr Mokbel between 2002 and 2006, including bail applications, committal proceedings, subpoena applications, and as junior counsel in the Supreme Court trial in relation to the Plutonium Case. Her appearances on behalf of Mr Mokbel included:
 - 40.1. on 17 April 2002, for a Special Mention⁸⁵
 - 40.2. on 26 April 2002, for Judgment⁸⁶
 - 40.3. on 2 July 2002, for a bail application⁸⁷
 - 40.4. on 15 July 2002, for a bail application⁸⁸
 - 40.5. on 16 July 2002, for a bail application⁸⁹
 - 40.6. on 25 November 2002, for an application and committal mention in the Melbourne Magistrates' Court⁹⁰
 - 40.7. on 18 December 2002, for an application⁹¹
 - 40.8. on 13 January 2003, for a hearing in the Melbourne Magistrates' Court⁹²

⁸⁰ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, VPL.0005.0051.0002 @.0058.

⁸¹ Anonymous Submission 030, 3-4 [3], 8 [18].

⁸² Anonymous Submission 030, 8 [18]; Anonymous Submission 030, Attachment 1, Letter, 14 [12].

⁸³ Anonymous Submission 030, 8 [18].

⁸⁴ Anonymous Submission 030, 9 [20]; Anonymous Submission 030, Attachment 1, Letter, 21 [47], [48].

⁸⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo 17 April 2002, 23, OPP.0001.0004.0025 @.0047.

⁸⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 26 April 2002, 23, OPP.0001.0004.0025 @.0047.

⁸⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 2 July 2002, 23, OPP.0001.0004.0025 @.0047.

⁸⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 July 2002, 23, OPP.0001.0004.0025 @.0047.

⁸⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 July 2002, 23, OPP.0001.0004.0025 @.0047.

⁹⁰ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 November 2002, 23, OPP.0001.0004.0025 @.0047; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 25 November 2002, 13, MCV.0001.0001.0001 @.0011.

⁹¹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 18 December 2002, 23, OPP.0001.0004.0025 @.0047.

⁹² Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 13 January 2003, 13, MCV.0001.0001.0001 @.0011.

- 40.9. on 20 November 2003, for a committal mention⁹³
- 40.10. on 10 December 2004, for a bail application in the Melbourne Magistrates' Court⁹⁴
- 40.11. on 22 July 2005, for a directions hearing⁹⁵
- 40.12. on 1 February 2006, for a mention⁹⁶
- 40.13. on 24 February 2006, for a mention.⁹⁷
41. Ms Gobbo charged fees for a number of the aforementioned appearances, and for other representation in relation to Mr Mokbel's cases, including:
 - 41.1. On 5 May 2002, she marked fees for 'appearances, conferences, preparation and "all work as per schedule" to 30/04/2002' in Mr Mokbel's Commonwealth prosecution and state prosecution.⁹⁸
 - 41.2. On 23 July 2002, she marked fees for a 'brief to appear at subpoena argument on 18/4/02' in the matter of *Police v Tony Mokbel*.⁹⁹ On the same date, she marked fees for a 'brief to appear at special mentions for subpoena argument on 31/5 and 5/7/02' in the matter of *C'wth DPP v Tony Mokbel*.¹⁰⁰
 - 41.3. On 24 July 2002, she marked fees for a 'brief to appear at Supreme Court for bail application on 2/7, 15/7 and 16/7/02' in the matter of *Tony Mokbel v State OPP*.¹⁰¹
 - 41.4. On 24 July 2002, she marked fees for a 'brief to prepare committal proceedings and appear on 25/6/02 and 27/6/02 including 5 days preparation'.¹⁰²
 - 41.5. [REDACTED]
 - 41.6. On 9 September 2002, she marked fees for a 'brief to appear at a Special Mention' in the matter of *Police v Tony Mokbel*.¹⁰⁴

⁹³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 23, OPP.0001.0004.0025 @.0047.

⁹⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 10 December 2004, 23, OPP.0001.0004.0025 @.0047; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 10 December 2004, 17, MCV.0001.0001.0001 @.0015.

⁹⁵ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 July 2002, 23, OPP.0001.0004.0025 @.0047.

⁹⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 1 February 2006, 23, OPP.0001.0004.0025 @.0047.

⁹⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 24 February 2006, 23, OPP.0001.0004.0025 @.0047.

⁹⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 May 2002, 48, MIN.5000.7000.0001 @.0048.

⁹⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 23 July 2002, 52, MIN.5000.7000.0001 @.0052.

¹⁰⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 23 July 2002, 52, MIN.5000.7000.0001 @.0052.

¹⁰¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 24 July 2002, 52, MIN.5000.7000.0001 @.0052.

¹⁰² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 24 July 2002, 52, MIN.5000.7000.0001 @.0052;

Exhibit RC1569 Meldrum & Hyland Barristers, Statement of Account of Ms Nicola Gobbo, 7 March 2019, 88, GMH.0001.0001.0002 @.0088.

¹⁰³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 9 August 2002, 53, MIN.5000.7000.0001 @.0053.

¹⁰⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 9 September 2002, 54, MIN.5000.7000.0001 @.0054.

- 41.7. On 18 October 2002, she marked fees for a 'brief to prepare and appear at a Supreme Court Bail Application on 04/09/2002'.¹⁰⁵
- 41.8. On 31 March 2003, she marked fees for a 'brief to appear at a Bail Variation and Special Mention in 07/03/2003, including conference', in the matter of *Police v Tony Mokbel*.¹⁰⁶
- 41.9. On 18 March 2004, she marked fees for a 'brief to appear at a Special Mention on 12/03/2004, including conferences, preparation and drafting subpoenas', in the matter of *The Police v Tony Mokbel*.¹⁰⁷
- 41.10. On 26 April 2004, she marked fees for a 'brief to appear at a Special mention on 26/04/2004, preparation and attendances at ESD [Ethical Standards Department] on 01/04/2004, 12/04/2004 and 22/04/2004'.¹⁰⁸
- 41.11. On 6 May 2004, she marked fees for a 'brief to appear at a Special Mention' in the matter of *AFP v Tony Mokbel*.¹⁰⁹
- 41.12. On 31 May 2004, she marked fees for a 'brief to prepare material and appear at a Mention on 19/05/2004, County Court on 20/04/2004 and a Committal Mention and Bail Variation on 21/05/2004', in the matter of *Police and ADP v Tony Mokbel*.¹¹⁰
- 41.13. On 29 November 2004, she marked fees for a 'brief to appear at committal proceedings (10 days) including preparation and conference "as per backsheet"' in the matter of *AFP v Antonios Mokbel*.¹¹¹
- 41.14. On 18 February 2005, she marked fees for a 'brief to appear at committal proceedings on 31/01, 01/02, 02/02, 09/02 and 15/02, including preparation', in the matter of *Police v Antonios Mokbel and Joseph Parisi*.¹¹²
- 41.15. On 5 September 2005, she marked fees for an 'appearance at the ACC [Australian Crime Commission] on 17/08/2005' in the matter of Antonios Mokbel and the ACC.¹¹³
- 41.16. On 1 December 2005, she marked fees for a 'brief to appear at the Melbourne Magistrates' Court bail application on 17/11/2005, 22/11/2005 and 23/11/2005, including conferences and preparation', in the matter of *Tony Mokbel v Police*.¹¹⁴
- 41.17. On 2 December 2005, she marked fees for a 'brief to appear in the Supreme Court for bail on 29/11/2005', in the matter of *The Queen v T. Mokbel*.¹¹⁵

¹⁰⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 18 October 2002, 56, MIN.5000.7000.0001 @.0056.

¹⁰⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 31 March 2003, 61, MIN.5000.7000.0001 @.0061.

¹⁰⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 18 March 2004, 72, MIN.5000.7000.0001 @.0072.

¹⁰⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 26 April 2004, 74, MIN.5000.7000.0001 @.0074.

¹⁰⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 16 May 2004, 75, MIN.5000.7000.0001 @.0075.

¹¹⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 31 May 2004, 7, MIN.5000.7000.0001 @.0076.

¹¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 29 November 2004, 83, MIN.5000.7000.0001

@.0083.

¹¹² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 18 February 2005, 85, MIN.5000.7000.0001 @.0085.

¹¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 September 2005, 90, MIN.5000.7000.0001

@.0090.

¹¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 1 December 2005, 93, MIN.5000.7000.0001 @.0093.

¹¹⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 2 December 2005, 93, MIN.5000.7000.0001 @.0093.

- 41.18. On 17 December 2005, she marked fees for a 'brief to appear at the Supreme Court, order S56 proceedings and to inspect subpoenaed documents.'¹¹⁶
- 41.19. On 3 February 2006, she marked fees for a 'brief to draft Form 8A and appear at a Committal Mention' in the matter of the *AFP v Tony Mokbel*.¹¹⁷
- 41.20. On 23 March 2006, she marked fees for a 'brief to appear at the Supreme Court trial (as per backsheet)' in the matter of *The Queen v Antonios Mokbel*.¹¹⁸
- 41.21. On 25 July 2007, she marked fees for a 'brief to advise, confer, examine extradition material and brief foreign lawyers' in the matter of *R v Antonios Mokbel*.¹¹⁹
42. Between January 2002 and November 2005, Ms Gobbo visited Mr Mokbel in custody in a professional capacity on more than 30 occasions.¹²⁰ She recorded one further visit, on 13 February 2009.¹²¹
43. Although Ms Gobbo did not represent Mr Mokbel at any further court hearings following the conclusion of his trial in March 2006, it is clear that she continued to communicate with Mr Mokbel for a number of years, on both a social and professional basis. For example, despite Ms Gobbo's handler, Mr Anderson, advising her that they would prefer that she not represent Mr Mokbel or any of his associates who were arrested around 5 June 2007,¹²² Ms Gobbo continued to have contact with Mr Mokbel, Mr Mokbel's partner, Ms Danielle McGuire, and Mr Mokbel's solicitor, Mirko Bagaric, throughout the extradition process, until his eventual arrival in Melbourne on 17 May 2008.¹²³ Based on the material reviewed by Counsel Assisting, these communications, at least at times, encompassed legal advice. It was submitted that Mr Mokbel believed that Ms Gobbo was acting as his lawyer during this period.¹²⁴
44. The day after Mr Mokbel's arrest in Greece on 5 June 2007, Ms Gobbo told her handler that Ms McGuire had contacted her and wanted her to pass on a

¹¹⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 17 December 2005, 94, MIN.5000.7000.0001 @.0094.

¹¹⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 3 February 2006, 94, MIN.5000.7000.0001 @.0094.

¹¹⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 23 March 2006, 95, MIN.5000.7000.0001 @.0095.

¹¹⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 July 2007, 7, MIN.5000.7000.0103 @.0109.

¹²⁰ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 8 January 2002-13 November 2005, 8-23, CNS.0001.0003.0037 @.0044-.0059.

¹²¹ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 February 2009, 27, CNS.0001.0003.0037 @.0063.

¹²² Exhibit RC0281 ICR3838 (082), 5 June 2007, 881, VPL.2000.0003.2467.

¹²³ Ms Gobbo reported having contact with Ms McGuire on the following occasions: Exhibit RC0281 ICR3838 (083), 12 June 2007, 889, VPL.2000.0003.2475; Exhibit RC0281 ICR3838 (082), 17 June 2007, 908, VPL.2000.0003.2494; Exhibit RC0281 ICR3838 (082), 19 June 2007, 914-915, VPL.2000.0003.2500-VPL.2000.0003.2501; Exhibit RC0281 ICR3838 (084), 26 June 2007, 942, VPL.2000.0003.2528; Exhibit RC0281 ICR3838 (089), 13 July 2007, 1011, VPL.2000.0003.2597; Exhibit RC0281 ICR3838 (112), 22 November 2007, 1439, VPL.2000.0003.3025; Exhibit RC0281 ICR3838 (119), 15 January 2008, 1573, VPL.2000.0003.3159. Ms Gobbo reported having contact with Mr Bagaric on the following occasions: Exhibit RC0281 ICR3838 (089), 14 July 2007, 1015, VPL.2000.0003.2601; Exhibit RC0281 ICR3838 (091), 19 July 2007, 1041, VPL.2000.0003.2627; Exhibit RC0281 ICR3838 (098), 1 September 2007, 1184-1185, VPL.2000.0003.2770-VPL.2000.0003.2771; Exhibit RC0281 ICR2958 (019), 19 July 2007, 292-293, VPL.2000.0003.1032-VPL.2000.0003.1033; Exhibit RC1903 Email chain involving Nicola Gobbo and Mirko Bagaric, 2 - 19 May 2008, 1-3, MIN.5000.0001.2920 @.2920-.2922.

¹²⁴ Anonymous Submission 030, Attachment 1, Letter, 24 [58].

message to members of Mr Mokbel's family that he was 'OK' and 'planning on remaining in Greece for as long as he can.'¹²⁵

45. Ms Gobbo's first contact with Mr Mokbel in Greece involved a 40 minute phone conversation on 10 June 2007.¹²⁶ Thereafter, she continued to have regular phone contact with him, sometimes as often as twice a day, until his eventual extradition to Australia in May 2008.¹²⁷
46. On multiple occasions Ms Gobbo told her handlers that she had been asked by Ms McGuire, Mr Mokbel and Mr Bagaric, to fly to Greece to assist with the process of challenging his extradition.¹²⁸ Although Ms Gobbo declined to do so, in July 2007 she charged fees for a brief to 'advise, confer, examine extradition material and brief foreign lawyers'.¹²⁹
47. Between June 2007 and May 2008, Ms Gobbo told her handlers that Mr Mokbel, Ms McGuire and Mr Bagaric had divulged defence tactics to her concerning the extradition matter¹³⁰ and liaised with her in relation to the progress of the extradition proceedings.¹³¹ In addition, on at least the following occasions during this period Ms Gobbo's assistance was sought in drafting and obtaining documents in relation to the extradition matter:
 - 47.1. On 22 July 2007, Ms Gobbo told her handler that Mr Bagaric had emailed her a list of questions in relation to Mr Mokbel in preparation for his extradition proceeding and requested that she assist in answering the questions. According to Ms Gobbo, the questions concerned Mr Mokbel's history, including the history of his court proceedings and timing of the new charges, and information

¹²⁵ Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2469.

¹²⁶ Exhibit RC0281 ICR3838 (082), 10 June 2007, 886, VPL.2000.0003.2472.

¹²⁷ See, eg, Upon being charged with Marshall murder: Exhibit RC0281 ICR3838 (085), 22 June 2007, 927, VPL.2000.0003.2513. See also Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527; Exhibit RC0281 ICR3838 (088), 7 July 2007, 941, VPL.2000.0003.2581; Exhibit RC0281 ICR3838 (089), 11 July 2007, 1006, VPL.2000.0003.2592; Exhibit RC0281 ICR3838 (089), 14 July 2007, 1016, VPL.2000.0003.2602; Exhibit RC0281 ICR3838 (091), 21 July 2007, 1041, VPL.2000.0003.2627; Exhibit RC0281 ICR3838 (092), 26 July 2007, 1068, VPL.2000.0003.2654; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1130, VPL.2000.0003.2716; Exhibit RC0281 ICR3838 (098), 1 September 2007, 1185, VPL.2000.0003.2771; Exhibit RC0281 ICR3838 (098), 4 September 2007, 1190-1191, VPL.2000.0003.2776-VPL.2000.0003.2777; Exhibit RC0281 ICR3838 (100), 16 September 2007, 1223-1224, VPL.2000.0003.2809-VPL.2000.0003.2810; Exhibit RC0281 ICR3838 (103), 3 October 2007, 1262, VPL.2000.0003.2848; Exhibit RC0281 ICR3838 (108), 5 November 2007, 1362, VPL.2000.0003.2948; Exhibit RC0281 ICR3838 (117), 25 December 2007, 1540, VPL.2000.0003.3126; Exhibit RC0281 ICR3838 (1109), 13 January 2008, 1568, VPL.2000.0003.3154; Exhibit RC0281 ICR3838 (119), 19 January 2008, 1580-1581, VPL.2000.0003.3166-VPL.2000.0003.3167; Exhibit RC0281 ICR2958 (007), 4 March 2008, 73, VPL.2000.0003.0813; Exhibit RC0281 ICR2958 (010), 21 March 2008, 118, VPL.2000.0003.0858; Exhibit RC0281 ICR2958 (016), 25 April 2008, 227, VPL.2000.0003.0967;

¹²⁸ Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2469; Exhibit RC0281 ICR3838 (082), 10 June 2007, 886, VPL.2000.0003.2472; Exhibit RC0281 ICR3838 (089), 3 October 2007, 1263, VPL.2000.0003.2472.

¹²⁹ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 26 July 2007, 73, GMH.0001.0001.0006 @.0073.

¹³⁰ Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527; Exhibit RC0281 ICR3838 (091), 22 July 2007, 1042, VPL.2000.0003.2628; Exhibit RC0281 ICR3838 (103), 3 October 2007, 1263, VPL.2000.0003.2849; Exhibit RC0281 ICR3838 (088), 7 July 2007, 995, VPL.2000.0003.2581; Exhibit RC0281 ICR3838 (103), 6 October 2007, 1276, VPL.2000.0003.2527.

¹³¹ Exhibit RC0281 ICR3838 (085), 26 June 2007, 941, VPL.2000.0003.2527; Exhibit RC0281 ICR3838 (100), 19 September 2007, 1223-1224, VPL.2000.0003.2809-VPL.2000.0003.2810; Exhibit RC0281 ICR3838 (112), 22 November 2007, 1444, VPL.2000.0003.3030; Exhibit RC0281 ICR3838 (089), 13 July 2007, 1011, VPL.2000.0003.2597.

concerning any precedents of which she was aware for a trial to continue without the presence of an accused.¹³²

- 47.2. On 2 October 2007, Ms Gobbo told her handler that Mr Mokbel had asked her to submit an affidavit regarding the likelihood of him receiving a fair trial in Australia and the inherent delays associated with this, which she declined to do.¹³³
- 47.3. On 3 October 2007, Ms Gobbo told her handler that whilst she had said she would not submit an affidavit concerning Mr Mokbel's proceedings, 'compromised by helping proof read Mirko's affidavits for him to swear.'¹³⁴ She told her handler that whilst this way she would still be appearing to assist Mr Mokbel, she would not be recorded as having done so in any records or files.¹³⁵
- 47.4. On 21 March 2008, Ms Gobbo told her handler that Mr Mokbel had asked her to obtain statements from various associates in support of his defence, which she declined to do.¹³⁶
48. Ms Gobbo continued to have contact with Mr Mokbel, Ms McGuire and Mr Bagaric upon Mr Mokbel's extradition, and received phone calls from each within the first couple of days of Mr Mokbel's return to Melbourne.¹³⁷ On 15 May 2008, in an email to Mr Bagaric, Ms Gobbo stated that a message could be conveyed to Mr Mokbel that 'notwithstanding my conflicts I am happy to try to help if I can.'¹³⁸
49. On 18 May 2008, Mr Bagaric provided Ms Gobbo with the submissions he intended to make in a potential stay application.¹³⁹ The following day, Ms Gobbo provided comments and advice in relation to the submissions, attached amended submissions in an email to Mr Bagaric and offered to assist him in summarising the evidence against Mr Mokbel in relation to each of the offences for which he was extradited.¹⁴⁰
50. Based on the circumstances outlined above and communications outlined below at [68], it is submitted that it is open to the Commissioner to find that there is a sufficient nexus between the representation Ms Gobbo provided to Mr Mokbel in his extradition proceedings and her communications with him concerning a potential plea deal, such that it can be inferred that Ms Gobbo continued to represent Mr Mokbel in relation to the Orbital/Quills Case and the Magnum Case until shortly after his extradition to Australia on 17 May 2008.

¹³² Exhibit RC0281 ICR3838 (091), 22 July 2007, 1042, VPL.2000.0003.2628.

¹³³ Exhibit RC0281 ICR3838 (102), 2 October 2007, 1255, VPL.2000.0003.2841; Exhibit RC0281 ICR3838 (103), 3 October 2007, 1262, VPL.2000.0003.2848.

¹³⁴ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1263, VPL.2000.0003.2849.

¹³⁵ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1263, VPL.2000.0003.2849.

¹³⁶ Exhibit RC0281 ICR2958 (010), 21 March 2008, 118, VPL.2000.0003.0858.

¹³⁷ Exhibit RC0281 ICR2958 (020), 19 May 2008, 318, VPL.2000.0003.1058; Exhibit RC0281 ICR2958 (020), 20 May 2008, 327-328, VPL.2000.0003.1067-VPL.2000.0003.1068; Exhibit RC0281 ICR2958 (020), 20 May 2008, 324, VPL.2000.0003.1064; Exhibit RC0281 ICR2958 (020), 23 May 2008, 345, VPL.2000.0003.1085. Ms Gobbo also received an email from Ms McGuire: Exhibit RC0281 ICR2958 (020), 21 May 2008, 318, VPL.2000.0003.1073;

¹³⁸ Exhibit RC1903 Email chain involving Nicola Gobbo and Mirko Bagaric, 2 - 19 May 2008, 2, MIN.5000.0001.2920 @.2921

¹³⁹ Exhibit RC1903 Email chain involving Nicola Gobbo and Mirko Bagaric, 2 - 19 May 2008, 1, MIN.5000.0001.2920 @.2921

¹⁴⁰ Exhibit RC1903 email chain involving Nicola Gobbo and Mirko Bagaric, 2 - 19 May 2008, 1, MIN.5000.0001.2920 @.2921

The Conduct of Ms Gobbo as a Human Source in relation to Mr Mokbel

Ms Gobbo's Motivation to Become an Informer and Targeting of Mr Mokbel

51. According to Ms Gobbo, her motivation in becoming an informer was to rid herself of 'the Mokbel cartel' as 'she was frustrated at the Mokbels' capacity to use lawyers to control others around them'¹⁴¹ and 'sickened of the amount of crime they were getting away with.'¹⁴²
52. During a meeting with her handlers on 16 September 2005, Ms Gobbo stated that she wanted Mr Mokbel to be 'in a position to never get bail' and expressed her view that if Mr Mokbel was in custody it would be difficult for him to influence other cases.¹⁴³ Her handlers asked for suggestions in achieving this, and Ms Gobbo suggested setting him up with an undercover officer.¹⁴⁴ A few days later, she told her handler that she believed Mr Mokbel was 'ripe to be taken advantage of if presented with a police member purporting to be corrupt.'¹⁴⁵
53. The primary goal of the Operation Posse Investigation Plan (the Investigation Plan) was the 'identification, investigation and complete dismantling of the Mokbel Family Criminal Organisation'.¹⁴⁶ In order to achieve that goal, the Investigation Plan identified the utilisation of information provided [REDACTED] to 'undermine the Mokbel family level of control over co-offenders' as being investigation objectives.¹⁴⁷ The provision of information by Ms Gobbo from the outset of her registration as a Human Source in relation to Mr Mokbel and members of his family, and the utilisation of same, squarely sits within that objective. Indeed, in the first Informer Contact Report (ICR) entry recorded, her handler makes the comment that 'HS [human source] can definitely be of high value in relation to current intelligence on Mokbel family and associates.'¹⁴⁸

General Categories of Information

54. Material before the Commission suggests that Ms Gobbo provided information to Victoria Police concerning Mr Mokbel prior to her registration in September 2005. Mr Bateson's diary records that the following information was provided, from at least 22 May 2005 to 23 August 2005:¹⁴⁹
 - 54.1. the fact that Solicitor 2 was providing a message service between Carl Williams and other persons including Mr Mokbel¹⁵⁰

¹⁴¹ *AB & EF v CD* [2017] VSC 350, [17].

¹⁴² Exhibit RC0281 ICR2958 (014), 18 April 2008, 187, VPL.2000.0003.0927.

¹⁴³ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591.

¹⁴⁴ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591.

¹⁴⁵ Exhibit RC0281 ICR3838 (002), 20-21 September 2005, 11, VPL.2000.0003.1597; Exhibit RC0281 ICR3838 (002), 21 September 2005, 5, VPL.2000.0003.1591.

¹⁴⁶ Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 3, VPL.0100.0009.0001 @.0003.

¹⁴⁷ Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 4, VPL.0100.0009.0001 @.0004.

¹⁴⁸ Exhibit RC0281 ICR3838 (001), 16 September 2005, 6, VPL.2000.0003.1592

¹⁴⁹ Exhibit RC0272 Commander Stuart Bateson diary, 23 August 2005, 49, VPL.0005.0058.0233 @.0281.

¹⁵⁰ Exhibit RC0272 Commander Stuart Bateson diary, 22 May 2005, 19, VPL.0005.0058.0233 @.0251.

- 54.2. information concerning the connection between Solicitor 2's apartment and Mr Mokbel¹⁵¹
- 54.3. information concerning the relationship between Solicitor 2 and Mr Mokbel¹⁵²
- 54.4. that Mr Mokbel was applying for a bail variation to allowing him to travel to Queensland¹⁵³
- 54.5. that Barrister 1 had been paid \$100,000, which was ultimately coming from Mr Mokbel.¹⁵⁴
55. In addition, according to Mr Paul Rowe, he had covertly recorded conversations with Ms Gobbo on 31 August 2005, in which Mr Steve Mansell was also a participant.¹⁵⁵ Mr Rowe gave evidence that during the second recorded conversation with Ms Gobbo on that date, she provided information concerning:
 - 55.1. her relationship with Mr Mokbel
 - 55.2. the fact that people she did not know would contact her because Mr Mokbel had told them to use her if they were arrested
 - 55.3. that she was expected to tell Mr Mokbel about the charges faced by such persons, the evidence against them and whether he might be exposed
 - 55.4. that Mr Mokbel's assets had been concealed and how he laundered money
 - 55.5. that she felt conflicted because Mr Mokbel expected her to ensure Mr Bickley did not co-operate with police, which she felt was against Mr Bickley's own interests.¹⁵⁶
56. Between September 2005 and March 2008, Ms Gobbo provided the following information to Victoria Police concerning Mr Mokbel:
 - 56.1. Mr Mokbel's mobile phone numbers (on at least seven occasions)¹⁵⁷
 - 56.2. information concerning the vehicles driven by Mr Mokbel¹⁵⁸

¹⁵¹ Exhibit RC0272 Commander Stuart Bateson diary, 4 June 2005, 25-26, VPL.0005.0058.0233 @.0257-.0258; Transcript of Commander Stuart Bateson, 2 July 2019, 3435, TRN.2019.07.02.01.

¹⁵² Exhibit RC0272 Commander Stuart Bateson diary, 29 June 2005, 33, VPL.0005.0058.0233 @.0265.

¹⁵³ Exhibit RC0272 Commander Stuart Bateson diary, 23 August 2005, 49, VPL.0005.0058.0233 @.0281.

¹⁵⁴ Exhibit RC0272 Commander Stuart Bateson diary, 21 July 2005, 40, VPL.0005.0058.0233 @.0272.

¹⁵⁵ Exhibit RC0266 Statement of Detective Sergeant Paul Rowe, 25 June 2019, 4 [25]-[26], VPL.0014.0035.0028 @.0031.

¹⁵⁶ Exhibit RC0266 Statement of Detective Sergeant Paul Rowe, 25 June 2019, 4-5 [28]-[30], VPL.0014.0035.0028 @.0031-.0032.

¹⁵⁷ Exhibit RC0281 ICR3838 (002), 20 September 2005, 9, VPL.2000.0003.1595; Exhibit RC0281 ICR3838 (005), 3 October 2005, 26, VPL.2000.0003.1612; Exhibit RC0281 ICR3838 (010), 1 December 2005, 70, VPL.2000.0003.1656; Exhibit RC0281 ICR3838 (023), 20 March 2006, 197, VPL.2000.0003.1783; Exhibit RC0281 ICR3838 (085), 27 June 2006, 944, VPL.2000.0003.2530; Exhibit RC0281 ICR2958 (010), 21 March 2008, 117, VPL.2000.0003.0857.

¹⁵⁸ Exhibit RC0283 Information Report SID272, 26 September 2005, VPL.2000.0003.8401; Exhibit RC0283 Information Report SID269, 29 September 2005, VPL.2000.0003.8395; Exhibit RC0281 ICR3838 (003), 26 September 2005, 14, VPL.2000.0003.1600.

- 56.3. addresses that he was known to frequent¹⁵⁹
- 56.4. code names used in reference to Mr Mokbel and a number of his associates
- 56.5. code words used in communication.¹⁶⁰
57. Between November 2005 and March 2007, Ms Gobbo provided contact details, details of properties and vehicle registrations belonging to Mr Mokbel's partner (Ms McGuire), family members, co-accused and known associates.¹⁶¹
58. Ms Gobbo gave her opinion as to whether particular associates of Mr Mokbel might provide information against him, some of whom she was also representing at the same time.¹⁶² At various times Ms Gobbo provided names of people who were apparently assisting in the manufacture of drugs or providing drugs to Mr Mokbel.¹⁶³
59. The provision of information concerning Mr Mokbel's financial circumstances was directly relevant to an objective identified in the Investigation Plan to 'identify assets of all Mokbel family members and systems used to legitimise funds and assets with a view to seizing criminal proceeds under current and

¹⁵⁹ Exhibit RC0283 Information Report SID269, 29 September 2005, VPL.2000.0003.8395; Exhibit RC0281 ICR3838 (020), 26 February 2006, 170, VPL.2000.0003.1756.

¹⁶⁰ Exhibit RC0281 ICR3838 (012), 13 December 2005, 85, VPL.2000.0003.1671; Exhibit RC0281 ICR3838 (004), 27 September 2005, 24, VPL.2000.0003.1610; Exhibit RC0281 ICR3838 (002), 21 September 2005, 9, VPL.2000.0003.1595.

¹⁶¹ See, eg, Exhibit RC0283 Information Report SID294, 16 November 2005, VPL.2000.0003.8425; Exhibit RC0283 Information Report SID302, 25 November 2005, VPL.2000.0003.8428; Exhibit RC0283 Information Report SID766, 16 June 2006, VPL.2000.0003.8766; Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713; Exhibit RC0281 ICR3838 (020), 26 February 2006, 169, VPL.2000.0003.1755; Exhibit RC0281 ICR3838 (023), 16 March 2006, 191, VPL.2000.0003.1777; Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1784; Exhibit RC0281 ICR3838 (027), 16 April 2006, 246-247, VPL.2000.0003.1832-VPL.2000.0003.1833; Exhibit RC0283 Information Report SID906, 10 October 2006, VPL.2000.0003.8900; Exhibit RC0283 Information Report SID392, 28 December 2007, VPL.2000.0003.8335; Exhibit RC0281 ICR3838 (002), 21 September 2005, 10-11, VPL.2000.0003.1596-VPL.2000.0003.1597; Exhibit RC0281 ICR3838 (003), 26 September 2005, 13-18, VPL.2000.0003.1599-VPL.2000.1603; Exhibit RC0281 ICR3838 (008), 3 November 2005, 51-52, VPL.2000.0003.1637-VPL.2000.0003.1638; Exhibit RC0281 ICR3838 (011), 8-9 December 2005, 78-79, VPL.2000.0003.1654-VPL.2000.0003.1655; Exhibit RC0281 ICR3838 (012), 13 December 2005, 84, VPL.2000.0003.1670; Exhibit RC0281 ICR3838 (015), 9 January 2006, 114, VPL.2000.0003.1700; Exhibit RC0281 ICR3838 (016), 20 January 2006, 128, VPL.2000.0003.1714; Exhibit RC0281 ICR3838 (018), 13 February 2006, 151, VPL.2000.0003.1737; Exhibit RC0281 ICR3838 (019), 21 February 2006, 160, VPL.2000.0003.1746; Exhibit RC0281 ICR3838 (040), 11 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (050), 22 October 2006, 516, VPL.2000.0003.2102; Exhibit RC0281 ICR3838 (063), 26 January 2007, 615, VPL.2000.0003.2201; Exhibit RC0281 ICR3838 (068), 3 March 2007, 669, VPL.2000.0003.2255; Exhibit RC0281 ICR3838 (083), 14 June 2007, 893, VPL.2000.0003.2479; Exhibit RC0281 ICR3838 (007), 28 October 2005, 43, VPL.2000.0003.1629; Exhibit RC0281 ICR3838 (020), 25 February 2006, 167, VPL.2000.0003.1753; Exhibit RC0281 ICR3838 (021), 6 March 2006, 178, VPL.2000.0003.1764; Exhibit RC0281 ICR3838 (024), 25 March 2006, 212, VPL.2000.0003.1798; Exhibit RC0281 ICR3838 (033), 1 June 2006, 314, VPL.2000.0003.1900; Exhibit RC0281 ICR3838 (042), 25 August 2006, 405, VPL.2000.0003.1991.

¹⁶² Exhibit RC0281 ICR3838 (002), 21 September 2005, 10, VPL.2000.0003.1596; Exhibit RC0486c Mr Peter Smith diary, 20 October 2005, 3-4, VPL.0016.0026.0382 @.0384-0.385; Exhibit RC0281 ICR3838 (064), 29 January 2007, 618, VPL.2000.0003.2204.

¹⁶³ Exhibit RC0281 ICR3838 (002), 21 September 2005, 9, VPL.2000.0003.1595; Exhibit RC0281 ICR3838 (003), 26 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0281 ICR3838 (007), 24 October 2005, 37, VPL.2000.0003.1623; Exhibit RC0281 ICR3838 (019), 21 February 2006, 6161 VPL.2000.0003.1747; Exhibit RC0281 ICR3838 (021), 7 March 2006, 179, VPL.2000.0003.1765; Exhibit RC0283 Information Report SID746, 4 June 2006, VPL.2000.0003.8732.

future restraining orders.¹⁶⁴ From September 2005, Ms Gobbo provided the following information regarding Mr Mokbel's assets and finances:

- 59.1. information concerning money he owed others¹⁶⁵
- 59.2. information concerning his living expenses and assets, including properties believed to be held in the names of other persons on Mr Mokbel's behalf¹⁶⁶
- 59.3. details of Mr Mokbel's conveyancer, who Ms Gobbo described as the 'common denominator for all properties connected to Tony Mokbel'¹⁶⁷
- 59.4. details of Mr Mokbel's accountant¹⁶⁸
- 59.5. identification of Mr Mokbel's accountant from a photograph.¹⁶⁹

Information concerning the Plutonium Case

60. As mentioned above, Ms Gobbo provided representation to Mr Mokbel in relation to the Plutonium Case, including acting as junior counsel at trial.
61. Prior to, and during the course of Mr Mokbel's trial, Ms Gobbo provided her opinion to her handlers as to the strength of the case against Mr Mokbel and his prospects of success at trial. For example:

¹⁶⁴ Exhibit RC0467 Investigation Plan for Operation Posse, 17 November 2005, 4, VPL.0100.0009.0001 @.0004.

¹⁶⁵ Exhibit RC0281 ICR3838 (001), 16 September 2007, 5, VPL.2000.0003.1591; Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.16091; Exhibit RC0283 Information Report SID336, 27 December 2005, VPL.2000.0003.8455; Exhibit RC0283 Information Report SID356, 21 January 2006, VPL.2000.0003.8474; Exhibit RC0281 ICR3838 (015), 12 January 2006, 116-117, VPL.2000.0003.1702-VPL.2000.0003.1703; Exhibit RC0283 Information Report SID725, 16 April 2006, VPL.2000.0003.8703; Exhibit RC0283 Information Report SID583, 26 May 2006, VPL.2000.0003.8685; Exhibit RC0283 Information Report SID556, 30 December 2005, VPL.2000.0003.8660; Exhibit RC0283 Information Report SID735, 30 May 2006, VPL.2000.0003.8716; Exhibit RC0283 Information Report SID740, 1 June 2006, VPL.2000.0003.8725; Exhibit RC0283 Information Report SID746, 4 June 2006, VPL.2000.0003.8732; Exhibit RC0283 Information Report SID696, 23 August 2006, VPL.2000.0003.8690; Exhibit RC0281 ICR3838 (033), 1 June 2006, 314, VPL.2000.0003.1900; Exhibit RC0281 ICR3838 (092), 24 July 2007, 1057, VPL.2000.0003.2643; Exhibit RC0281 ICR3838 (119), 18 January 2008, 1579, VPL.2000.0003.3165; Exhibit RC0281 ICR3838 (083), 12 June 2007, 890, VPL.2000.0003.2476; Exhibit RC0281 ICR3838 (097), 27 August 2007, 1544, VPL.2000.0003.2740; Exhibit RC0281 ICR2958 (020), 20 May 2008, 319, VPL.2000.0003.1059.

¹⁶⁶ Exhibit RC0281 ICR3838 (001), 16 September 2007, 5, VPL.2000.0003.1591; Exhibit RC0281 ICR3838 (003), 26 September 2005, 14, VPL.2000.0003.1600; Exhibit RC0283 Information Report SID336, 27 December 2005, VPL.2000.0003.8455; Exhibit RC0283 Information Report SID356, 21 January 2006, VPL.2000.0003.8474; Exhibit RC0281 ICR3838 (015), 12 January 2006, 118, VPL.2000.0003.1704; Exhibit RC0283 Information Report SID725, 16 April 2006, VPL.2000.0003.8703; Exhibit RC0283 Information Report SID583, 26 May 2006, VPL.2000.0003.8685; Exhibit RC0283 Information Report SID556, 30 December 2005, VPL.2000.0003.8660; Exhibit RC0283 Information Report SID735, 30 May 2006, VPL.2000.0003.8716; Exhibit RC0283 Information Report SID740, 1 June 2006, VPL.2000.0003.8725; Exhibit RC0283 Information Report SID746, 4 June 2006, VPL.2000.0003.8732; Exhibit RC0283 Information Report SID696, 23 August 2006, VPL.2000.0003.8690; Exhibit RC0281 ICR3838 (033), 1 June 2006, 314, VPL.2000.0003.1900; Exhibit RC0281 ICR3838 (092), 24 July 2007, 1057, VPL.2000.0003.2643; Exhibit RC0281 ICR3838 (119), 18 January 2008, 1579, VPL.2000.0003.3165; Exhibit RC0281 ICR3838 (083), 12 June 2007, 890, VPL.2000.0003.2476; Exhibit RC0281 ICR3838 (097), 27 August 2007, 1544, VPL.2000.0003.2740; Exhibit RC0281 ICR2958 (020), 20 May 2008, 319, VPL.2000.0003.1059.

¹⁶⁷ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1056, VPL.2000.0003.2643.

¹⁶⁸ Exhibit RC0281 ICR3838 (008), 4 November 2005, 53, VPL.2000.0003.1639.

¹⁶⁹ Exhibit RC0281 ICR3838 (018), 15 February 2006, 155, VPL.2000.0003.1741.

- 61.1. On 12 December 2005, Ms Gobbo told her handler that Mr Mokbel 'has no defence'.¹⁷⁰
- 61.2. On 12 January 2006, Ms Gobbo told her handler that she and Mr Heliotis wanted Mr Mokbel to plead guilty, but that he would not because he was 'too stubborn'.¹⁷¹
- 61.3. On 14 February 2006, Ms Gobbo again told her handler of her belief that Mr Mokbel 'has no defence' and suggested that 'when he finally realises this he may do something "stupid"', such as jury tampering.¹⁷²
- 61.4. On 28 February 2006, Ms Gobbo provided her opinion that there was a '10% chance' that Mr Mokbel would be found not guilty of the charges.¹⁷³
- 61.5. On 3 March 2006, Ms Gobbo told her handler that Mr Mokbel had a 'possible chance of acquittal due to a clever no case submission'.¹⁷⁴
62. During the course of the trial, Ms Gobbo provided information to her handlers concerning defence tactics, including the names of possible defence witnesses from who she had taken statements,¹⁷⁵ and the likelihood as to whether Mr Mokbel would provide evidence in the course of the trial (which Ms Gobbo described as being a '1% chance').¹⁷⁶ In addition, she provided information as to Mr Mokbel's attitude towards the jury and the fact that he did not want the jury to change.¹⁷⁷
63. On 17 March 2006, Ms Gobbo informed police that Mr Mokbel's behaviour (including the fact that he had told her twice not to contact him over the weekend) led her to suspect that he would be involved in some unknown criminality over the weekend.¹⁷⁸ It was submitted to the Commission that Ms Gobbo effectively suggested and induced Mr Mokbel to abscond during the trial, by advising him that upon the conclusion of the trial he would be pursued for additional charges (including murder) 'until he was convicted and sentencing to life imprisonment', and suggested to him words to the effect of 'I'd take off if I were you'.¹⁷⁹ As outlined above, Mr Mokbel failed to appear at his trial on 20 March 2006.

Information concerning the Extradition Proceedings

64. In the days subsequent to Mr Mokbel's disappearance on 20 March 2006, Ms Gobbo provided information to her handlers concerning the behaviour of Mr Mokbel's partner (Ms McGuire), family members and known associates, for the

¹⁷⁰ Exhibit RC0281 ICR3838 (012), 12 December 2005, 81, VPL.2000.0003.1759

¹⁷¹ Exhibit RC0281 ICR3838 (015), 12 January 2006, 117, VPL.2000.0003.1703.

¹⁷² Exhibit RC0281 ICR3838 (018), 14 February 2006, 152, VPL.2000.0003.1738.

¹⁷³ Exhibit RC0281 ICR3838 (020), 28 February 2006, 173, VPL.2000.0003.1759.

¹⁷⁴ Exhibit RC0281 ICR3838 (021), 3 March 2006, 175, VPL.2000.0003.1761.

¹⁷⁵ Exhibit RC0281 ICR3838 (019), 18 February 2006, 157, VPL.2000.0003.1743.

¹⁷⁶ Exhibit RC0281 ICR3838 (020), 28 February 2006, 173, VPL.2000.0003.1759.

¹⁷⁷ Exhibit RC0281 ICR3838 (019), 23 February 2006, 164, VPL.2000.0003.1750.

¹⁷⁸ Exhibit RC0281 ICR3838 (023), 17 March 2006, 194, VPL.2000.0003.1780.

¹⁷⁹ Anonymous Submission 030, 13-14 [25(c)]; Anonymous Submission 030, Attachment 1, Letter, 21 [45]-[46].

apparent purpose of determining whether they might know of Mr Mokbel's whereabouts.¹⁸⁰

65. In particular, in March 2006 Ms Gobbo told her handler that in her opinion an associate of Mr Mokbel's, Mr Jeffrey Jamou, may have knowledge as to Mr Mokbel's whereabouts. Ms Gobbo told police that 'recently, Jamou has been with Mokbel day & night. Tony listens to him, he would get Jamou to do "research" for him... if Tony wanted to know which countries don't extradite to Australia he would ask Jamou this.'¹⁸¹ A week after Mr Mokbel's arrest in Greece, Ms Gobbo asked her handler as to whether any consideration had been given to her receiving a percentage of the reward offered (for information leading to Mr Mokbel's arrest) for passing on this information about Mr Jamou.¹⁸²
66. Ms Gobbo provided further information to her handlers over the course of the period in which Mr Mokbel's whereabouts were unknown, including the fact he had left his mobile at home and phone numbers of his relatives and known associates.¹⁸³
67. As mentioned above at [13] and in Chapter 15 of the Narrative Submissions, Mr Mokbel was arrested in Greece on 5 June 2007 and Ms Gobbo was notified of his arrest. Thereafter, she regularly communicated with Mr Mokbel, his partner and his solicitor in relation to the extradition proceedings. Some detail of these communications is outlined in Chapter 15 of the Narrative Submissions.
68. During the course of the extradition proceedings, Ms Gobbo provided information to police regarding Mr Mokbel's tactics in challenging the extradition, his response to particular court outcomes, his attitude towards resolving the charges faced by him, and her opinion as to whether Mr Mokbel would seek to enter into a plea deal.¹⁸⁴ For example:
 - 68.1. On 6 June 2007, Ms Gobbo told her handlers that she had spoken to Ms McGuire, who advised that Mr Mokbel would be fighting the extradition.¹⁸⁵
 - 68.2. On 10 June 2007, Ms Gobbo told her handler that Mr Mokbel had discussed with her the matters being raised against him for the extradition application, [REDACTED] and wanted to engage a company to monitor and capture all media attention to support his application.¹⁸⁶

¹⁸⁰ Exhibit RC0281 ICR3838 (023), 20 March 2006, 197, VPL.2000.0003.1783; Exhibit RC0281 ICR3838 (023), 21 March 2006, 202, VPL.2000.0003.1788; Exhibit RC0281 ICR3838 (023), 22 March 2006, 203-204, VPL.2000.0003.1789-VPL.2000.0003.1790; Exhibit RC0281 ICR3838 (023), 23 March 2006, 2064, VPL.2000.0003.1792.

¹⁸¹ Exhibit RC0281 ICR3838 (023), 23 March 2006, 206, VPL.2000.0003.1792.

¹⁸² Exhibit RC0281 ICR3838 (083), 12 June 2007, 891, VPL.2000.0003.2477.

¹⁸³ Exhibit RC0281 ICR3838 (007), 20 March 2006, 197, VPL.2000.0003.1783; Exhibit RC0281 ICR3838 (007), 21 March 2006, 202, VPL.2000.0003.1788; Exhibit RC0281 ICR3838 (007), 22 March 2006, 203-204, VPL.2000.0003.1789-VPL.2000.0003.1780.

¹⁸⁴ Exhibit RC0281 ICR3838 (001), 1 September 2007, 1184-1185, VPL.2000.0003.2770-VPL.2000.0003.2771; Exhibit RC0281 ICR3838 (023), 26 January 2008, 7, VPL.2000.0003.0747.

¹⁸⁵ Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2469.

¹⁸⁶ Exhibit RC0281 ICR3838 (082), 10 June 2007, 886, VPL.2000.0003.2472.

- 68.3. On 12 June 2007, Ms Gobbo repeated that Mr Mokbel wanted to engage a media watch company as 'the more prejudicial material will help his application.'¹⁸⁷
- 68.4. On 15 June 2007, during a meeting with her handlers, Ms Gobbo stated that Mr Mokbel would plead guilty to all drug charges but would not plead guilty to any murder charges. She said he understood that he was 'looking at 20 years on bottom for the drugs' but was 'adamant that he did not commit a murder.'¹⁸⁸ Ms Gobbo advised her handler that Mr Mokbel had asked her to speak to Deputy Commissioner Simon Overland and do a deal.¹⁸⁹
- 68.5. On 18 June 2007, Ms Gobbo discussed with her handler the different ways in which extradition may be challenged. She said that one method was to argue that an accused's life would be in danger if extradited and that Mr Mokbel was saying that 'Purana warned him that his life was in danger and that Danielle's was too.'¹⁹⁰ This information is recorded as having been verbally disseminated to James (Jim) O'Brien at Purana Taskforce.¹⁹¹
- 68.6. On 18 July 2007, Ms Gobbo again told her handler that Mr Mokbel wanted to engage a media watch company to gather all articles about him regarding the extradition case.¹⁹²
- 68.7. On 19 July 2007, Ms Gobbo told her handler that she had spoken to Mr Bagaric, and that he intended 'to request that the Lebanese Government get involved and request extradition as well in order to stifle the Australian extradition.'¹⁹³ This information is recorded as having been verbally disseminated to Jim O'Brien at Purana Taskforce.¹⁹⁴
- 68.8. On 1 September 2007, Ms Gobbo told her handler that Mr Mokbel's 'aim is to frustrate the extradition so as authorities come to him to deal' and that 'failing that he intends to fight every charge.' The relevant ICR entry records that: 'some charges he intends appearing for himself in order to frustrate the legal system for 10 years. He thinks the murders are ludicrous. If police dropped them then he would plea to the rest.'¹⁹⁵ The ICR entry records that this information was 'not disseminated re Legal professional privilege issues.'¹⁹⁶
- 68.9. On 2 October 2007, Ms Gobbo told her handler that if a decision of the Federal Court in relation to an injunction was negative then Mr Mokbel would appeal to the full bench of the Federal Court 'straight away in order to delay the Greek proceedings.'¹⁹⁷ The ICR entry records that this information was 'not disseminated re defence council [sic] intel.'

¹⁸⁷ Exhibit RC0281 ICR3838 (083), 12 June 2007, 889, VPL.2000.0003.2475.

¹⁸⁸ Exhibit RC0281 ICR3838 (083), 15 June 2007, 896, VPL.2000.0003.2482.

¹⁸⁹ Exhibit RC0281 ICR3838 (083), 15 June 2007, 896, VPL.2000.0003.2482.

¹⁹⁰ Exhibit RC0281 ICR3838 (084), 18 June 2007, 914, VPL.2000.0003.2500.

¹⁹¹ Exhibit RC0281 ICR3838 (084), 18 June 2007, 914, VPL.2000.0003.2500.

¹⁹² Exhibit RC0281 ICR3838 (091), 18 July 2007, 1032, VPL.2000.0003.2618.

¹⁹³ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2624.

¹⁹⁴ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1039, VPL.2000.0003.2625.

¹⁹⁵ Exhibit RC0281 ICR3838 (098), 1 September 2007, 1184, VPL.2000.0003.2770.

¹⁹⁶ Exhibit RC0281 ICR3838 (098), 1 September 2007, 1185, VPL.2000.0003.2771.

¹⁹⁷ Exhibit RC0281 ICR3838 (102), 2 October 2007, 1255, VPL.2000.0003.2841.

SDU [Source Development Unit] management only re ensuring HS avoids this case.¹⁹⁸

- 68.10. On 3 October 2007, Ms Gobbo again told her handler about a 'plan' for an immediate appeal to the full bench of the Federal Court pending the outcome of a hearing. She also stated that Mr Mokbel and his representatives were 'desperate' to change an upcoming hearing date.¹⁹⁹ The ICR records that this information was 'not disseminated owing to above information being defence strategy issues.'²⁰⁰
- 68.11. On 6 October 2007, Ms Gobbo discussed an affidavit with her handler, that had been drafted by Mr Bagaric and had not yet been filed with the court. Ms Gobbo stated that 'the guts of the affidavit is that Mokbel should not come back because he risks spending the rest of his life in jail and he cannot get a fair trial.'²⁰¹ The ICR again recorded that this information was not disseminated due to it concerning defence material.²⁰²
69. On at least two occasions Ms Gobbo warned police [REDACTED].²⁰³ It appears that information may have been calculated to dissuade police to [REDACTED]. For example, on [REDACTED] 2007, she cautioned police that [REDACTED].²⁰⁴ The relevant ICR records that this information was verbally disseminated to Gavan Ryan of Purana Taskforce.²⁰⁵
70. Between the period of Mr Mokbel's arrest in Greece in June 2007 and his extradition to Australia in May 2008, Ms Gobbo continued to provide contact details in relation to Mr Mokbel's known associates and relatives,²⁰⁶ and information concerning Mr Mokbel's assets and finances, including information as to who appeared to be paying his legal fees.²⁰⁷

¹⁹⁸ Exhibit RC0281 ICR3838 (102), 2 October 2007, 1255, VPL.2000.0003.2841.

¹⁹⁹ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1263, VPL.2000.0003.2849.

²⁰⁰ Exhibit RC0281 ICR3838 (103), 3 October 2007, 1263, VPL.2000.0003.2849.

²⁰¹ Exhibit RC0281 ICR3838 (103), 6 October 2007, 1276, VPL.2000.0003.2862.

²⁰⁶ See, eg, Ms McGuire: Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2468. Ms McGuire: Exhibit RC0281 ICR3838 (083), 12 June 2007, 889, VPL.2000.0003.2475. Mr Mokbel: Exhibit RC0281 ICR3838 (083), 15 June 2007, 895, VPL.2000.0003.2481. Ms McGuire: Exhibit RC0281 ICR3838 (083), 14 June 2007, 893, VPL.2000.0003.2479. Ms McGuire and Mr Mokbel: Exhibit RC0281 ICR3838 (085), 27 June 2007, 944, VPL.2000.0003.2530. Mr El-Hage: Exhibit RC0281 ICR3838 (085), 27 June 2007, 945, VPL.2000.0003.2531. Mr Jamou: Exhibit RC0281 ICR3838 (089), 12 July 2007, 1010, VPL.2000.0003.2596. Ms McGuire: Exhibit RC0281 ICR3838 (089), 14 July 2007, 1015, VPL.2000.0003.2601. Ms Mokbel: Exhibit RC0281 ICR3838 (101), 25 September 2007, 1243, VPL.2000.0003.2829. Ms McGuire: Exhibit RC0281 ICR3838 (089), 14 July 2007, 1015, VPL.2000.0003.2601. Ms McGuire: Exhibit RC0281 ICR2958 (007), 3 March 2008, 72, VPL.2000.0003.0812. Mr Mokbel: Exhibit RC0281 ICR2958 (010), 21 March 2008, 117, VPL.2000.0003.0857. Mary 'book keeper': Exhibit RC0281 ICR2958 (013), 12 April 2008, 155, VPL.2000.0003.0895.

²⁰⁷ Exhibit RC0281 ICR3838 (082), 6 June 2007, 883, VPL.2000.0003.2469; Exhibit RC0281 ICR3838 (083), 12 June 2007, 889, VPL.2000.0003.2475; Exhibit RC0281 ICR3838 (103), 24 July 2007, 1057, VPL.2000.0003.2643; Exhibit RC0281 ICR3838 (098), 1 September 2007, 1184, VPL.2000.0003.2770; Exhibit RC0281 ICR3838 (117), 25 December 2007, 1540, VPL.2000.0003.3126; Exhibit RC0281 ICR2958 (013), 12 April 2008, 154, VPL.2000.0003.0894; Exhibit RC0281 ICR2958 (016), 23 April

71. In addition, Ms Gobbo continued to communicate with, and represent, a number of Mr Mokbel's co-accused throughout the period of the extradition process, including with Mr Bickley and Mr Cooper who were both prosecution witnesses against Mr Mokbel in relation to a number of his cases.²⁰⁸

Information concerning the Magnum Case

72. ██████████ was a co-accused in relation to the Magnum Case and became a prosecution witness against Mr Mokbel and others.²⁰⁹ On 3 March 2008 Ms Gobbo told handlers that she had seen ██████████ statement and provided her opinion that the statement is 'amateurish' and 'too vague.'²¹⁰ She suggested that there should be more content and 'separate statements for separate issues.'²¹¹
73. On 4 March 2008, Ms Gobbo told her handler that she had spoken to Mr Mokbel and discussed the brief in the Magnum Case. She said that Mr Mokbel had been served with a copy of ██████████ statement and was angry at him. She said that during the conversation with Mr Mokbel they discussed Mr Elk and Mr Issa, and 'why she had convinced him to plead.' The relevant ICR records that Ms Gobbo stated 'that there was overwhelming evidence implicating him' and that Mr Mokbel 'refused to accept this as evidence', indicating that they were likely discussing Mr Mokbel's prosecution case and not that of his co-accused.²¹²

Information concerning the Orbital/Quills Case – Provision of the Brief of Evidence to Purana

74. On 25 October 2007, Ms Gobbo told her handler about a discussion that she had with Mr Mokbel and speculated that Mr Mokbel had read the summary in relation to the Orbital/ Quills Case.²¹³ She advised her handler that parts of the police summary were factually incorrect and required attention.²¹⁴
75. As detailed in Chapter 15 of the Narrative Submissions, following the arrest of Mr Mokbel in Greece there was pressure on Purana to collate material for the extradition proceedings, with a potential consequence being that police may not be able to prosecute Mr Mokbel for certain offences upon his extradition to Australia if the evidence was not comprehensive enough.²¹⁵ In June 2007, Victoria Police were having difficulties obtaining material concerning the AFP brief of evidence in the Orbital matter against Mr Mokbel, which it appears was required to supplement evidence in the Quills matter. As a result, Mr Rowe requested a copy of the brief concerning the Orbital matter from Ms Gobbo,

2008, 211, VPL.2000.0003.0951; Exhibit RC0281 ICR2958 (019), 12 May 2008, 292, VPL.2000.0003.1032.

²⁰⁸ See, eg, Mr Bickley: Exhibit RC0281 ICR3838 (082), 7 June 2007, 885, VPL.2000.0003.2471; Exhibit RC0281 ICR3838 (019), 21 June 2007, 924, VPL.2000.0003.2510; Exhibit RC0281 ICR2958 (085), 23 June 2007, 934, VPL.2000.0003.2520. Mr Cooper: Exhibit RC0281 ICR3838 (084), 20 June 2007, 917-918, VPL.2000.0003.2503-VPL.2000.0003.2504; Exhibit RC0281 ICR3838 (085), 23 June 2007, 930, VPL.2000.0003.2516.

²⁰⁹ Un-tendered Presentment No. C0705786.11: *R v Antonios Mokbel*, 2010, 1-8, RCMP.0010.0002.0002 @.0001-0008.

²¹⁰ Exhibit RC0281 ICR2958 (007), 3 March 2008, 72, VPL.2000.0003.0812.

²¹¹ Exhibit RC0281 ICR2958 (007), 3 March 2008, 72, VPL.2000.0003.0812.

²¹² Exhibit RC0281 ICR2958 (007), 4 March 2008, 74, VPL.2000.0003.0814.

²¹³ Exhibit RC0281 ICR3838 (106), 25 October 2007, 1319, VPL.2000.0003.2905.

²¹⁴ Exhibit RC0281 ICR3838 (106), 25 October 2007, 1319, VPL.2000.0003.2905.

²¹⁵ Exhibit RC0266 Statement of Detective Senior Sergeant Paul Rowe, 25 June 2019, 22 [160], VPL.0014.0035.0028 @.0049.

which she provided on 22 June 2007.²¹⁶ Ultimately Mr Rowe obtained material from the AFP in August 2007, which was added to the brief in relation to the Quills matter.²¹⁷ The extradition material was filed in Greece in the first week of July 2007. This enabled an arrest and the process of extradition to commence.²¹⁸

Information Relevant to Operation Kayak

76. On 16 September 2005, Ms Gobbo provided her opinion to her handlers as to the strength of evidence in relation to the Kayak matter. She also discussed the importance of covertly recorded conversations, which she said was critical evidence for the prosecution case against Mr Mokbel.²¹⁹
77. On 26 September 2005, she told her handlers that Mr Mokbel was obsessed about the tapes and believed that without the tapes he could not be convicted.²²⁰
78. Between September 2005 and January 2006, Ms Gobbo provided information to her handlers concerning Mr Mokbel's strategy in dealing with the tape recordings including that he would 'attack the police officers who turn the tapes on and off' and that he wanted an overseas expert to examine the tapes.²²¹
79. It was submitted to the Commission that Mr Mokbel had engaged an expert from the US to examine the tapes, as he said that the handling of the tapes by Mr David Miechel and members of the Drug Squad was integral to his defence of the charges.²²² It was further submitted that Ms Gobbo was involved in 'sabotaging' the examination of the tapes by the expert. It was alleged that Ms Gobbo requested to be permitted to observe the US expert conduct the examination, which he allowed. Subsequently, the examination concluded much earlier than expected and did not detect any interference. It was submitted that the US expert later told Mr Mokbel that he should not trust his legal representatives.²²³
80. It was further submitted that a conflict arose in the Kayak matter, due to the fact that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²²⁴

²¹⁶ Exhibit RC0266 Statement of Detective Senior Sergeant Paul Rowe, 25 June 2019, 23 [165], VPL.0014.0035.0028 @.0050.

²¹⁷ Exhibit RC0266 Statement of Detective Senior Sergeant Paul Rowe, 25 June 2019, 23 [167]-[169], VPL.0014.0035.0028 @.0050.

²¹⁸ Exhibit RC1750 Purana Taskforce Update, 10 July 2007, 1 VPL.0099.0002.0099 @.0099

²¹⁹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590.

²²⁰ Exhibit RC0281 ICR3838 (003), 26 September 2005, 15, VPL.2000.0003.1601.

²²¹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590; Exhibit RC0281 ICR3838 (010), 6 December 2005, 74, VPL.2000.0003.1660; Exhibit RC0281 ICR3838 (012), 13 December 2005, 83, VPL.2000.0003.1669; Exhibit RC0281 ICR3838 (015), 3 January 2006, 109, VPL.2000.0003.1695; Exhibit RC0281 ICR3838 (015), 9 January 2006, 113-114, VPL.2000.0003.1699-VPL.2000.0003.1700.

²²² Anonymous Submission 030, 10-11 [23]- [24]; Anonymous Submission 030, Attachment 1, Letter, 15 [20].

²²³ Anonymous Submission 030, 12 [25(a)]; Anonymous Submission 030, Attachment 1, Letter, 18-19.

Relevant Conduct in relation to Mr Bickley

81. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Mr Mokbel's cases, namely:
 - 81.1. the Orbital/Quills Case; and
 - 81.2. charges arising from Operation Spake.
82. For the reasons set out in the Case Study in relation to Mr Bickley, it is submitted that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.
83. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.
84. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
 - 84.1. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,²²⁵ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.²²⁶
85. As outlined in the case study of Mr Bickley, Ms Gobbo appeared to have some awareness as to the position of conflict with respect to acting on behalf of both Mr Mokbel and Mr Bickley. In September 2005, Ms Gobbo told handlers that she expressed her concern to Mr Rowe that answers arising during cross-examination in Mr Bickley's bail application would be adverse to the interests of Mr Mokbel.²²⁷ She further advised her handler that Mr Mokbel was concerned about Mr Bickley providing information against him,²²⁸ and provided her opinion that Mr Bickley 'must have something very big on Mokbel'.²²⁹ It was submitted that Ms Gobbo failed to disclose her conflict of interest in acting for both Mr Mokbel and Mr Bickley at the same time.

²²⁵ See Legal Principles Submissions at [210].

²²⁶ See Legal Principles Submissions at [212]-[213].

²²⁷ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589.

²²⁸ Exhibit RC0281 ICR3838 (001), 16 September 2005, 3, VPL.2000.0003.1589; Exhibit RC0281 ICR3838 (003), 26 September 2005, 15, VPL.2000.0003.1601; Exhibit RC0283 Information Report SID269, 29 September 2005, VPL.2000.0003.8395.

²²⁹ Exhibit RC0281 ICR3838 (003), 26 September 2005, 15, VPL.2000.0003.1601.

Relevant Conduct in relation to Mr Cooper, [REDACTED] and Mr Thomas

86. As stated above, the prosecution relied upon the evidence of Mr Cooper in relation to the following cases:
- 86.1. the Orbital/Quills Case²³⁰
 - 86.2. charges arising from Operation Landslip²³¹
 - 86.3. charges arising from Operation Matchless²³²
 - 86.4. charges arising from Operation Spake.²³³
87. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Mokbel's matter. As set out in the Narrative Submissions in Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 87.1. the discovery of the offending the subject of Operation Posse;
 - 87.2. Mr Cooper being arrested in Operation Posse;
 - 87.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 87.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Mokbel (among others).
88. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
89. In addition, the prosecution relied upon the evidence of a [REDACTED] in relation to the following cases:
- 89.1. Charges arising from [REDACTED];²³⁴ and

²³⁰ Un-tendered Presentment No. C0907076, *R v Antonios Mokbel*, 2009, 2, RCMP.0010.0002.0002 @.0010; *R v Mokbel (Change of Pleas)* [2012] VSC 86, [42]-[43]; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001.

²³¹ Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMP.0010.0005.0002 @.0001.

²³² Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 1, OPP.0056.0001.0001.

²³³ Un-tendered Presentment No. C0706005.1, *R v Mokbel, Finn & Finn*, 2009, 4, RCMP.0010.0005.0004 @.0548.

²³⁴ Un-tendered Presentment No. C0706005.1, *R v Mokbel, Finn & Finn*, 2009, 4, RCMP.0010.0005.0004 @.0548; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 2, OPP.0056.0001.0001.

- 89.2. Charges arising from [REDACTED].²³⁵
90. Further, as set out in Case Study of [REDACTED] at paragraphs [REDACTED], it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and [REDACTED] subsequent decision to do so. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Mokbel, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.

Relevant Conduct in relation to Mr Thomas

91. Further, the prosecution relied upon the evidence of Mr Thomas in relation to the following cases:
- 91.1. charges arising from Operation Landslip²³⁶
- 91.2. charges arising from Operation Matchless.²³⁷
92. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is also relevant to an assessment of Mr Mokbel's matter. As set out in the Narrative Submissions in Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led Mr Thomas to his decision to assist and co-operate with authorities. As with Mr Cooper, such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
93. In September 2005, Ms Gobbo advised police that Mr Thomas and Mr Cooper would both have 'sufficient information about Mokbel to put him away for a long time'.²³⁸
94. It was submitted to the Commission that at no stage was Mr Mokbel advised of Ms Gobbo's involvement with Mr Cooper, [REDACTED] or Mr Thomas.²³⁹

²³⁵ Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMPI.0010.0005.0002 @.0001; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 3, OPP.0056.0001.0001.

²³⁶ Un-tendered Presentment No. C0806379, *R v Antonios Mokbel & Ors*, 2009, 1, RCMPI.0010.0005.0002 @.0001; Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5, OPP.0056.0001.0001.

²³⁷ Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5, OPP.0056.0001.0001.

²³⁸ Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602.

²³⁹ Anonymous Submission 030, 9-10 [21], 17 [30]-[31], 19 [37].

Other Relevant Proceedings

95. Between July 2006 and November 2006, Ms Gobbo told her handlers about a meeting which she attended in June 2005, between Mr Mokbel, Cooper and two other lawyers (Solicitor 2 and David Grace – barrister for Kabalan Mokbel). According to Ms Gobbo, during the meeting Mr Mokbel attempted to convince Mr Cooper to swear a false statement to assist in the defence of Kabalan Mokbel and to absolve Mr Mokbel of any involvement.²⁴⁰ Ms Gobbo told her handlers that she took notes in relation to this meeting,²⁴¹ and discussed with them ‘the proposed warrant that Purana should executed [sic]’ to recover her notes of the meeting.²⁴²
96. Material before the Commission suggested that a warrant was subsequently executed on 7 December 2006, during which three pages of handwritten notes were seized from Ms Gobbo’s chambers.²⁴³
97. On 12 June 2007, Ms Gobbo told her handler that she had considered ‘arranging Tony Mokbel to be charged with attempting to pervert the course of justice’.²⁴⁴ She said that she could provide evidence during the course of coercive hearings, which would protect her status.²⁴⁵
98. [REDACTED]. On 13 July 2007, 17 July 2007 and 24 September 2007, she told her handler that, as far as she was aware, the only evidence police had in relation to charges concerning this matter was the evidence of Cooper and [REDACTED].²⁴⁷ The relevant ICR entry records that Mr Dale Flynn of Purana was provided an update in relation to this issue.

Asset Confiscation

99. As a consequence of being charged and convicted of drug trafficking offences, asset confiscation proceedings were brought against Mr Mokbel, resulting in the granting of multiple restraining orders, forfeiture orders and pecuniary penalty orders. The assets forfeited as a result of those orders included various properties, cash and bank accounts, with a gross value of approximately \$18.4 million and a net value of approximately \$4.3 million.²⁴⁸

²⁴⁰ Exhibit RC0281 ICR3838 (052), 2 November 2007, 537, VPL.2000.0003.2123; Un-tendered Transcript of meeting between Nicola Gobbo, Anderson and Peter Smith, 12 July 2006, 178-179, VPL.0005.0111.0183 @.0360-.0361.

²⁴¹ Exhibit RC0281 ICR3838 (052), 2 November 2007, 537, VPL.2000.0003.2123.

²⁴² Exhibit RC0281 ICR3838 (051), 23 October 2006, 519-520, VPL.2000.0003.2105-VPL.2000.0003.2106.

²⁴³ Un-tendered Search Warrant SW452/06, 1 December 2006, 1, MIN.0001.0012.0416, @.0001; Un-tendered Result of Search Warrant SW452/06, 7 December 2006, MIN.0001.0012.0416 @.0003.

²⁴⁴ Exhibit RC0281 ICR3838 (083), 12 June 2007, 891, VPL.2000.0003.2477.

²⁴⁵ Exhibit RC0281 ICR3838 (083), 12 June 2007, 891, VPL.2000.0003.2477.

²⁴⁶ Exhibit RC0281 ICR3838 (089), 13 July 2007, 1012, VPL.2000.0003.2598; Exhibit RC0281 ICR3838 (090), 17 July 2007, 1024, VPL.2000.0003.2610; Exhibit RC0281 ICR3838 (101), 24 September 2007, 1242, VPL.2000.0003.2828

²⁴⁷ Exhibit RC0281 ICR3838 (101), 24 September 2007, 1242, VPL.2000.0003.2828

²⁴⁸ Un-tendered Master List of ACO Production of Documents to the RCMP, 10 May 2019, ACO.0001.0001.0001.

Submissions to the Commission regarding Mr Mokbel

100. On 7 March 2019, submissions regarding Mr Mokbel were filed with the Commission. Mr Mokbel made an application to the Commission for leave to appear on 14 February 2019, and was granted leave to appear at a hearing regarding a non-publication order application on 17 May 2019. Submissions concerning Mr Mokbel included the following matters:
- 100.1. It was submitted to the Commission that between about early 2002 and about December 2011 he had a continuing legal professional relationship with Ms Gobbo,²⁴⁹ during which he believed that all communications with Ms Gobbo touching upon criminal matters were confidential and subject to legal professional privilege. It was submitted to the Commission that he never waived these rights.²⁵⁰
 - 100.2. It was submitted that Ms Gobbo failed to disclose to Mr Mokbel her personal relationships with witnesses (both civilian witnesses and police officers), including with Detective Sergeant Dale and Mr Miechel.²⁵¹
 - 100.3. It was submitted that the circumstances in which Mr Mokbel was convicted of each charge gave rise to a substantial miscarriage of justice.²⁵²

Submissions under Terms of Reference 1 and 2 in relation to Mr Mokbel

101. It is submitted that it is open to the Commissioner to find that the three cases of Mr Mokbel may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
102. This case is linked to the cases of Mr Thomas and Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapters 7 and 11.
103. These submissions should be read in conjunction with relevant parts of the Narrative Submissions in Chapters 2, 5, 7, 8, 9, 10, 11, 15, 18 and 20 which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to these cases.
104. The extent to which the cases of Mr Mokbel may have been affected can be measured by virtue of the following matters.

²⁴⁹ Anonymous Submission 030, 8 [18].

²⁵⁰ Anonymous Submission 030, 3-4 [3], 7 [17].

²⁵¹ Anonymous Submission 030, 18-19 [32], [34]-[36].

²⁵² Un-tendered Notice of Application for Leave to Appeal Against Convictions, 6 December 2017, *Antonios Sajih Mokbel v CDPP & DPP*, COR.1003.0001.0002.

The Plutonium Case

Conduct of Ms Gobbo

105. First, Category 1A²⁵³ applies in that, between September 2001 and March 2006,²⁵⁴ Ms Gobbo acted for Mr Mokbel while she was a human source,²⁵⁵ and did not disclose same to him.²⁵⁶
106. Secondly, Category 1B²⁵⁷ applies in that, between May 2005 and March 2006,²⁵⁸ which was before and during the period that Ms Gobbo acted for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution, and did not disclose same to him.²⁵⁹
107. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁶⁰ Further, in certain instances identified above,²⁶¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁶²
108. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

109. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁶³
 - 109.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mokbel;

²⁵³ See Legal Principles Submissions at [249].

²⁵⁴ See above analysis at [37]-[42].

²⁵⁵ See Legal Principles Submissions at [20].

²⁵⁶ See Legal Principles Submissions at [239].

²⁵⁷ See Legal Principles Submissions at [249].

²⁵⁸ See above analysis at [54]-[65].

²⁵⁹ See above analysis at [58], [62].

²⁶⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁶¹ See above analysis at [54]-[63].

²⁶² See Legal Principles Submissions at [310]-[319] and [301]-[306].

²⁶³ See Legal Principles Submissions at [384] and [452]-[457].

- 109.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mokbel, appropriate disclosure was made; or alternatively
- 109.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office and then possibly a court.
110. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [109.1] were taken, and accordingly there was the potential for the right of Mr Mokbel to a fair trial to have been interfered with.
111. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mokbel and/or his legal representatives.
112. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁶⁴
113. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁶⁵
114. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.²⁶⁶
115. Category 3A²⁶⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
116. Category 3B²⁶⁸ applies in that, before and during the period Ms Gobbo acted for Mr Mokbel, she provided information in relation to him to members of Victoria Police and/or otherwise assisted the prosecution of the accused,²⁶⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
117. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁶⁴ See Legal Principles Submissions at [380]-[385].

²⁶⁵ See Legal Principles Submissions at [351], [362]-[373].

²⁶⁶ See Legal Principles Submissions at [351], [374].

²⁶⁷ See Legal Principles Submissions at [465].

²⁶⁸ See Legal Principles Submissions at [465].

²⁶⁹ See above analysis at [54]-[65].

The Orbital/Quills Case and the Magnum Case

Conduct of Ms Gobbo

118. First, Category 1A²⁷⁰ applies in that, between October 2005 and May 2008,²⁷¹ Ms Gobbo acted for Mr Mokbel while she was a human source,²⁷² and did not disclose same to him.²⁷³
119. Secondly, Category 1B²⁷⁴ applies in that, between May 2005 and May 2008,²⁷⁵ which was before and during the period that Ms Gobbo acted for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution, and did not disclose same to him.²⁷⁶
120. Thirdly, Category 2A²⁷⁷ applies in that evidence relied upon by the prosecution in Mr Mokbel's case, namely the evidence of Mr Cooper,²⁷⁸ and Mr Bickley,²⁷⁹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²⁸⁰
121. Fourthly, Category 2B²⁸¹ applies in that Ms Gobbo had knowledge of the circumstances founding the above in [120] and failed to disclose same to her client, Mr Mokbel, thereby depriving him of the ability to object to its admission.
122. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁸² Further, in certain instances identified above,²⁸³ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁸⁴
123. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

²⁷⁰ See Legal Principles Submissions at [249].

²⁷¹ See above analysis at [37]-[50].

²⁷² See Legal Principles Submissions at [20].

²⁷³ See Legal Principles Submissions at [239].

²⁷⁴ See Legal Principles Submissions at [249].

²⁷⁵ See above analysis at [54]-[75].

²⁷⁶ See above analysis at [58], [68], [72], [75], ([95] – [98]).

²⁷⁷ See Legal Principles Submissions at [249].

²⁷⁸ See above analysis at [86]-[88].

²⁷⁹ See above analysis at [81]-[84.1].

²⁸⁰ See Legal Principles Submissions at [196]-[222].

²⁸¹ See Legal Principles Submissions at [249].

²⁸² See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁸³ See above analysis at [47], [54] - [59], [68] – [75].

²⁸⁴ See Legal Principles Submissions at [310]-[319] and [301]-[306].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

124. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁸⁵
- 124.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mokbel;
 - 124.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mokbel, appropriate disclosure was made; or alternatively
 - 124.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
125. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [124.1] were taken, and accordingly there was the potential for the right of Mr Mokbel to a fair trial to have been interfered with.
126. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mokbel and/or his legal representatives.
127. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁸⁶
128. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁸⁷
129. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁸⁸
130. Category 3A²⁸⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

²⁸⁵ See Legal Principles Submissions at [384] and [452]-[457].

²⁸⁶ See Legal Principles Submissions at [380]-[385].

²⁸⁷ See Legal Principles Submissions at [351], [362]-[373].

²⁸⁸ See Legal Principles Submissions at [351], [374].

²⁸⁹ See Legal Principles Submissions at [465].

131. Category 3B²⁹⁰ applies in that, before and during the period Ms Gobbo acted for Mr Mokbel, she provided information in relation to him to members of Victoria Police and/or otherwise assisted the prosecution of the accused,²⁹¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
132. Category 4A²⁹² applies in that, as noted above at [120], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
133. Category 4B²⁹³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
134. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

The Charges arising from Operations Kayak, Landslip, Matchless and Spake

135. In relation to charges against Mr Mokbel arising from Operations Kayak, Landslip, Matchless and Spake, it is submitted that it is open to the Commission to find that because of the conduct of Ms Gobbo and Victoria Police pertaining to those charges, the Orbital/Quills Case and the Magnum Case may have been further affected.
136. The extent to which the Orbital/Quills Case and the Magnum Case may have been further affected by virtue of the conduct associated with the abovementioned Operations, can be measured by virtue of the following matters.

Conduct of Ms Gobbo

137. First, Category 1A²⁹⁴ applies in that, between October 2005 and May 2008,²⁹⁵ Ms Gobbo acted for Mr Mokbel while she was a human source,²⁹⁶ and did not disclose same to him.²⁹⁷
138. Secondly, Category 1B²⁹⁸ applies in that, between May 2005 and May 2008,²⁹⁹ which was before and during the period that Ms Gobbo acted for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to

²⁹⁰ See Legal Principles Submissions at [465].

²⁹¹ See above analysis at [58], [68], [72], [75], ([96] – [99]?).

²⁹² See Legal Principles Submissions at [465].

²⁹³ See Legal Principles Submissions at [465].

²⁹⁴ See Legal Principles Submissions at [249].

²⁹⁵ See above analysis at [37]-[50].

²⁹⁶ See Legal Principles Submissions at [20].

²⁹⁷ See Legal Principles Submissions at [239].

²⁹⁸ See Legal Principles Submissions at [249].

²⁹⁹ See above analysis at [54]-[80].

members of Victoria Police and/or otherwise assisted (or attempted to assist) in his prosecution, and did not disclose same to him.³⁰⁰

139. Thirdly, Category 2A³⁰¹ applies in that evidence relied upon by the prosecution in Mr Mokbel's case, namely the evidence of Mr Cooper,³⁰² Mr Bickley,³⁰³ [REDACTED]³⁰⁴ and Mr Thomas,³⁰⁵ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.³⁰⁶
140. Fourthly, Category 2B³⁰⁷ applies in that Ms Gobbo had knowledge of the circumstances founding the above [139] and failed to disclose same to her client, Mr Mokbel, thereby depriving him of the ability to object to its admission.
141. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³⁰⁸ Further, in certain instances identified above,³⁰⁹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.³¹⁰
142. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

143. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³¹¹

³⁰⁰ See above analysis at [58], [68], [72], [75], ([95] – [98]).

³⁰¹ See Legal Principles Submissions at [249].

³⁰² See above analysis at [86]-[88].

³⁰³ See above analysis at [81]-[84.1].

³⁰⁴ See above analysis at [89]-[9084.1].

³⁰⁵ See above analysis at [91]-[92].

³⁰⁶ See Legal Principles Submissions at [196]-[222].

³⁰⁷ See Legal Principles Submissions at [249].

³⁰⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

³⁰⁹ See above analysis at [47], [54] - [59], [68], [69], [76] – [79].

³¹⁰ See Legal Principles Submissions at [310]-[319] and [301]-[306].

³¹¹ See Legal Principles Submissions at [384] and [452]-[457].

- 143.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mokbel;
 - 143.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mokbel, appropriate disclosure was made; or alternatively
 - 143.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
144. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [143.1] were taken, and accordingly there was the potential for the right of Mr Mokbel to a fair trial to have been interfered with.
 145. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mokbel and/or his legal representatives.
 146. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³¹²
 147. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³¹³
 148. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³¹⁴
 149. Category 3A³¹⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 150. Category 3B³¹⁶ applies in that, before and during the period Ms Gobbo acted for Mr Mokbel, she provided information in relation to him to members of Victoria Police and/or otherwise assisted the prosecution of the accused,³¹⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 151. Category 4A³¹⁸ applies in that, as noted above at [139], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or

³¹² See Legal Principles Submissions at [380]-[385].

³¹³ See Legal Principles Submissions at [351], [362]-[373].

³¹⁴ See Legal Principles Submissions at [351], [374].

³¹⁵ See Legal Principles Submissions at [465].

³¹⁶ See Legal Principles Submissions at [465].

³¹⁷ See above analysis at [54]-[80].

³¹⁸ See Legal Principles Submissions at [465].

illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

152. Category 4B³¹⁹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
153. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³¹⁹ See Legal Principles Submissions at [465].

CASE STUDY: HORTY MOKBEL

The Relevant Case of Mr Mokbel

1. These submissions should be read in conjunction with the Narrative Submissions, at Chapters 5, 15, and 16, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Horthy Mokbel.
2. The one relevant case of Mr Horthy Mokbel concerns his plea of guilty and sentence on 8 November 2010, before the Supreme Court, for one charge of having in his possession substances and equipment, between 1 June 2006 and 5 April 2007, with the intention of using them for the purpose of trafficking in a drug of dependence (the case).¹ The charge arose from two police operations, Operation Tool and Operation Dotard.²
3. On 25 July 2007 and 7 December 2007, Mr Horthy Mokbel was charged with numerous offences arising from the above operations.³ Throughout that period, Mr Horthy Mokbel was in custody, having been remanded since being charged on 13 April 2007 with offences in relation to Operation Posse of which he was later acquitted.⁴
4. On 26 July 2007, a filing hearing for the case was conducted in the Magistrates' Court at Melbourne.⁵ In December 2007 and February 2008, committal mention hearings were conducted in the Magistrates' Court at Melbourne.⁶ On 14 October 2008, Mr Horthy Mokbel made an unsuccessful application for bail before the Magistrates' Court at Melbourne.⁷ Between 1 and 4 December 2008, a committal hearing took place, at the conclusion of which Mr Horthy Mokbel was committed to stand trial on all charges.⁸
5. On 2 August 2010, following extensive pre-trial proceedings before the Supreme Court, the charges in relation to Operation Tool and Operation Dotard were resolved by agreement to a plea of guilty on one charge.⁹ On that day, Mr

¹ Un-tendered Presentment C0605383.3A, *DPP v Horthy Mokbel*, 2010, 20-32, RCMP1.0070.0001.0009 @.0020-.0032.

² Un-tendered Summary of Charges, *DPP v Horthy Mokbel*, 2010, 33, RCMP1.0070.0001.0009 @.0033; Un-tendered Summary of Evidence, *DPP v Horthy Mokbel*, 2010, 588-589, RCMP1.0070.0001.0009 @.0588-0589.

³ Un-tendered Summary of Charges, *DPP v Horthy Mokbel*, 2010, 33, RCMP1.0070.0001.0009 @.0033; Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 581 [3], RCMP1.0070.0001.0009 @.0581; Un-tendered Summary of Evidence, *DPP v Horthy Mokbel*, 2010, 588-591, RCMP1.0070.0001.0009 @.0588-0591.

⁴ See *R v Horthy Mokbel* (Sentence) [2010] VSC 432, [32].

⁵ Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 582, RCMP1.0070.0001.0009 @.0582.

⁶ Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 582, RCMP1.0070.0001.0009 @.0582.

⁷ Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 582, RCMP1.0070.0001.0009 @.0582.

⁸ Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 582, RCMP1.0070.0001.0009 @.0582.

⁹ See *R v Horthy Mokbel* (Sentence) [2010] VSC 432, [35]; Un-tendered Summary of Proceedings, *DPP v Horthy Mokbel*, 2010, 583-585, RCMP1.0070.0001.0009 @.0583-5.

Horty Mokbel was arraigned and pleaded guilty to the charge described above.¹⁰

6. The prosecution case against Mr Horty Mokbel was that he was involved in a broader drug manufacturing and trafficking enterprise in which a number of other persons were allegedly involved, including Messrs Stephen Gavanas, Mohammad Khodr, [REDACTED] and others.¹¹ Mr Horty Mokbel was described as having “a commercial role” in a “sophisticated, large scale, fully commercial chain of transactions directed towards the illegal production of methylamphetamine.”¹² The case against Mr Horty Mokbel included reliance upon the evidence of Mr Cooper, [REDACTED].¹³ The “primary investigator” in the case was Mr Jason Kelly.¹⁴ In addition, notable members of police involved in the prosecution as police witnesses included, Mr Paul Rowe, Mr Dale Flynn, Mr Craig Hayes and Mr Graham Evans.¹⁵
7. On 8 November 2010, following plea hearings in September 2010,¹⁶ Mr Horty Mokbel was convicted and sentenced in the Supreme Court to a term of imprisonment of six years, with a non-parole period of four years and six months.¹⁷
8. In 2011, Mr Horty Mokbel sought leave to appeal against sentence before the Court of Appeal.¹⁸ The grounds of appeal did not concern Ms Gobbo. The application for leave to appeal was refused, but an error made by the sentencing judge as to the calculation of pre-sentence detention was corrected.¹⁹

Ms Gobbo’s Legal Representation of Mr Horty Mokbel

9. It was submitted to the Commission that Ms Gobbo “acted as a legal representative and provided ongoing legal advice to [him] during his criminal proceedings between 1999 until sometime in 2007”.²⁰ That is generally supported by other material before the Commission.
10. In particular, material before the Commission establishes that between 1999 and 2002, Ms Gobbo acted as Mr Horty Mokbel’s lawyer in relation to various

¹⁰ Un-tendered Summary of Proceedings, *DPP v Horty Mokbel*, 2010, 585, RCMP1.0070.0001.0009 @.0585; Un-tendered Presentment C0605383.3A, *DPP v Horty Mokbel*, 2010, 20-32, RCMP1.0070.0001.0009 @.0020-32.

¹¹ See *R v Horty Mokbel* (Sentence) [2010] VSC 432, [2]-[20].

¹² *R v Horty Mokbel* (Sentence) [2010] VSC 432, [22].

¹³ See Un-tendered Presentment C0605383.3A, *DPP v Horty Mokbel*, 2010, 20-32, RCMP1.0070.0001.0009 @.0020-32.

¹⁵ See Un-tendered Presentment C0605383.3A, *DPP v Horty Mokbel*, 2010, 20-32, RCMP1.0070.0001.0009 @.0020-32.

¹⁶ Un-tendered Summary of Proceedings, *DPP v Horty Mokbel*, 2010, 585, RCMP1.0070.0001.0009 @.0585.

¹⁷ *R v Horty Mokbel* (Sentence) [2010] VSC 432, [53].

¹⁸ See *Horty Mokbel v The Queen* [2011] VSCA 106.

¹⁹ See *Horty Mokbel v The Queen* [2011] VSCA 106, [61]-[63].

²⁰ See Anonymous Submission 031, 1.

earlier unrelated proceedings.²¹ Further, in the period before and surrounding Mr Horthy Mokbel's proceedings for the offending to which he pleaded guilty, the evidence suggests that Ms Gobbo acted for, or advised, him on the following occasions:

- 10.1. On 10 October 2006, Ms Gobbo met with Mr Horthy Mokbel in chambers "to discuss Operation DOTARD offenders".²²
 - 10.2. On 13 April 2007, the day of Mr Horthy Mokbel's arrest in relation to Operation Posse, Ms Gobbo visited and conferred with him in the Melbourne Custody Centre.²³
 - 10.3. On 6 July 2007, Ms Gobbo rendered fees for "[c]onferences, advice and drafting Supreme Court Affidavit and Form 8A" in the matter of *Police v Horthy Mokbel*, which appears to have been in relation to the Operation Posse matter.²⁴
 - 10.4. On 14 September 2007, Ms Gobbo conferred with Mr Horthy Mokbel, and his brother Mr Milad Mokbel, about their cases.²⁵
 - 10.5. On 21 September 2007, Ms Gobbo, together with her instructing solicitor, Mr Alastair Grigor, conducted a professional visit upon Mr Horthy Mokbel in prison.²⁶
11. At the 21 September 2007 conference, it appears that Ms Gobbo formally confirmed that she would no longer be involved as counsel for Mr Horthy Mokbel.²⁷ There is no evidence of Ms Gobbo providing any further advice or representation to him after that time. Therefore, it appears that Ms Gobbo's role as a lawyer in relation to the offending was confined to provision of advice in the early stages of the committal proceedings.

²¹ See, eg: Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 April 2000, 18, MIN.5000.7000.0001 @.0018; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 29 August 2000, 24, MIN.5000.7000.0001 @.0024; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 14 February 2001, 32, MIN.5000.7000.0001 @.0032; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 18 April 2001, 35, MIN.5000.7000.0001 @.0035; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 24 May 2001, 37, MIN.5000.7000.0001 @.0037; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 8 June 2001, 38, MIN.5000.7000.0001 @.0038; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 29 November 2001, 43, MIN.5000.7000.0001 @.0043; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 10 December 2001, 44, MIN.5000.7000.0001 @.0044; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 13 March 2002, 47, MIN.5000.7000.0001 @.0047; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 4 July 2002, 51, MIN.5000.7000.0001 @.0051; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 9 August 2002, 53, MIN.5000.7000.0001 @.0053; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 19 June 2002, 24, OPP.0001.0004.0025 @.0048; Exhibit RC1569 Meldrum & Hyland Invoice for fees due to Ms Gobbo, 18 March 2019, 3, 8, GMH.0001.0001.0015 @.0003, .0008; Anonymous Submission 031, 1-3.

²² See Exhibit RC0281 ICR3838 (048), 10 October 2006, 467, VPL.2000.0003.2053.

²³ Exhibit RC0281 ICR3838 (074), 13 April 2007, 785, VPL.2000.0003.2371.

²⁴ Exhibit RC1568 Ms Gobbo fee book 02, 6 July 2007, 6, MIN.5000.7000.0103 @.0108; Exhibit RC1569 Meldrum & Hyland Invoice for fees due to Ms Gobbo, 6 July 2007, 82, GMH.0001.0001.0006 @.0082; Exhibit RC1569 Meldrum & Hyland, 'Ms Gobbo Statement of Account', 07 March 2019, 29, GMH.0001.0001.0002 @.0029. See Transcript of Mr Dale Flynn, 3 October 2019, 7143-4, TRN.2019.10.03.01.C.

²⁵ See Exhibit RC0281 ICR3838 (100), 14 September 2007, 1219, VPL.2000.0003.2805: "She has been on the phone to Horthy and Milad re their cases."

²⁶ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 21 September 2007, 26, CNS.0001.0003.0037 @.0062. See also Exhibit RC1602 Correctional Services Commissioner "Archive Visit Enquiry", 21 September 2001, CNS.0001.0003.1358. See also Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

²⁷ See Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824. This accords with the Anonymous Submission 031, 1.

The Use of Ms Gobbo as a Human Source in relation to Mr Horthy Mokbel

Prior to Charge on 25 July 2007

12. Ms Gobbo began providing information to police about Mr Horthy Mokbel immediately upon her third registration as a human source, at her first meeting with handlers on 16 September 2005.²⁸ She continued to do so consistently until he was charged with the relevant offending on 25 July 2007.²⁹

Tasking and Information Provided

13. During this period, Victoria Police actively sought information from Ms Gobbo concerning Mr Horthy Mokbel, and specifically “tasked” her for that purpose. For example, according to the Informer Contact Reports (ICRs):
 - 13.1. On 13 October 2005, Ms Gobbo was tasked by Mr Peter Smith, one of her handlers, to “ascertain any plans of Mokbels to attend race tracks or other gambling destinations.”³⁰ This was in the context of Ms Gobbo informing Mr Peter Smith that she would be seeing Mr Horthy Mokbel the following day in relation to his racetrack ban.³¹
 - 13.2. On 23 December 2005, another handler, Mr Black, tasked Ms Gobbo to “[g]ather current criminal intelligence on Horthy and report back”.³²
 - 13.3. On 31 December 2005, Mr Black again tasked Ms Gobbo to “attempt to speak with Horthy Mokbel” at Antonios (Tony) Mokbel’s New Year’s Eve party which she was to attend that evening.³³
 - 13.4. On 28 January 2006, Mr Peter Smith tasked Ms Gobbo to “find out [the] location of Horthy Mokbel’s investment property at Safety Beach.”³⁴
14. Throughout the period from September 2005 to July 2007, Ms Gobbo provided extensive information in relation to Mr Horthy Mokbel to police. As the ICRs show, such information included:
 - 14.1. background information about his personal circumstances, including details of his personal relationships and social affairs³⁵

²⁸ See Exhibit RC0281 ICR3838 (001), 16 September 2005, 4-5, VPL.2000.0003.1590-1591.

²⁹ See generally references to Mr Horthy Mokbel in Un-tendered Victoria Police Summary of Extracts, Horthy Mokbel, 1 May 2020, 1-214, VPL.4226.0001.0001 @.0001 -0214.

³⁰ Exhibit RC0281 ICR3838 (006), 13 October 2005, 31, VPL.2000.0003.1617.

³¹ Exhibit RC0281 ICR3838 (006), 13 October 2005, 31, VPL.2000.0003.1617.

³² Exhibit RC0281 ICR3838 (013), 13 October 2005, 23 December 2005, 97, VPL.2000.0003.1683.

³³ Exhibit RC0281 ICR3838 (014), 31 December 2005, 106, VPL.2000.0003.1692.

³⁴ Exhibit RC0281 ICR3838 (017), 28 January 2006, 137, VPL.2000.0003.1723; see also Gobbo providing information about the Safety Beach property at Exhibit RC0281 ICR3838 (020), 27 February 2006, 172, VPL.2000.0003.1751 @.1758 Exhibit RC0283 Information Report IRSID436, 27 February 2006, VPL.2000.0003.8549. See Exhibit RC0281 ICR3838 (043), 30 August 2006, 410, VPL.2000.0003.1996, Exhibit RC0281 ICR3838 (045), 10 September 2006, 419, VPL.2000.0003.2005, re Rosebud investment property, and Mr O’Brien’s specific interest in same.

³⁵ See, eg: Exhibit RC0281 ICR3838 (001), 16 September 2005, 4, VPL.2000.0003.1590, : Exhibit RC0281 ICR3838 (004), 1 October 2005, 22, VPL.2000.0003.1608; Exhibit RC0281 ICR3838 (016), 28 January 2006, 134, VPL.2000.0003.1720.

- 14.2. information about his financial and business affairs and dealings³⁶
- 14.3. information about languages he speaks (including Arabic)³⁷
- 14.4. information as to his “nickname” or alias³⁸
- 14.5. information relating to the identification of motor vehicles he used or owned or was otherwise associated with³⁹
- 14.6. information relating to his use of mobile telephones, including the number of telephones he used⁴⁰ and their numbers⁴¹
- 14.7. information about persons with whom he was said to be associated⁴²
- 14.8. information about his alleged drug trafficking activities, including:
 - 14.8.1. details of persons with whom he was allegedly involved in the manufacture of drugs⁴³
 - 14.8.2. details concerning his alleged conduct in obtaining and possessing precursor substances for the manufacture of drugs⁴⁴

³⁶ See eg, Exhibit RC0281 ICR3838 (004), 1 October 2005, 22, VPL.2000.0003.1608; Exhibit RC0281 ICR3838 (013), 23 December 2005, 96, VPL.2000.0003.1682; Exhibit RC0281 ICR3838 (015), 4 January 2006, 110-111, VPL.2000.0003.1696-1697. See Exhibit RC0283 Information Report IRSID 356, 4 January 2006, 1, VPL.2000.0003.8474; Exhibit RC0281 ICR3838 (015), 12 January 2006, 121, VPL.2000.0003.1707; Exhibit RC0281 ICR3838 (016), 22 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0281 ICR3838 (016), 23 January 2006, 130, VPL.2000.0003.1716; Exhibit RC0281 ICR3838 (018), 17 February 2006, 156, VPL.2000.0003.1742; Exhibit RC0281 ICR3838 (020), 27 February 2006, 172, VPL.2000.0003.1758; Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766; Exhibit RC0281 ICR3838 (023), 16 March 2006, 191, VPL.2000.0003.1777; Exhibit RC0281 ICR3838 (031), 5 May 2006, 286, VPL.2000.0003.1872; Exhibit RC0281 ICR3838 (031), 12 May 2006, 296, VPL.2000.0003.1882; Exhibit RC0281 ICR3838 (034), 5 May 2006, 319, VPL.2000.0003.1905; Exhibit RC0281 ICR3838 (034), 9 June 2006, 323, VPL.2000.0003.1909; Exhibit RC0281 ICR3838 (035), 14 June 2006, 330, VPL.2000.0003.1916; Exhibit RC0281 ICR3838 (040), 3 August 2006, 381, VPL.2000.0003.1967; Exhibit RC0281 ICR3838 (041), 16 August 2006, 397, VPL.2000.0003.1982; Exhibit RC0281 ICR3838 (043), 28 August 2006, 409 VPL.2000.0003.1995; Exhibit RC0281 ICR3838 (043), 29 August 2006, 410, VPL.2000.0003.1996, and See Exhibit RC0283 Information Report IRSID 825, 1, 30 August 2006, VPL.2000.0003.8845; Exhibit RC0281 ICR3838 (046), 21 September 2006, 433, VPL.2000.0003.2019; Exhibit RC0281 ICR3838 (048), 9 October 2006, 459, VPL.2000.0003.2045.

³⁷ See eg: Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606.

³⁸ See eg: Exhibit RC0281 ICR3838 (004), 1 October 2005, 24, VPL.2000.0003.1610.

³⁹ See, eg: Exhibit RC0281 ICR3838 (016), 19 January 2006, 127, VPL.2000.0003.1713; Exhibit RC0281 ICR3838 (016), 23 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0281 ICR3838 (019), 18 February 2006, 158, VPL.2000.0003.1744; Exhibit RC0281 ICR3838 (023), 23 March 2006, 205, VPL.2000.0003.1791; Exhibit RC0281 ICR3838 (034), 3 June 2006, 318, VPL.2000.0003.1904; Exhibit RC0281 ICR3838 (036), 24 June 2006, 342, VPL.2000.0003.1928 and see Exhibit RC0283 Information Report IRSID 745, 3 June 2006, 1, VPL.2000.0003.8731.

⁴⁰ See, eg: Exhibit RC0281 ICR3838 (016), 22 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0281 ICR3838 (046), 21 September 2006, 433, VPL.2000.0003.2019; Exhibit RC0281 ICR3838 (048), 10 October 2006, 467, VPL.2000.0003.2053.

⁴¹ See, Exhibit RC0281 ICR3838 (016), 22 January 2006, 129, VPL.2000.0003.1715; Exhibit RC0281 ICR3838 (043), 29 August 2006, 409, VPL.2000.0003.1995.

⁴² See, eg: Exhibit RC0281 ICR3838 (017), 8 February 2006, 145, VPL.2000.0003.1731; Exhibit RC0281 ICR3838 (018), 15 February 2006, 153, VPL.2000.0003.1739.

⁴³ See eg, Exhibit RC0281 ICR3838 (007), 24 October 2005, 37, VPL.2000.0003.1623; Exhibit RC0281 ICR3838 (007), 25 October 2005, 39, VPL.2000.0003.1625; Exhibit RC0281 ICR3838 (015), 12 January 2006, 120, VPL.2000.0003.1706; Exhibit RC0281 ICR3838 (017), 9 February 2006, 147, VPL.2000.0003.1733; Exhibit RC0281 ICR3838 (031), 5 May 2006, 285-286, VPL.2000.0003.1871-1872; Exhibit RC0281 ICR3838 (048), 9 October 2006, 459, VPL.2000.0003.2045.

⁴⁴ See eg, Exhibit RC0281 ICR3838 (007), 25 October 2005, 39, VPL.2000.0003.1625; Exhibit RC0281 ICR3838 (020), 24 February 2006, 166, VPL.2000.0003.1752; Exhibit RC0281 ICR3838 (031), 5 May 2006, 285-286, VPL.2000.0003.1871-1872.

- 14.8.3. other more general information concerning his alleged involvement in drug manufacturing and trafficking activities.⁴⁵

The Contemplated Use of Ms Gobbo as a Covert Operative

15. At times, it appears Ms Gobbo and members of Victoria Police contemplated the use of her as a covert operative, including in relation to Mr Horthy Mokbel. In particular, on 28 October 2005, an ICR entry records the following, under the heading 'Corrupt policeman scenario':⁴⁶

"HS [human source] states that HS can suggest in conversation with the MOKBEL brothers, for example at the Shark Fin restaurant, that HS has a client who had to bribe a drug squad detective ... HS and Handler to consider possible scenarios re this and discuss further."

16. Nothing, however, appears to have eventuated in relation to the foregoing idea. On another occasion, on the afternoon of 8 June 2006, Ms Gobbo and one of her handlers, Mr Green, discussed the potential use of a covert "recording device" to record a dinner meeting that she was to attend that night with Mr Horthy Mokbel and others.⁴⁷ Just over an hour later, however, Mr Green telephoned Ms Gobbo and told her that he had "[d]ecided no to recording device due to it being an unnecessary risk."⁴⁸ The ICR describes that Ms Gobbo "was a little put out by this [decision] – but only briefly."⁴⁹ She nevertheless attended the dinner meeting and afterwards provided a detailed report on what was discussed.⁵⁰

Close Social Relationship

17. During this time, Ms Gobbo maintained a close social relationship with Mr Horthy Mokbel.⁵¹ For example, she was in regular contact with Mr Horthy Mokbel and frequently attended dinner with him and his associates.⁵² On 23 December

⁴⁵ See, eg: Exhibit RC0281 ICR3838 (017), 9 February 2006, 147, VPL.2000.0003.1733; Exhibit RC0281 ICR3838 (019), 22 February 2006, 162, VPL.2000.0003.1748; Exhibit RC0281 ICR3838 (021), 3 March 2006, 175, VPL.2000.0003.1761; Exhibit RC0281 ICR3838 (021), 4 March 2006, 176-177, VPL.2000.0003.1762-1763; Exhibit RC0281 ICR3838 (023), 21 March 2006, 201, VPL.2000.0003.1787; Exhibit RC0281 ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817; Exhibit RC0281 ICR3838 (027), 16 April 2006, 246, VPL.2000.0003.1832; Exhibit RC0281 ICR3838 (031), 5 May 2006, 285-286, VPL.2000.0003.1871-1872; Exhibit RC0281 ICR3838 (039), 14 August 2006, 373, VPL.2000.0003.1959; see also Exhibit RC0281 ICR3838 (041), 14 August 2006, 393-394, VPL.2000.0003.1979-1980, Exhibit RC0281 ICR3838 (041), 15 August 2006, 395-396, VPL.2000.0003.1981-1982, Exhibit RC0281 ICR3838 (043), 30 August 2006, 411, VPL.2000.0003.1997; Exhibit RC0281 ICR3838 (048), 10 October 2006, 465, VPL.2000.0003.2051.

⁴⁶ Exhibit RC0281 ICR3838 (007), 28 October 2005, 48, VPL.2000.0003.1634.

⁴⁷ Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907.

⁴⁸ Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907.

⁴⁹ Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907.

⁵⁰ Exhibit RC0281 ICR3838 (034), 8 June 2006, 322 VPL.2000.0003.1908.

⁵¹ In addition to the references in the ICRs, noted below, see also Anonymous Submission 031, 1, 5 [19].

⁵² See, eg: Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605; Exhibit RC0281 ICR3838 (007), 28 October 2005, 45, VPL.2000.0003.1631; Exhibit RC0281 ICR3838 (017), 7 February 2006, 145, VPL.2000.0003.1731; Exhibit RC0281 ICR3838 (019), 22 February 2006, 161, VPL.2000.0003.1747; Exhibit RC0281 ICR3838 (020), 27 February 2006, 171, VPL.2000.0003.1757; Exhibit RC0281 ICR3838 (021), 6 March 2006, 179, VPL.2000.0003.1765; Exhibit RC0281 ICR3838 (021), 9 March 2006, 181-182, VPL.2000.0003.1767-1768; Exhibit RC0281 ICR3838 (027), 14 April 2006, 244, VPL.2000.0003.1830; Exhibit RC0281 ICR3838 (031), 9 May 2006, 292, VPL.2000.0003.1878; Exhibit RC0281 ICR3838 (031), 12 May 2006, 296, VPL.2000.0003.1882; Exhibit RC0281 ICR3838 (031), 15 May 2006, 298, VPL.2000.0003.1884; Exhibit RC0281 ICR3838 (034), 8 June 2006, 321-322, VPL.2000.0003.1907-1908; Exhibit RC0281 ICR3838 (034), 9 June 2006, 323,

Discussions between Victoria Police and Ms Gobbo about Operation Dotard

20. On 9 October 2006, Mr Anderson, a handler, telephoned Ms Gobbo and provided her with an update “regarding the status of Operation Dotard”.⁶³ According to the relevant ICR entry, Mr Anderson and Ms Gobbo discussed the “proposed course of action if [Ms Gobbo] is contacted by offenders arrested” as part of that operation,⁶⁴ which appears to have been a reference to Messrs Mohammad Khodr and Stephen Gavanas. Ms Gobbo and Mr Anderson also discussed Ms Gobbo’s expectations of Mr Horthy Mokbel’s likely response to news of Mr Gavanas’ arrest.⁶⁵ Later that day, following Mr Gavanas’ arrest, Ms Gobbo reported to Mr Anderson the response of Mr Horthy Mokbel to the arrest.⁶⁶
21. On 10 October 2006, Ms Gobbo conferred with Mr Horthy Mokbel and Mr Stephen Andrianakis, solicitor, in her chambers in relation to Operation Dotard.⁶⁷ Following the conference, she provided Mr Anderson with a detailed account of their discussions.⁶⁸ The relevant ICR entry notes that this information was subsequently conveyed verbally to Mr Gavan Ryan of the Purana Taskforce.⁶⁹

Ms Gobbo’s Reflections about Lies and Deceit

22. On 17 July 2007, just prior to the arrest of Mr Horthy Mokbel on 25 July 2007, during a meeting with her handlers, Ms Gobbo reflected on her previous conduct as a human source, and commented:⁷⁰

“I have mastered the art of living a double, triple secret life. I lie to people every day ... [including] Horthy ... I pretend I don’t know anything that I have to remember that I don’t know and I’ve never - got to remember the line I told him yesterday, so I can carry on the lie next week or tomorrow with slightly different variations of those lies because of different people. It’s a fucking stressful existence working out the lies.”

Handlers Attempting to Dissuade Ms Gobbo from Acting for Mr Horthy Mokbel

23. It is important to note that, at times, Ms Gobbo’s handlers actively sought to dissuade Ms Gobbo from acting as a lawyer for Mr Horthy Mokbel. In April 2007, for example, the handlers were at pains to counsel Ms Gobbo against acting for Mr Horthy Mokbel, as is apparent from the following:
 - 23.1. On 13 April 2007, Mr Anderson noted in an ICR, “[Ms Gobbo] is aware [sic] of the reason why she must not be involved in the arrest or subsequent appearances on behalf of Horthy ... [Ms Gobbo] agrees and

⁶³ Exhibit RC0281 ICR3838 (048), 9 October 2006, 460, VPL.2000.0003.2046

⁶⁴ Exhibit RC0281 ICR3838 (048), 9 October 2006, 460, VPL.2000.0003.2046

⁶⁵ Exhibit RC0281 ICR3838 (048), 9 October 2006, 460-461, VPL.2000.0003.2046-2047.

⁶⁶ Exhibit RC0281 ICR3838 (048), 9 October 2006, 461-462, VPL.2000.0003.2047-2048. See also Exhibit RC0281 ICR3838 (048), 9 October 2006, 463-464, VPL.2000.0003.2049-2050.

⁶⁷ Exhibit RC0281 ICR3838 (048), 10 October 2006, 466-467, VPL.2000.0003.2052-3053.

⁶⁸ Exhibit RC0281 ICR3838 (048), 10 October 2006, 466-467, VPL.2000.0003.2052-2053.

⁶⁹ Exhibit RC0281 ICR3838 (048), 10 October 2006, 467, VPL.2000.0003.2053.

⁷⁰ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Fox and Sandy White, 17 July 2007, VPL.0005.0137.1200 @.1389-1390.

is attempting to arrange for another person to replace her if asked to represent Horthy".⁷¹

- 23.2. On 17 April 2007, Mr Anderson noted "[Ms Gobbo] not tasked to see Horthy and [Ms Gobbo] again requested to remove from representing or providing legal advice to Horthy."⁷²
- 23.3. On 18 April 2007, Mr Anderson again urged Ms Gobbo against acting for Mr Horthy Mokbel, noting: "[Ms Gobbo] again instructed not to be involved in the representing or providing legal advice to Horthy. Reasons for same discussed with [Ms Gobbo] and highlighting the consequence for such involvement."⁷³
- 23.4. On 19 April 2007, Mr Anderson advised Ms Gobbo "that careful consideration needs to be given prior to any visit to Horthy at Prison."⁷⁴
- 23.5. On 20 April 2007, Mr Anderson noted that he "again reminded [Ms Gobbo] of the consequences of being involved in advising Horthy".⁷⁵
- 23.6. On 26 April 2007, when, despite the recent advice of her handlers, Ms Gobbo insisted that she wanted to prepare an affidavit for Mr Horthy Mokbel, Mr Anderson "[a]gain ... instructed [her] not to be involved in the representation or providing legal advice" to him.⁷⁶
- 23.7. Despite these discussions, Ms Gobbo continued to act for Mr Horthy Mokbel and members of Victoria Police continued to use her as a human source in relation to him.

Following Charge on 25 July 2007

24. Following Mr Horthy Mokbel being charged on 25 July 2007, he continued to feature frequently in communications between Ms Gobbo and her handlers. In particular, in the months following his arrest, Ms Gobbo provided information concerning his financial affairs, including his investment in a racehorse.⁷⁷ She also provided information about the apparent arrangements for the funding of Mr Horthy Mokbel's legal expenses.⁷⁸
25. It is clear that, in the period immediately following his arrest, Mr Horthy Mokbel placed considerable trust in Ms Gobbo as a legal advisor. On 13 August 2007, the ICRs record that Ms Gobbo told her handler Mr Fox, that Mr Horthy Mokbel was urging her to act for his wife, Ms Zaharoula Mokbel, because he apparently said that "she is the only one he trusts for his family",⁷⁹ and "[t]hey believe she is the only one capable".⁸⁰ Similarly, on 20 August 2007, Ms Gobbo

⁷¹ Exhibit RC0281 ICR3838 (074), 13 April 2007, 784, VPL.2000.0003.2370.

⁷² Exhibit RC0281 ICR3838 (075), 17 April 2007, 795, VPL.2000.0003.2381.

⁷³ Exhibit RC0281 ICR3838 (075), 18 April 2007, 799, VPL.2000.0003.2385.

⁷⁴ Exhibit RC0281 ICR3838 (075), 19 April 2007, 802, VPL.2000.0003.2388.

⁷⁵ Exhibit RC0281 ICR3838 (075), 20 April 2007, 803, VPL.2000.0003.2389.

⁷⁶ Exhibit RC0281 ICR3838 (076), 26 April 2007, 810, VPL.2000.0003.2396.

⁷⁷ Exhibit RC0281 ICR3838 (094), 14 August 2007, 1092, VPL.2000.0003.2678; Exhibit RC0281 ICR3838 (106), 24 October 2007, 1314, VPL.2000.0003.2900; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1335-1336, VPL.2000.0003.2921-2922.

⁷⁸ See Exhibit RC0281 ICR3838 (094), 14 August 2007, 1091-1092, VPL.2000.0003.2677-2678; Exhibit RC0281 ICR3838 (095), 18 August 2007, 1115, VPL.2000.0003.2701; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1127, VPL.2000.0003.2713; Exhibit RC0281 ICR3838 (104), 12 October 2007, 1293, VPL.2000.0003.2879 ("Verbally disseminated above information to Gav Ryan and Dale Flynn – Purana").

⁷⁹ Exhibit RC0281 ICR3838 (094), 13 August 2007, 1081, VPL.2000.0003.2667.

⁸⁰ Exhibit RC0281 ICR3838 (094), 14 August 2007, 1092, VPL.2000.0003.2678.

told Mr Fox that Mr Horthy Mokbel had “apparently told [Ms Zaharoula] to trust no-one else but [Ms Gobbo]”.⁸¹

26. During this period, Ms Gobbo kept her handlers abreast of developments concerning Mr Horthy Mokbel’s relationship and communications with his solicitor. For example, on 22 August 2007, Ms Gobbo reportedly told Mr Fox that Mr Horthy Mokbel “desperately wants to see [her] or Alastair Grigor”, his solicitor, the following day.⁸² And, on 29 August 2007, Ms Gobbo conveyed to Mr Fox what had been discussed between Mr Horthy Mokbel and Mr Grigor at a gaol visit that had taken place that day.⁸³ According to the ICRs, the latter information was “[v]erbally disseminated ... to Gavin [sic] Ryan – Purana”.⁸⁴
27. Ms Gobbo also suggested to police that Mr Horthy Mokbel was involved in ongoing illegal activities. On 9 September 2007, Ms Gobbo told Mr Fox that she had heard that Mr Horthy Mokbel had “put [a] contract out” on ██████████, a witness in the case against him.⁸⁵ According to the ICRs, that information was also “[v]erbally disseminated ... to Gavin [sic] Ryan – Purana”.⁸⁶
28. On 11 September 2007, Ms Gobbo and Mr Fox had further discussions about her ongoing representation of Mr Horthy Mokbel. The ICRs record as follows:⁸⁷

Horthy has a case coming up also and she says she may have no alternative but to do that one as well owing to Sheriffs [sic] position.

HS says that Steven Sheriffs [sic] (SC) is not available and there is no-one else to do the committal. Horthy wants her.

Re-iterated our position that we do not want her acting for Horthy or Roula.

She knows this.

Talked about how she does not want to undo all the hard work she has done over the past two years by representing them and running risk of them getting off at court.

She understands this.

She has put up a list of alternate solicitors to Alistair Grigor. But does not know what he can do at such short notice.

29. Despite the above, the messages from the handlers to Ms Gobbo were mixed. On 14 September 2007, Mr Fox, told Ms Gobbo “that she can go down and see Horthy ... at Barwon if she thinks it is necessary to keep [him] onsite.”⁸⁸ And on the same day, Ms Gobbo conferred by telephone with Mr Horthy Mokbel, and his brother Mr Milad Mokbel, about their cases.⁸⁹

⁸¹ Exhibit RC0281 ICR3838 (095), 20 August 2007, 1118, VPL.2000.0003.2704

⁸² Exhibit RC0281 ICR3838 (096), 22 August 2007, 1131, VPL.2000.0003.2717.

⁸³ Exhibit RC0281 ICR3838 (097), 29 August 2007, 1170, VPL.2000.0003.2756

⁸⁴ Exhibit RC0281 ICR3838 (097), 29 August 2007, 1170, VPL.2000.0003.2756. Cf. Exhibit RC0310 Statement of Mr Gavan Ryan, 13 June 2019, 14-15 [88]-[89], VPL.0014.0039.0001_R1S @ 0014-0015.

⁸⁵ Exhibit RC0281 ICR3838 (099), 9 September 2007, 1204, VPL.2000.0003.2790.

⁸⁶ Exhibit RC0281 ICR3838 (094), 29 August 2007, 1170, VPL.2000.0003.2756. Exhibit RC0310 Statement of Mr Gavan Ryan, 13 June 2019, 14-15 [88]-[89], VPL.0014.0039.0001_R1S @ 0014-0015.

⁸⁷ Exhibit RC0281 ICR3838 (099), 10 September 2007, 1207, VPL.2000.0003.2793.

⁸⁸ Exhibit RC0281 ICR3838 (100), 14 September 2007, 1219, VPL.2000.0003.2805.

⁸⁹ See Exhibit RC0281 ICR3838 (100), 14 September 2007, 1219, VPL.2000.0003.2805.

30. As noted above, on 21 September 2007, Ms Gobbo, together with her instructing solicitor, Mr Alastair Grigor, conducted a professional visit upon Mr Horthy Mokbel in prison.⁹⁰ That evening, she gave her handlers a detailed report on the content of the conference.⁹¹ In particular, she appears to have informed Mr Fox of the content of her legal advice. She also appears to have given police tips on “keep[ing] the pressure up” on Mr Horthy Mokbel. The ICRs record as follows:⁹²

General talk about [Ms Gobbo] going through the issues with Horthy and telling him to be realistic. She has told him, why fight the charges considering he has real issues to deal with compared to the expense of fighting the trial, the length and the time to do it.

[Ms Gobbo] thinks that Purana need to keep the pressure up on where the money is coming from.

31. It appears that, during the conference on 21 September 2007, Ms Gobbo formally confirmed that she would no longer be involved as counsel for Mr Horthy Mokbel.⁹³ The relevant ICR entry records: “[Ms Gobbo] confirms that she won’t be involved in Horthy’s committal in November or the one in February.”⁹⁴ Thereafter, it appears that Ms Gobbo’s relationship with Mr Horthy Mokbel quickly declined.⁹⁵
32. In November 2007, there were some discussions between Ms Gobbo and her handlers about her potentially attending the gaol to visit Mr Horthy Mokbel. However, such a visit appears not to have eventuated,⁹⁶ and it appears that the relationship continued to decline into 2008.⁹⁷
33. In December 2008, notwithstanding the apparent decline in their relationship during the preceding year, it appears that Mr Horthy Mokbel sought to have Ms

⁹⁰ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 21 September 2007, 26, CNS.0001.0003.0037 @.0062. See also Exhibit RC1602 Correctional Services Commissioner “Archive Visit Enquiry”, 21 September 2007, 1, CNS.0001.0003.1358. See also Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁹¹ See Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁹² See Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁹³ See Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824. This accords with the Anonymous Submission 031, 1.

⁹⁴ See Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824.

⁹⁵ See, eg: Exhibit RC0281 ICR3838 (102), 2 October 2007, 1254, VPL.2000.0003.2840; Exhibit RC0281; Exhibit RC0281 ICR3838 (106), 24 October 2007, 1317, VPL.2000.0003.2903; Exhibit RC0281 ICR3838 (101), 24 October 2007, 1320, VPL.2000.0003.2906; Exhibit RC0281 ICR3838 (106), 26 October 2007, 1321, VPL.2000.0003.2907; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1337, VPL.2000.0003.2923.

⁹⁶ Exhibit RC0281 ICR3838 (108), 5 November 2007, 1362, VPL.2000.0003.2948; Exhibit RC0281 ICR3838 (111), 19 November 2007, 1423, VPL.2000.0003.3009; Exhibit RC0281 ICR3838 (111), 19 November 2007, 1425, VPL.2000.0003.3011; Exhibit RC0281 ICR3838 (112), 22 November 2007, 1439, VPL.2000.0003.3025; Exhibit RC0281 ICR3838 (112), 23 November 2007, 1446, VPL.2000.0003.3032; Exhibit RC0281 ICR3838 (113), 26 November 2007, 1464, VPL.2000.0003.3050.

⁹⁷ See, eg: Exhibit RC0281 ICR2958 (010), 18 March 2008, 106, VPL.2000.0003.0846; Exhibit RC0281 ICR2958 (010), 20 March 2008, 113-114, VPL.2000.0003.0853-0854; Exhibit RC0281 ICR2958 (013), 12 April 2008, 154, VPL.2000.0003.0894; Exhibit RC0281 ICR2958 (015), 20 April 2008, 195, VPL.2000.0003.0935.

Gobbo represent him at a bail application.⁹⁸ However, that too never eventuated, with Ms Gobbo claiming she would “have nothing to do with [it]”.⁹⁹

Relevant Conduct in relation to Mr Cooper

34. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Horty Mokbel’s case. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 34.1. the discovery of the offending the subject of Operation Posse;
 - 34.2. Mr Cooper being arrested in Operation Posse;
 - 34.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 34.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Horty Mokbel (among others).
35. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Horty Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Horty Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
36. Further, as set out in case studies of [REDACTED] [REDACTED] it is submitted that it is open to find that there may have been a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and to those persons’ respective subsequent decisions to do so.
37. On this basis, it may be argued that the evidence of [REDACTED] [REDACTED], relied upon in the prosecution of Mr Horty Mokbel, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.
38. Notably, in her letter of 30 June 2015 to Assistant Commissioner Stephen Fontana, Ms Gobbo listed Mr Horty Mokbel on a list of “significant crimes and/or arrests” in which she was involved.¹⁰⁰

⁹⁸ Exhibit RC0281 ICR2958 (048), 5 December 2008, 758, VPL.2000.0003.1498; Exhibit RC0281 ICR2958 (048), 6 December 2008, 758, VPL.2000.0003.1498; Exhibit RC0281 ICR2958 (048), 8 December 2008, 761, VPL.2000.0003.1501.

⁹⁹ Exhibit RC0281 ICR2958 (048), 9 December 2008, 764, VPL.2000.0003.1504. See also: Exhibit RC0281 ICR2958 (050), 23 December 2008, 790, VPL.2000.0003.1530.

¹⁰⁰ See Exhibit RC1433 Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 8, MIN.0002.0001.0584 @.0591.

Submission to the Commission regarding Mr Horthy Mokbel

39. In a submission to the Commission, a number of propositions about the use of Ms Gobbo as a human source by Victoria Police were advanced. Some of those factual assertions have been addressed above. In addition to those, the submission contains a series of assertions concerning the role Ms Gobbo played in relation to [REDACTED], including that:¹⁰¹

[REDACTED] has recently informed [REDACTED] that during a conference with his Counsel, [REDACTED], that Gobbo was present, and during the conference there was a discussion about [REDACTED] providing evidence and that Gobbo stated to him "tell them everything you know" which he understood to as meaning to tell them everything he knew about [REDACTED]

40. However, as addressed in the case study in relation to [REDACTED], it is submitted by Counsel Assisting that given the hearsay character of that assertion together with the fact that it is not supported by any other evidence before the Commission, there is an insufficient basis to accept it.

Submissions under Terms of Reference 1 and 2 in relation to Mr Horthy Mokbel

41. It is submitted that it is open to the Commissioner to find that the case of Mr Mokbel may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
42. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
43. These submissions should be read in conjunction with the Narrative Submissions, at Chapters 5, 15, and 16, which contain a detailed account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Mokbel.
44. The extent to which the case of Mr Horthy Mokbel may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

45. First, Category 1A¹⁰² applies in that, between approximately July 2007 and September 2007,¹⁰³ Ms Gobbo acted for Mr Mokbel while she was a human source,¹⁰⁴ and did not disclose same to him.¹⁰⁵
46. Secondly, Category 1B¹⁰⁶ applies in that, between September 2005 and September 2007, which was before and during the period that Ms Gobbo acted

¹⁰¹ Anonymous Submission 031, 5 [15].

¹⁰² See Legal Principles Submissions at [249].

¹⁰³ See [10] above.

¹⁰⁴ See Legal Principles Submissions at [20].

¹⁰⁵ See Legal Principles Submissions at [239].

¹⁰⁶ See Legal Principles Submissions at [249].

for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹⁰⁷

47. Thirdly, Category 2A¹⁰⁸ applies in that evidence relied upon by the prosecution in the case against Mr Mokbel, namely the evidence of Mr Cooper,¹⁰⁹ [REDACTED] [REDACTED] [REDACTED] may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹¹³
48. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹¹⁴ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹¹⁵
49. Fourthly, Category 2B¹¹⁶ applies in that Ms Gobbo had knowledge of the circumstances founding the above [47] in relation to Mr Cooper and failed to disclose same to her client, Mr Mokbel, thereby depriving him of the ability to object to the admission of that evidence.
50. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹¹⁷ Further, in certain instances identified above,¹¹⁸ Ms Gobbo’s conduct may constitute a breach of legal professional privilege and or confidence.¹¹⁹
51. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁰⁷ See above analysis at [12]-[31].

¹⁰⁸ See Legal Principles Submissions at [249].

¹⁰⁹ See above analysis at [6] and [34]-[35].

¹¹⁰ See analysis at [6] and [36]-[37].

¹¹¹ See analysis at [6] and [4136]-[37].

¹¹² See analysis at [6] and [36]-[37].

¹¹³ See Legal Principles Submissions at [249].

¹¹⁴ See Legal Principles Submissions at [210].

¹¹⁵ See Legal Principles Submissions at [212]-[213].

¹¹⁶ See Legal Principles Submissions at [249].

¹¹⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹¹⁸ See above analysis at [30].

¹¹⁹ See Legal Principles Submissions at [310]-[319] and [301]-[306].

Conduct of Victoria Police

52. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²⁰
 - 52.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Horthy Mokbel;
 - 52.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Horthy Mokbel, appropriate disclosure was made; or alternatively
 - 52.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) and Victorian Government Solicitor's Office (VGSO) and then possibly a court.
53. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [52.1] were taken, and accordingly there was the potential for the right of Mr Horthy Mokbel to a fair trial to have been interfered with.
54. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Horthy Mokbel and/or his legal representatives.
55. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²¹
56. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²²
57. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹²³
58. Category 3A¹²⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
59. Category 3B¹²⁵ applies in that, between September 2005 and September 2007, which was before and during the period that Ms Gobbo acted for Mr Mokbel in

¹²⁰ See Legal Principles Submissions at [384] and [452]-[457].

¹²¹ See Legal Principles Submissions at [380]-[385].

¹²² See Legal Principles Submissions at [351], [362]-[373].

¹²³ See Legal Principles Submissions at [351] and [374].

¹²⁴ See Legal Principles Submissions at [465].

¹²⁵ See Legal Principles Submissions at [465].

relation to the case, she provided information in relation to him to members of Victoria Police.¹²⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

60. Category 4A¹²⁷ applies in that, as noted above at [47], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
61. Category 4B¹²⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
62. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²⁶ See above analysis at [46].

¹²⁷ See Legal Principles Submissions at [465].

¹²⁸ See Legal Principles Submissions at [465].

CASE STUDY: MILAD MOKBEL

The Relevant Cases of Mr Mokbel

1. The relevant matters concerning Milad Mokbel comprise three cases, as reflected in the following presentments:
 - 1.1. Presentment C0605102, arising from Operation Posse (Posse Case);¹
 - 1.2. Presentment C0605102.1, involving one count of blackmail (Blackmail Case);² and
 - 1.3. Presentment C0806384.1, arising from Operation Matchless (Matchless Case).³
2. The Posse Case and the Blackmail Case were determined at consolidated plea and sentencing hearings, before the Supreme Court, between June and December 2008.⁴ Those matters were also the subject of an unsuccessful appeal against sentence before the Court of Appeal in February 2011.⁵ The Matchless Case was heard and determined separately, in June and July 2011.⁶

The Posse Case

3. The Posse Case involved three charges for drug related offending and two charges for proceeds of crime related offending.⁷ The drug related offending was committed between 1 February 2006 and 25 April 2006,⁸ and related to Mr Milad Mokbel's involvement in the manufacturing and trafficking activities of Mr Cooper.⁹ The proceeds of crime offending was committed between September

¹ See Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007; Un-tendered Prosecution Plea Opening, *R v Milad Mokbel*, undated, OPP.0039.0001.0002 @.0013-0023; Un-tendered Transcript of proceedings, *R v Mokbel* (Supreme Court of Victoria, Justice Curtain, 20 June 2008), OPP.0039.0001.0002 @.0024-0196; *R v Mokbel* [2008] VSC 635; *Mokbel v The Queen* [2011] VSCA 34.

² See Un-tendered Presentment No. C0605102.1, *R v Milad Mokbel*, 2008, OPP.0039.0001.0002 @.0008-.0012; Un-tendered Prosecution Plea Opening, *R v Milad Mokbel*, undated, OPP.0039.0001.0002 @.0013-.0023; Un-tendered Transcript of proceedings, *R v Mokbel* (Supreme Court of Victoria, Justice Curtain, 20 June 2008), OPP.0039.0001.0002 @.0024-0196; *R v Mokbel* [2008] VSC 635; *Mokbel v The Queen* [2011] VSCA 34.

³ Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, RCMP.0010.0005.0003 @.0211-.0213; Un-tendered Prosecution Opening for Plea, undated, RCMP.0010.0005.0003 @.0214-.0227; Un-tendered Transcript of proceeding, *DPP v Milad Mokbel* (Supreme Court of Victoria, Justice Wheelan, 30 June 2011), RCMP.0010.0005.0003 @.0228-.0284; *DPP v Mokbel* [2011] VSC 328.

⁴ Un-tendered Transcript of Proceedings, *R v Milad Mokbel* (Supreme Court of Victoria, Justice Curtain, 20 June 2008), OPP.0039.0001.0002 @.0024-0196; *R v Mokbel* [2008] VSC 635.

⁵ *Mokbel v The Queen* [2011] VSCA 34.

⁶ Un-tendered Transcript of Proceedings, *DPP v Mokbel* (Supreme Court of Victoria, Justice Wheelan, 30 June 2011), RCMP.0010.0005.0003 @.0228-.0284; *DPP v Mokbel* [2011] VSC 328.

⁷ See *Mokbel v The Queen* [2011] VSCA 34, [3], for breakdown of counts.

⁸ See Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, OPP.0039.0001.0002 @.0001-.0007.

⁹ For more detail, see *R v Mokbel* [2008] VSC 635, [9]-[18]; *Mokbel v The Queen* [2011] VSCA 34, [9]-[13].

2005 and September 2006,¹⁰ but was uncovered following the execution of search warrants as a result of the investigation into the drug offending.¹¹

4. The evidence and assistance given by Mr Cooper was central to the prosecution case.¹² In particular, in the days following Mr Cooper's arrest on 22 April 2006, he assisted police in obtaining incriminating evidence against Mr Milad Mokbel, [REDACTED] with him and making delivery of a [REDACTED] drug package to him.¹³ According to the presentment, reliance was also placed upon the evidence of [REDACTED].¹⁴
5. In addition, proof of one of the charges of knowingly deal with proceeds of crime, being count 2 on the presentment,¹⁵ relied upon evidence obtained by way of the execution of a search warrant on 5 September 2006 at [REDACTED] [REDACTED] Parkdale (Parkdale Search Warrant), which was the residence of Mr Garry Gibbs.¹⁶
6. The informant in the Posse Case was Mr Paul Rowe.¹⁷ Other notable members of police involved in the prosecution as police witnesses included Mr Dale Flynn, Mr Jason Kelly, Mr Tim Johns, Mr Craig Hayes, Mr Graham Evans, Mr Boris Buick, and Mr James (Jim) O'Brien.¹⁸
7. On 25 April 2006, Mr Milad Mokbel was arrested and remanded in custody, where he remained throughout the proceedings.¹⁹ On 22 July 2007, he was committed by way of straight hand-up brief to the Supreme Court.²⁰ On 16 April 2008, he pleaded guilty, and the plea hearing subsequently took place alongside the Blackmail Case on dates between June and December 2008.²¹ On 17 December 2008, Mr Milad Mokbel was sentenced to various terms of imprisonment for the offences in the Posse Case. He received a total effective sentence, in combination with the sentence imposed in the Blackmail Case, of 11 years' imprisonment, with a non-parole period of eight years.²²

¹⁰ See Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007. Cf. *Mokbel v The Queen* [2011] VSCA 34, [3].

¹¹ See Un-tendered Prosecution Plea Opening, undated, 2-5, OPP.0039.0001.0002 @.0014-.0017. See, esp, counts 3, 4, and 5 on Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007.

¹² See, esp: *R v Mokbel* [2008] VSC 635, [14]-[17]; *Mokbel v The Queen* [2011] VSCA 34, [11]-[12]; Un-tendered Prosecution Plea Opening, undated, 2-4, OPP.0039.0001.0002 @.0014-.0016.

¹³ See Un-tendered Prosecution Plea Opening, undated, 2-7, OPP.0039.0001.0002 @.0014-.0019. See, esp, counts 2 and 6 on Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007.

¹⁴ See Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007. In relation to reliance upon the evidence of [REDACTED], see also Un-tendered Prosecution Plea Opening, undated, 6-7, OPP.0039.0001.0002 @.0018-.0019

¹⁵ Un-tendered Presentment No. C0605102, *R v Milad Mokbel*, 2008, 1-7, OPP.0039.0001.0002 @.0001-.0007

¹⁶ See Un-tendered Prosecution Plea Opening, undated, 2-7, OPP.0039.0001.0002 @.0014-.0019.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁹ See Un-tendered Prosecution Plea Opening, undated, 6-7, OPP.0039.0001.0002 @.0022; *R v Mokbel* [2008] VSC 635, [57].

²⁰ See *R v Mokbel* [2008] VSC 635, [42].

²¹ See *R v Mokbel* [2008] VSC 635, [42].

²² See *R v Mokbel* [2008] VSC 635, [53]-[57].

8. In February 2011, Mr Milad Mokbel brought an appeal against the sentence in the Posse Case before the Court of Appeal, but was unsuccessful.²³ The grounds of appeal did not concern Ms Gobbo.

The Blackmail Case

9. The Blackmail Case concerned one charge of blackmail, relating to a phone call made by Mr Milad Mokbel to the victim on 22 October 2003.²⁴ Mr Milad Mokbel pleaded guilty to the charge on 22 October 2007 before the County Court, but it was later determined, along with the Posse Case, before the Supreme Court on 17 December 2008.²⁵ Mr Milad Mokbel was sentenced to 12 months' imprisonment for the blackmail count.²⁶ As outlined above, the total effective sentence he received, in combination with the sentences imposed in the Posse Case, was 11 years' imprisonment, with a non-parole period of eight years.²⁷ The Blackmail Case was also the subject of Mr Milad Mokbel's unsuccessful appeal before the Court of Appeal in February 2011.²⁸

The Matchless Case

10. The Matchless Case concerned one charge of trafficking in a commercial quantity of methylamphetamine, between 1 September 2002 and 11 April 2003, which related to the operation of a clandestine drug laboratory in Rye.²⁹ The laboratory was set up by Mr Cooper and others in September 2002 in order to manufacture methylamphetamine to supply to different trafficking syndicates, one of which involved Mr Milad Mokbel.³⁰ In April 2003, the laboratory was raided and Mr Milad Mokbel and others were arrested.³¹ He was later charged with the offences on 30 June 2008.³² The prosecution case included reliance upon the evidence of:

10.1. Mr Cooper;³³

10.2. Mr Thomas;³⁴ and

²³ See *Mokbel v The Queen* [2011] VSCA 34.

²⁴ See Un-tendered Presentment No. C0605102.1, *R v Milad Mokbel*, 2008, OPP.0039.0001.0002 @.0008-.0012 ; *R v Mokbel* [2008] VSC 635, [2]-[5]; Un-tendered Prosecution Plea Opening, undated, 1, 7-8, OPP.0039.0001.0002 @.0013, .0019-.0020.

²⁵ See *R v Mokbel* [2008] VSC 635, [41].

²⁶ See *R v Mokbel* [2008] VSC 635, [52].

²⁷ See *R v Mokbel* [2008] VSC 635, [52]-[57].

²⁸ See *Mokbel v The Queen* [2011] VSCA 34.

²⁹ *DPP v Mokbel* [2011] VSC 328, [1]; Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, RCMP.0010.0005.0003 @.0211-.0213.

³⁰ See Un-tendered Prosecution Opening for Plea, undated, 1 [2], RCMP.0010.0005.0003 @.0214.

³¹ *DPP v Mokbel* [2011] VSC 328, [6]. See Un-tendered Prosecution Opening for Plea, undated, 12-13, RCMP.0010.0005.0003 @.0225-.0226.

³² *DPP v Mokbel* [2011] VSC 328, [6].

³³ See Un-tendered Prosecution Opening for Plea, undated, 3 [8], RCMP.0010.0005.0003 @.0216; Un-tendered Transcript of Proceedings, *DPP v Milad Mokbel* (Supreme Court of Victoria, Justice Whelan, 30 June 2011), 23 [20]-[22], RCMP.0010.0005.0003 @.0251; Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, 2, RCMP.0010.0005.0003 @.0212; Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

³⁴ See Un-tendered Transcript of Proceedings, *DPP v Milad Mokbel* (Supreme Court of Victoria, Justice Whelan, 30 June 2011), 23 [20]-[22], RCMP.0010.0005.0003 @.0251; See also Mr Thomas (as 'Witness B') is named as witness on Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, 3, RCMP.0010.0005.0003 @.0213; Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

10.3. [REDACTED].³⁵

11. In addition, notable members of police involved in the prosecution as police witnesses included Mr Dale Flynn, Mr Craig Hayes, and Mr Paul Rowe.³⁶
12. In June 2011, Mr Milad Mokbel pleaded guilty to the Matchless Case before the Supreme Court. On 22 July 2011, he was sentenced to four years' imprisonment, with various orders as to concurrency and the fixing of a new non-parole period.³⁷

Ms Gobbo's Role as Mr Milad Mokbel's Lawyer

13. Material before the Commission establishes that Ms Gobbo acted as Mr Milad Mokbel's lawyer between approximately 2001 and 2008. In summary, the evidence indicates that:
 - 13.1. Between approximately 2001 and 2004, Ms Gobbo acted as Mr Milad Mokbel's lawyer in relation to various earlier unrelated proceedings;³⁸
 - 13.2. Between approximately 2005 and 2008, she continued to act as his lawyer, including in that:
 - 13.2.1. on the night of 25 April 2006, and in the early hours of 26 April 2006, she provided him legal advice upon his arrest in the Posse Case³⁹

³⁵ See Un-tendered Prosecution Opening for Plea, undated, 3 [8], RCMP1.0010.0005.0003 @.0216; Un-tendered Transcript of Proceedings, *DPP v Milad Mokbel* (Supreme Court of Victoria, Justice Whelan, 30 June 2011), 23 [22]-[67], RCMP1.0010.0005.0003 @.0251; Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, 2, RCMP1.0010.0005.0003 @.0212; Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001.

³⁶ The involvement of these members in the investigation and proceedings can be inferred from their presence as witnesses on the presentment: See Un-tendered Presentment No. C0806384.1, *R v Milad Mokbel*, 2011, 2-3, RCMP1.0010.0005.0003 @.0212-13.

³⁷ *DPP v Mokbel* [2011] VSC 328, [32]. The orders were expressed in the following terms: "... I sentence you to 4 years' imprisonment. Pursuant to s 6E of the Act I direct that 2 years of that sentence be served concurrently with the sentence you are already undergoing. Pursuant to s 14 of the Act I fix a new single non-parole period commencing today of 4 years 5 months 2 days so that (subject to administrative adjustments) the earliest date upon which you will become eligible for parole will be 24 December 2015, which represents an additional 1 year on the pre-existing non-parole period."

³⁸ See Exhibit RC1568 Ms Nicola Gobbo fee book 01, 24 June 2002, 1 September 2002, 13 February 2003, 9 July 2003, 29 February 2004, 51, 54, 57, 59, 64, 71, MIN.5000.7000.0001 @.0051, .0054, .0057, .0059, .0064, .0071. See also corresponding, invoices from clerk: Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees to Ms Nicola Gobbo, 24 July 2003, 14, GMH.0001.0001.0014 @.0014; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees to Ms Nicola Gobbo, 5 March 2004, 67, GMH.0001.0001.0013 @.0067; See also corresponding statement of account from clerk: Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Nicola Gobbo, 7 March 2019, 84, 87, GMH.0001.0001.0002 @.0084, .0087; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 8 July 2003, 27, OPP.0001.0004.002 @.0051; See also, Exhibit RC1841 Magistrates Court of Victoria records for Ms Nicola Gobbo, 4 and 5 February 2003, 13, MCV.0001.0001.0001 @.0011, .0013. See also Anonymous Submission 035, 1-2, 8-9 [29]-[31]. See also Transcript of Ms Nicola Gobbo, 4 February 2020, 13045, TRN.2020.02.04.01.

³⁹ See Exhibit RC0538 Statement of Inspector Dale Flynn, 17 June 2019, 11 [60], VPL.0014.0042.0001 @.0011; Exhibit RC0281 ICR3838 (029), 25 April 2006, 270-271, VPL.2000.0003.1856-7; Anonymous Submission 035, 6 [16].

- 13.2.2. between May 2006 and September 2007, she conducted approximately seven “professional” visits to him whilst he was remanded in custody⁴⁰
- 13.2.3. between approximately May 2006 and May 2008, after being placed on his telephone list with the assistance of Mr Flynn,⁴¹ Ms Gobbo communicated with him by telephone (including to discuss his legal matters) on a frequent basis⁴²
- 13.2.4. between April 2006 and October 2007, she was engaged in the process of Mr Milad Mokbel agreeing to resolve the Posse

⁴⁰ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 4 May 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 May 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 18 June 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 July 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 6 August 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Correctional Services Commissioner Prisoners Visited by Ms Gobbo, 13 November 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 21 September 2007, 26, CNS.0001.0003.0037 @.0062.

⁴¹ Transcript of Inspector Dale Flynn, 1 October 2019, 6933, TRN.2019.10.01.01; Exhibit RC0281 ICR3838 (030), 3 May 2006, 281, VPL.2000.0003.1867.

⁴² See, eg: Exhibit RC0281 ICR3838 (031), 7 May 2006, 290, VPL.2000.0003.1876; Exhibit RC0281 ICR3838 (033), 28 May 2006, 311-312, VPL.2000.0003.1897-98; Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898; Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907; Exhibit RC0281 ICR3838 (036), 20 June 2006, 336, VPL.2000.0003.1922; Exhibit RC0281 ICR3838 (036), 23 June 2006, 341, VPL.2000.0003.1927; Exhibit RC0281 ICR3838 (038), 13 July 2006, 358, VPL.2000.0003.1944; Exhibit RC0281 ICR3838 (038), 19 July 2006, 362, VPL.2000.0003.1948; Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (040), 10 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (041), 12 August 2006, 391, VPL.2000.0003.1977; Exhibit RC0281 ICR3838 (041), 17 August 2006, 397, VPL.2000.0003.1983; Exhibit RC0281 ICR3838 (045), 11 September 2006, 420, VPL.2000.0003.2006; Exhibit RC0281 ICR3838 (045), 13 September 2006, 422, VPL.2000.0003.2008; Exhibit RC0281 ICR3838 (047), 1 October 2006, 444, VPL.2000.0003.2030; Exhibit RC0281 ICR3838 (048), 10 October 2006, 465-466, VPL.2000.0003.2051-2052; Exhibit RC0281 ICR3838 (049), 15 October 2006, 485, VPL.2000.0003.2071; Exhibit RC0281 ICR3838 (049), 16 October 2006, 490, VPL.2000.0003.2076; Exhibit RC0281 ICR3838 (049), 18 October 2006, 495, VPL.2000.0003.2081; Exhibit RC0281 ICR3838 (050), 22 October 2006, 515, VPL.2000.0003.2101; Exhibit RC0281 ICR3838 (051), 24 October 2006, 520, VPL.2000.0003.2106; Exhibit RC0281 ICR3838 (051), 26 October 2006, 523, VPL.2000.0003.2109; Exhibit RC0281 ICR3838 (051), 27 October 2006, 523, VPL.2000.0003.2111-2112; Exhibit RC0281 ICR3838 (052), 3 November 2006, 540, VPL.2000.0003.2126; Exhibit RC0281 ICR3838 (052), 4 November 2006, 543, VPL.2000.0003.2129; Exhibit RC0281 ICR3838 (052), 8 November 2006, 545, VPL.2000.0003.2131; Exhibit RC0281 ICR3838 (052), 10 November 2006, 551, VPL.2000.0003.2137; Exhibit RC0281 ICR3838 (057), 15 December 2006, 587, VPL.2000.0003.2173; Exhibit RC0281 ICR3838 (062), 15 January 2007, 605, VPL.2000.0003.2191; Exhibit RC0281 ICR3838 (063), 22 February 2007, 610, VPL.2000.0003.2196; Exhibit RC0281 ICR3838 (070), 15 March 2007, 708-9 (15.03.07, 1429 and 1500), VPL.2000.0003.2294-2295; Exhibit RC0281 ICR3838 (070), 16 March 2007, 712, VPL.2000.0003.2298; Exhibit RC0281 ICR3838 (070), 17 March 2007, 713, VPL.2000.0003.2299; Exhibit RC0281 ICR3838 (070), 18 March 2007, 714, VPL.2000.0003.2300; Exhibit RC0281 ICR3838 (072), 29 March 2007, 744, VPL.2000.0003.2330; Exhibit RC0281 ICR3838 (074), 11 April 2007, 780-81, VPL.2000.0003.2366-2367; Exhibit RC0281 ICR3838 (074), 12 April 2007, 782, VPL.2000.0003.2368; Exhibit RC0281 ICR3838 (075), 17 April 2007, 795, VPL.2000.0003.2381; Exhibit RC0281 ICR3838 (081), 29 May 2007, 866, VPL.2000.0003.2452; Exhibit RC0281 ICR3838 (084), 18 June 2007, 914, VPL.2000.0003.2500; Exhibit RC0281 ICR3838 (085), 26 June 2007, 940, VPL.2000.0003.2526; Exhibit RC0281 ICR3838 (085), 27 June 2007, 943, VPL.2000.0003.2529; Exhibit RC0281 ICR3838 (088), 05 July 2007, 988, VPL.2000.0003.2574; Exhibit RC0281 ICR2958 (019), 17 May 2008, 310, VPL.2000.0003.1050.

Case and plead guilty⁴³ including by discussing the matter with investigating police⁴⁴

13.2.5. on 13 September 2007, Ms Gobbo charged fees of \$500 in the matter of “*Police v Milad Mokbel*”, addressed to Grigor Lawyers, for a “[b]rief to advise, confer & settle charges”.⁴⁵

14. It was submitted to the Commission that Ms Gobbo “effectively assumed and acted pursuant to an informal ongoing retainer to represent [Mr Mokbel] in all his criminal proceedings...”, and as part of that she “monitored, oversaw and provided [him] with advice in all his criminal matters, even when other counsel represented [Mr Mokbel]”.⁴⁶ That submission appears to be generally consistent with the other evidence before the Commission.

⁴³ Anonymous Submission 035, 7; Un-tendered Transcript of Proceedings, *AB & EF v CD* [2017] VSC 350 (Supreme Court of Victoria, Justice Ginnane, 28 February 2017) 326, COR.1000.0001.0356 @.0105-.0106; Exhibit RC0281 ICR3838 (070), 17 March 2007, 713, VPL.2000.0003.2299; Exhibit RC0281 ICR3838 (071), 20 March 2007, 720, VPL.2000.0003.2306; Exhibit RC0281 ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2334; Exhibit RC0281 ICR3838 (073), 4 May 2007, 767, VPL.2000.0003.2353; Exhibit RC0281 ICR3838 (075), 17 April 2007, 795, VPL.2000.0003.2381 (“3838 wants to speak to Milad about pleading guilty to the Purana Charges”); Exhibit RC0281 ICR3838 (075), 19 April 2007, 801, VPL.2000.0003.2387 (“3838 would like to see Milad and assist him to plea to all charges.”); Exhibit RC0281 ICR3838 (077), 30 April 2007, 818, VPL.2000.0003.2404; Exhibit RC0281 ICR3838 (078), 6 May 2007, 826, VPL.2000.0003.2412; Exhibit RC0281 ICR3838 (078), 11 May 2007, 834, VPL.2000.0003.2420; Exhibit RC0281 ICR3838 (079), 15 May 2007, 837, VPL.2000.0003.2423; Exhibit RC0281 ICR3838 (079), 18 May 2007, 840, VPL.2000.0003.2426; Exhibit RC0281 ICR3838 (080), 22 May 2007, 849, VPL.2000.0003.2435; Exhibit RC0281 ICR3838 (080), 23 May 2007, 850, VPL.2000.0003.2436; Exhibit RC0281 ICR3838 (080), 25 May 2007, 856, VPL.2000.0003.2442; Exhibit RC0281 ICR3838 (081), 29 May 2007, 866, VPL.2000.0003.2452; Exhibit RC0281 ICR3838 (081), 30 May 2007, 870, VPL.2000.0003.2456; Exhibit RC0281 ICR3838 (082), 6 June 2007, 844, VPL.2000.0003.2470; Exhibit RC0281 ICR3838 (082), 8 June 2007, 885, VPL.2000.0003.2471-2472; Exhibit RC0281 ICR3838 (082), 10 June 2007, 886, VPL.2000.0003.2472; Exhibit RC0281 ICR3838 (084), 18 June 2007, 914, VPL.2000.0003.2500; Exhibit RC0281 ICR3838 (084), 19 June 2007, 916, VPL.2000.0003.2502; Exhibit RC0281 ICR3838 (084), 20 June 2007, 918, VPL.2000.0003.2504; Exhibit RC0281 ICR3838 (085), 22 June 2007, 929, VPL.2000.0003.2515; Exhibit RC0281 ICR3838 (085), 25 June 2007, 937, VPL.2000.0003.2523; Exhibit RC0281 ICR3838 (085), 25 June 2007, 938-9, VPL.2000.0003.2524-2525; Exhibit RC0281 ICR3838 (087), 2 July 2007, 965, VPL.2000.0003.2551; Exhibit RC0281 ICR3838 (088), 5 July 2007, 991, VPL.2000.0003.2577; Exhibit RC0281 ICR3838 (092), 23 July 2007, 1050, VPL.2000.0003.2636-2637; Cf. Exhibit RC0281 ICR3838 (092), 24 July 2007, 1055, VPL.2000.0003.2641; Exhibit RC0281 ICR3838 (094), 14 August 2007, 1089, VPL.2000.0003.2675; Cf. Exhibit RC0281 ICR3838 (099), 10 September 2007, 1205, VPL.2000.0003.2791-2792.

⁴⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 13 September 2007, 9, MIN.5000.7000.0103 @.0111. See also corresponding invoice: Exhibit RC1569 Meldrum and Hyland Barristers’ Clerk Invoice for fees due to Ms Nicola Gobbo, 17 September 2007, 48, GMH.0001.0001.0006 @.0048. See also corresponding statement of account: Exhibit RC1569 Meldrum and Hyland Barristers’ Clerk Statement of Account for Ms Nicola Gobbo, 7 March 2019, 25, GMH.0001.0001.0002 @.0025; Cf. Exhibit RC0281 ICR3838 (099), 10 September 2007, 1205, VPL.2000.0003.2791-2792; Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801.

⁴⁶ Anonymous Submission 035, 9 [32]. Specifically, it was submitted that Ms Gobbo provided Mr Mokbel with ongoing advice concerning the Posse Case and Matchless Case: Anonymous Submission 035, 9-10 [34].

The Use of Ms Gobbo as a Human Source in relation to Mr Milad Mokbel

Between September 2005 and Mr Milad Mokbel's Arrest on 25 April 2006

15. Ms Gobbo began providing information to police about Mr Milad Mokbel immediately upon her third registration as a human source on 16 September 2005.⁴⁷ She continued to do so consistently through to his arrest in relation to the Posse Case on 25 April 2006.⁴⁸ During this period, members of Victoria Police actively sought information from Ms Gobbo in relation to Mr Milad Mokbel.⁴⁹ According to the Informer Contact Reports (ICRs), the information concerning Mr Milad Mokbel which Ms Gobbo provided to police during this period included:
 - 15.1. advice to Victoria Police as to persons who could be potential candidates for providing evidence against Mr Milad Mokbel, including specifically identifying both Mr Cooper and Mr Thomas as such (both of whom ultimately became witnesses against him, as noted above)⁵⁰
 - 15.2. background information about his personal circumstances, including details of his personal relationships and social affairs⁵¹
 - 15.3. information as to his "nickname" or alias⁵²

⁴⁷ See Exhibit RC0281 ICR3838 (001), 16 September 2005, 4-5, VPL.2000.0003.1590-1591.

⁴⁸ See, generally, Un-tendered Victoria Police Summary of ICR extracts in relation to Milad Mokbel, 11 July 2019, 1-62, VPL.4022.0001.0001 @.0001-.0062.

⁴⁹ See, eg, Exhibit RC0281 ICR3838 (012), 15 December 2005, 89, VPL.2000.0003.1675, "Instructed Source to call me after the Milad Mokbel evening, if anything significant is raised"; Exhibit RC0281 ICR3838 (014), 28 December 2005, 102, VPL.2000.0003.1688, "Reinforced with Source to call DSU immediately if anything important arises from the meeting [between Ms Gobbo and Mr Milad Mokbel]"; Exhibit RC0281 ICR3838 (016), 23 January 2006, 130, VPL.2000.0003.1716, "Further info asked about Milad's girlfriend ...".

⁵⁰ Exhibit RC0281 ICR3838 (003), 22, 23, 24 & 26 September 2005, 16-17, VPL.2000.0003.1599: On 26 September 2005, Ms Gobbo advised her handlers that Mr Thomas and Mr Cooper "would both have sufficient information about [Milad Mokbel] put him away for a long time". Ms Gobbo confirmed that she was, in that statement, referring to Mr Milad Mokbel and not another Mokbel in evidence before Ginnane J; see Transcript of Proceedings, *AB & EF v CD* (Supreme Court of Victoria, Ginnane J, 27 February 2017), COR.1000.0001.0355 @.0035.

⁵¹ See, eg, Exhibit RC0281 ICR3838 (001), 16 September 2006, 4-5, VPL.2000.0003.1590-1591; Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602; Exhibit RC0281 ICR3838 (004), 1 October 2005, 19-20, VPL.2000.0003.1605-1606; Exhibit RC0281 ICR3838 (016), 23 January 2006, 130, VPL.2000.0003.1716; Exhibit RC0281 ICR3838 (020), 27 February 2006, 172, VPL.2000.0003.1758 [See also Exhibit RC0283 Information Report SID437, 27 February 2006, VPL.2000.0003.8550]; Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773, [See also Exhibit RC0283 Information Report SID 523, 14 March 2006, VPL.2000.0003.8624]; Exhibit RC0281 ICR3838 (023), 22 March 2006, 204, VPL.2000.0003.1790; Exhibit RC0281 ICR3838 (025), 5 April 2006, 225, VPL.2000.0003.1811; Exhibit RC0281 ICR3838 (025), 7 April 2006, 227, VPL.2000.0003.1813; Exhibit RC0281 ICR3838 (025), 9 April 2006, 228-29, VPL.2000.0003.1814.

⁵² Exhibit RC0281 ICR3838 (004), 1 October 2005, 24, VPL.2000.0003.1610.

- 15.4. information relating to his use of mobile telephones,⁵³ including the number of telephones he used⁵⁴ and their contact numbers⁵⁵
- 15.5. information about other languages he spoke (namely Arabic)⁵⁶
- 15.6. information about his financial affairs and dealings⁵⁷
- 15.7. Information about alleged drug trafficking activities, including:
 - 15.7.1. details of persons with whom he was allegedly involved in the manufacture of drugs⁵⁸
 - 15.7.2. detail concerning his alleged conduct in obtaining and possessing precursor substances for the manufacture of drugs⁵⁹
 - 15.7.3. detail of his financial transactions and affairs in connection to alleged drug trafficking⁶⁰
 - 15.7.4. other more general information concerning his alleged involvement in drug manufacturing and trafficking activities.⁶¹
16. Material before the Commission establishes that some of the information that Ms Gobbo provided during this time was used by Victoria Police to advance

⁵³ See, eg, Exhibit RC0281 ICR3838 (014), 28 December 2005, 103, VPL.2000.0003.1689 [See also Exhibit RC0283 Information Report SID 534-291205, 29 December 2005, VPL.2000.0003.1685, "Forward to Officer in Charge, Purana Task Force D/A/I O'Brien – Operation Posse"].

⁵⁴ See Exhibit RC0281 ICR3838 (004), 1 October 2005, 15, VPL.2000.0003.1601; Exhibit RC0281 ICR3838 (019), 23 February 2006, 162, VPL.2000.0003.1748, "Milad has 6 bodgie numbers details N/K...";

⁵⁵ Exhibit RC0281 ICR3838 (020), 25 February 2006, 167, VPL.2000.0003.1753; Exhibit RC0281 ICR3838 (027), 16 April 2006, 247, VPL.2000.0003.1833; [see also Exhibit RC0283 Information Report SID 727, 16 April 2006, VPL.2000.0003.8706].

⁵⁶ Exhibit RC0281 ICR3838 (004), 1 October 2005, 20, VPL.2000.0003.1606.

⁵⁷ Exhibit RC0281 ICR3838 (008), 28 November 2005, 65, VPL.2000.0003.1651.

⁵⁸ Exhibit RC0281 ICR3838 (007), 24 October 2005, 48, VPL.2000.0003.1623; Exhibit RC0281 ICR3838 (012), 13 December 2005, 85, VPL.2000.0003.1671.

⁵⁹ Exhibit RC0281 ICR3838 (010), 30 November 2005, 69, VPL.2000.0003.1653, "D/A/I O'Brien Called and Updated" [see also Exhibit RC0283, Information Report SID331-301105, 30 November 2005, VPL.2000.0003.8448]; Exhibit RC0281 ICR3838 (010), 1 December 2005, 70, VPL.2000.0003.1656, "D/A/I O'BRIEN Informed" [see also Exhibit RC0283 Information Report SID333-011205, 1 December 2005, VPL.2000.0003.8450]; See also Exhibit RC0464b Statement of Mr James (Jim) O'Brien (long), 19 [88] VPL..0014.0040.0001 @.0019; See Exhibit RC0281 ICR3838 (011), 9 December 2005, 58, VPL.2000.0003.1664; Exhibit RC0281 ICR3838 (012), 13 December 2005, 85, VPL.2000.0003.1671; Exhibit RC0281 ICR3838 (020), 24 February 2006, 166, VPL.2000.0003.1752 [See also Exhibit RC0283 Information Report SID 405, 24 February 2006, VPL.2000.0003.8517].

⁶⁰ Exhibit RC0281 ICR3838 (010), 3 December 2005, 72, VPL.2000.0003.1658, "D/A/I O'BRIEN Informed" [see also Exhibit RC0283 Information Report SID334-031205, 27 December 2005, VPL.2000.0003.8451]; See also Exhibit RC0464b Statement of Mr James (Jim) O'Brien (long), 19 [89] VPL..0014.0040.0001 @.0019; Exhibit RC0281 ICR3838 (014), 26 December 2005, 100, VPL.2000.0003.1686, [See also Exhibit RC0283 Information Report SID532-261205, 26 December 2005, VPL.2000.0003.8638, "Forward to Officer in Charge, Purana Task Force, Attention D/A/I O'Brien – Operation Posse refer"]; Exhibit RC0281 ICR3838 (021), 3 March 2006, 175, VPL.2000.0003.1761 [See also Exhibit RC0283 Information Report SID451, 4 March 2006, VPL.2000.0003.8564].

⁶¹ Exhibit RC0281 ICR3838 (019), 23 February 2006, 162, VPL.2000.0003.1748 [See also Exhibit RC0283 Information Report SID391, 23 February 2006, VPL.2000.0003.8506]; Exhibit RC0281 ICR3838 (020), 24 February 2006, VPL.2000.0003.1752 [See also Exhibit RC0283 Information Report SID 405, 24 February 2006, VPL.2000.0003.8517]; Exhibit RC0281 ICR3838 (021), 6 March 2006, 177-8, VPL.2000.0003.1763-1764 [See also Exhibit RC0281 Information Report SID457, 5 March 2006, VPL.2000.0003.8572]; Exhibit RC0281 ICR3838 (023), 16 March 2006, 190-91, VPL.2000.0003.1776-1777 [See also Exhibit RC0283 Information Report SID 503, 23 April 2006, VPL.2000.0003.8605].

Operation Posse, the investigation of Purana Taskforce of which Mr Milad Mokbel was one of many targets. For example:

- 16.1. On 4 January 2006, Victoria Police obtained a telecommunications intercept warrant, under the *Telecommunications (Interpretation) Act 1979*, targeting a mobile telephone of Mr Milad Mokbel.⁶² The affidavit relied upon in the application for the warrant, sworn by Detective Senior Sergeant Russell Fletcher of Victoria Police, dated 3 January 2006, makes express reference to information obtained from Ms Gobbo (as “Informer 21803838”).⁶³
- 16.2. On 3 April 2006, Victoria Police obtained another telecommunications intercept warrant, under the *Telecommunications Act* targeting a mobile telephone of Mr Milad Mokbel.⁶⁴ The affidavit relied upon in the application for the warrant, sworn by Detective Senior Sergeant Russell Fletcher of Victoria Police (based on information provided by Mr Flynn⁶⁵), dated 29 March 2006, makes express reference to information obtained from Ms Gobbo (as “Informer 21803838”).⁶⁶
17. In addition, during this time, on 28 October 2005, according to the ICRs, Ms Gobbo also made suggestions to police that she may be able to assist in luring Mr Milad Mokbel and his brothers into corrupt activities with police, seemingly as part of a contemplated covert operation.⁶⁷
18. In the period leading up to his arrest in April 2006, Ms Gobbo provided specific information that directly implicated Mr Milad Mokbel in the drug trafficking and manufacturing activities the subject of Operation Posse. For example, the ICRs record that:
 - 18.1. on 29 March 2006, she informed Mr Peter Smith that “Cooper is currently cooking for ... Milad Mokbel ...” and others⁶⁸
 - 18.2. on 10 April 2006, she suggested to Mr Peter Smith that Mr Cooper and Mr Zlate Cvetanovski intended to “pick something up, probably chemicals” from Mr Milad Mokbel, in connection with their ongoing drug manufacturing operation⁶⁹
 - 18.3. on 16 April 2006, she suggested to Mr Green that Mr Cooper was [REDACTED] for the Mokbels, including Mr Milad Mokbel.⁷⁰
19. In the immediate lead up to Mr Milad Mokbel’s arrest on 25 April 2006, it appears that Ms Gobbo and her handlers had some level of appreciation (albeit inadequate) of the ethical conflicts involved in Ms Gobbo acting for Mr Milad

⁶² See Un-tendered Warrant D02635, 4 January 2006, VPL.2100.0009.0006.

⁶³ See Un-tendered Affidavit of Detective Senior Sergeant Russell Scott Fletcher in support of Warrant D02635, 3 January 2006, [20], [33], [38], [41]-[42], VPL.2100.0006.0001 @.0005, .0013, .0014, .0016.

⁶⁴ See Un-tendered Warrant D02703-00, 3 April 2006, VPL.2100.0009.0015.

⁶⁵ See Un-tendered Affidavit of Detective Senior Sergeant Russell Scott Fletcher in support of Warrant D02703-00, 29 March 2006, [6], VPL.2100.0006.0022 @.0023.

⁶⁶ See Un-tendered Affidavit of Detective Senior Sergeant Russell Scott Fletcher in support of Warrant D02703-00, 29 March 2006, [25], [35], [41], [56]-[57], [64]-[66], [70], [74], [77], [99]-[101], VPL.2100.0006.0022 @.0026-7, .0034, .0036, .0041, .0043-4, .0047, .0057-.0059.

⁶⁷ See, Exhibit RC0281 ICR3838 (007), 28 October 2005, 48, VPL.2000.0003.1623.

⁶⁸ Exhibit RC0281 ICR3838, 29 March 2006, 216, VPL.2000.0003.1802.

⁶⁹ Exhibit RC0281 ICR3838, 10 April 2006, 231-2, VPL.2000.0003.1817; See also Exhibit RC0281 ICR3838, 18 April 2006, 249, VPL.2000.0003.1835.

⁷⁰ Exhibit RC0281 ICR3838, 16 April 2006, 246, VPL.2000.0003.1832.

Mokbel in light of her role with Mr Cooper and Operation Posse.⁷¹ Despite this, Ms Gobbo and Victoria Police continued to, in effect, work hand-in-hand. For example, according to the ICRs:

- 19.1. On 23 April 2006, she was well aware of the plan of Victoria Police to have Mr Cooper [REDACTED] with Mr Milad Mokbel ([REDACTED]), and she provided them with advice on the content of the conversation.⁷²
- 19.2. On the same date, Ms Gobbo and Messrs Peter Smith and Sandy White discussed “various Milad arrest scenarios and what [Ms Gobbo] should do”.⁷³
- 19.3. On 24 and 25 April 2006, the handlers kept Ms Gobbo updated as to the plan of Victoria Police to arrest Mr Milad Mokbel.⁷⁴
- 19.4. Finally, on 25 April 2006, just prior to his arrest, Ms Gobbo spoke to Mr Milad Mokbel on the phone and provided him with legal advice concerning a separate legal issue relating to the forfeiture of Antonios (Tony) Mokbel’s bail surety.⁷⁵

Ms Gobbo’s Conduct upon Mr Milad Mokbel’s Arrest (in relation to the Posse Case) on 25 April 2006

20. On the evening of 25 April 2006, Mr Milad Mokbel was arrested at his home, following the delivery by Mr Cooper of a [REDACTED] package [REDACTED], as part of a [REDACTED] of Victoria Police.⁷⁶ The ICRs indicate that, immediately upon his arrest, he telephoned Ms Gobbo,⁷⁷ who asked to be put onto the police and requested that she be contacted again when they arrive at the police station.⁷⁸ Later that night, Ms Gobbo attended the St Kilda Road police station,⁷⁹ where, according to the ICRs, she:
 - 20.1. first, conferred with Mr Cooper⁸⁰
 - 20.2. secondly, met with Mr Sandy White, with whom she discussed how she might approach her conference with Mr Milad Mokbel⁸¹
 - 20.3. thirdly, conferred with Mr Milad Mokbel in custody, during which she provided him with legal advice in relation to his arrest and the charges

⁷¹ See, eg, Exhibit RC0281 ICR3838 (028), 23 April 2006, 261, VPL.2000.0003.1847; Exhibit RC0281 ICR3838 (028), 23 April 2006, 263, VPL.2000.0003.1849.

⁷² See Exhibit RC0281 ICR3838 (028), 23 April 2006, 262-3, VPL.2000.0003.1848-1849, “HS remembers Cooper talking about 13 litres of something on Easter Sunday, suggests could be used in conversation with Milad Mokbel (D/Sgt Flynn advised and Handler updated re strategy w. Cooper to meet w. Milad and Horty Mokbel ...”.

⁷³ Exhibit RC0281 ICR3838 (028), 23 April 2006, 263, VPL.2000.0003.1849.

⁷⁴ Exhibit RC0281 ICR3838 (028), 24 April 2006, 263, 266, 267, VPL.2000.0003.1849, 1852, 1853; Exhibit RC0281 ICR3838 (029), 25 April 2006, 268, VPL.2000.0003.1854.

⁷⁵ Exhibit RC0281 ICR3838 (029), 25 April 2006, 268, VPL.2000.0003.1854.

⁷⁶ Exhibit RC0281 ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1855. See also *Mokbel v The Queen* [2011] VSCA 34, at [12].

⁷⁷ Cf. Anonymous Submission 035, [16(a)]; Exhibit RC0538 Statement of Inspector Dale Flynn, 17 June 2019, 11 [60], VPL.0014.0042.0001 @.0011.

⁷⁸ Exhibit RC0281 ICR3838 (029), 25 April 2006, 269, VPL.2000.0003.1855.

⁷⁹ Exhibit RC0281 ICR3838 (029), 25 April 2006, 270, VPL.2000.0003.1856.

⁸⁰ Exhibit RC0281 ICR3838 (029), 25 April 2006, 270, VPL.2000.0003.1856.

⁸¹ Exhibit RC0281 ICR3838 (029), 25/26 April 2006, 270, VPL.2000.0003.1856; Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 118-9, VPL.0005.0097.0001 @.0118-.0119.

he would face (in the Posse Case), his prospects for bail, and asset confiscation issues concerning his residence.⁸²

21. Following her conference with Mr Milad Mokbel, Ms Gobbo told Mr Flynn that he wished to plead guilty to the charges in the Posse Case.⁸³ Mr Milad Mokbel then gave a no comment interview.⁸⁴ At this time, too, Ms Gobbo had some appreciation of the conflict of interest in advising Milad Mokbel, given her role with Mr Cooper, but she did not restrain from doing so.⁸⁵ In evidence before the Commission, she accepted that Mr Milad Mokbel did not receive “independent legal advice” from her on 25 April 2006.⁸⁶
22. Early the next morning, on 26 April 2006, Ms Gobbo departed St Kilda Rd police station and attended a meeting with Messrs Green and Sandy White at a nearby hotel,⁸⁷ during which she provided them with a commentary on her conference with Mr Milad Mokbel.⁸⁸ Among other things, Ms Gobbo:
 - 22.1. conveyed to them the content of her communications with Mr Milad Mokbel, including concerning her advice to him on his prospects for bail and asset confiscation issues concerning his residence⁸⁹
 - 22.2. gave them strategic advice as to where Mr Milad Mokbel should be remanded in custody, commenting that “[h]e wouldn’t be happy about [being at Barwon Prison] ... [if] you wanna fuck him over put him in Barwon”,⁹⁰ and suggesting that “[f]rom the point of view of – of monitoring his craziness it would be better that he’s in a different gaol because ... he won’t be able to do much from Barwon”.⁹¹

Ms Gobbo’s Relevant Conduct following Mr Milad Mokbel’s Arrest

23. In the 18 months following Mr Milad Mokbel’s arrest, Ms Gobbo continued to provide him with legal advice,⁹² as well as inform on him to police.⁹³ During this time, it appears that Ms Gobbo had some awareness (albeit at an inadequate

⁸² Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 19, 48-49, VPL.0005.0097. 0001 @.0019, .0048-.0049; Exhibit RC0281 ICR3838 (029), 25/26 April 2006, 270, VPL.2000.0003.1856; See Anonymous Submission 035, [16(f)], [16(e)]. See also Transcript of Ms Nicola Gobbo, 7 February 2020, 13437-8, TRN.2020.02.07.01.

⁸³ See Exhibit RC0538 Statement of Inspector Dale Flynn, 17 June 2019, 11 [60], VPL.0014.0042.0001 @.0011. See also Transcript of Ms Nicola Gobbo, 7 February 2020, 13438, TRN.2020.02.07.01.

⁸⁴ See Exhibit RC0538 Statement of Inspector Dale Flynn, 17 June 2019, 11 [60], VPL.0014.0042.0001 @.0011.

⁸⁵ See, eg, Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 36-37, VPL.0005.0097.0001 @.0036-.0037.

⁸⁶ Transcript of Ms Nicola Gobbo, 7 February 2020, 13438, TRN.2020.02.07.01.

⁸⁷ Exhibit RC0281 ICR3838 (029), 25/26 April 2006, 270, VPL.2000.0003.1856; Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, VPL.0005.0097.0001.

⁸⁸ Exhibit RC0281 ICR3838 (029), 25/26 April 2006, 270-71, VPL.2000.0003.1856-1857.

⁸⁹ Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 19, 29, 48-9, VPL.0005.0097.0001 @.0019, .0029, .0048-.0049.

⁹⁰ Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 70, VPL.0005.0097.0001 @.0070.

⁹¹ Exhibit RC0549d Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 70, VPL.0005.0097.0001 @.0070.

⁹² It was submitted to the Commission, in the 18 months following his arrest, Ms Gobbo regularly visited him and discussed his legal matters: Anonymous Submission 035, [19]. That is generally consistent with the other material before the Commission.

⁹³ See, generally, Un-tendered Victoria Police Summary of ICR extracts in relation to Milad Mokbel, 11 July 2019, 62-248, VPL.4022.0001.0001 @.0062-.0248. See also, Counsel Assisting Submissions, Volume 2, ‘Part 2 – Representation of Milad Mokbel & related Matters’, 655.

level) about the issues of conflict associated with her acting for Mr Milad Mokbel, and it was often the subject of discussions with her handlers.⁹⁴ Despite this, she persisted in maintaining what ostensibly amounted to a professional, lawyer–client relationship with Mr Milad Mokbel.

24. Following the arrest, Ms Gobbo and Victoria Police continued to work together in relation to Mr Milad Mokbel. For example, the ICRs records indicate that:

24.1. On 3 May 2006, Ms Gobbo requested Mr Peter Smith to ask Mr Flynn to arrange for her business phone number to be added to Mr Milad Mokbel’s phone list.⁹⁵ Within a few hours, the request was successfully processed.⁹⁶

24.2. On 11 October 2006, Mr Anderson told Ms Gobbo that “the handlers would like [her] to see Mr Milad Mokbel” to discuss certain matters concerning the Williams family.⁹⁷

24.3. On 25 June 2007, Mr Fox recorded the following communication with Ms Gobbo in an ICR:⁹⁸

HS [human source] confirms that Milad has told her he is pleading to first matters but reserves plea on second matters

Told her she can speak to Milad if she thinks it will help

But cannot represent him as already discussed numerous times.

Understood and accepted.

She will speak to Dale Flynn and then ring Milad.

25. From the arrest in April 2006 through to late 2007, Ms Gobbo continued to keep in close contact with Mr Milad Mokbel. She had frequent telephone

⁹⁴ See, eg: Exhibit RC0281 ICR3838 (030), 30 April 2006, 277, VPL.2000.0003.1863; Exhibit RC0281 ICR3838 (030), 4 May 2006, 283, VPL.2000.0003.1869; Exhibit RC0281 ICR3838 (078), 11 May 2007, 834, VPL.2000.0003.2420; Exhibit RC0281 ICR3838 (080), 23 May 2007, 850, VPL.2000.0003.2436; Exhibit RC0281 ICR3838 (085), 22 June 2007, 929, VPL.2000.0003.2515. Cf: Exhibit RC0281 ICR3838 (085), 25 June 2007, 937, VPL.2000.0003.2523; Exhibit RC0281 ICR3838 (085), 25 June 2007, 937-8, VPL.2000.0003.2523-2524; Exhibit RC0281 ICR3838 (087), 2 July 2007, 965, VPL.2000.0003.2551; Exhibit RC0281 ICR3838 (088), 5 July 2007, 991, VPL.2000.0003.2577; Exhibit RC0281 ICR3838 (092), 23 July 2007, 1050, VPL.2000.0003.2636-2637; Exhibit RC0281 ICR3838 (092), 24 July 2007, 1055, VPL.2000.0003.2641, (“Verbally disseminated to Dale Flynn – Purana”). Cf. Exhibit RC0281 ICR3838 (097), 29 August 2007, 1169-70, VPL.2000.0003.2755-2756; Exhibit RC0281 ICR3838 (098), 31 August 2007, 1178-79, VPL.2000.0003.2764-2765.

⁹⁵ Exhibit RC0281 ICR3838 (030), 3 May 2006, 281, VPL.2000.0003.1867, “D/I O’Brien & D/S Flynn adv re above”. See Transcript of Inspector Dale Flynn, 1 October 2019, 6933, TRN.2019.10.01.01. See also Transcript of Ms Nicola Gobbo, 7 February 2020, 13440-1, 2020.02.07.01.

⁹⁶ Exhibit RC0281 ICR3838 (030), 3 May 2006, 281, VPL.2000.0003.1867. See Transcript of Inspector Dale Flynn, 1 October 2019, 6933, TRN.2019.10.01.01.

⁹⁷ Exhibit RC0281 ICR3838 (048), 11 October 2006, 469, VPL.2000.0003.2055-6.

⁹⁸ Exhibit RC0281 ICR3838 (085), 25 June 2007, 937-8, VPL.2000.0003.2523-2524. Cf. Exhibit RC0281 ICR3838 (085), 25 June 2007, 939, VPL.2000.0003.2525.

contact with him,⁹⁹ and conducted several “professional” visits to him in prison.¹⁰⁰

26. Moreover, Ms Gobbo made suggestions to police concerning their ongoing investigation of Mr Milad Mokbel. For example, on 9 May 2006, the ICRs record that she suggested to Mr Peter Smith that investigators listen to conversations between Mr Milad Mokbel and Mr Horty Mokbel during their prison visits.¹⁰¹ She also continued to provide police with information potentially adverse to Mr Milad Mokbel’s interests. For example, according to the ICRs:

26.1. On 5 May 2006, she told her handlers that Mr Milad Mokbel was a part-owner in the phenyl-2-propanone (P2P), [REDACTED]

[REDACTED].¹⁰²

⁹⁹ See, eg: Exhibit RC0281 ICR3838 (031), 07 May 2006, 290, VPL.2000.0003.1876; Exhibit RC0281 ICR3838 (033), 28 May 2006, 311, VPL.2000.0003.1897-1898; Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898; Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907; Exhibit RC0281 ICR3838 (036), 20 June 2006, 336, VPL.2000.0003.1922; Exhibit RC0281 ICR3838 (036), 23 June 2006, 341, VPL.2000.0003.1927; Exhibit RC0281 ICR3838 (038), 13 July 2006, 358, VPL.2000.0003.1944; Exhibit RC0281 ICR3838 (038), 19 July 2006, 362, VPL.2000.0003.1948; Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (040), 10 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (041), 12 August 2006, 391, VPL.2000.0003.1977; Exhibit RC0281 ICR3838 (041), 17 August 2006, 397, VPL.2000.0003.1983; Exhibit RC0281 ICR3838 (045), 11 September 2006, 420, VPL.2000.0003.2006; Exhibit RC0281 ICR3838 (045), 13 September 2006, 420, VPL.2000.0003.2006; Exhibit RC0281 ICR3838 (047), 1 October 2006, 444, VPL.2000.0003.2030; Exhibit RC0281 ICR3838 (048), 10 October 2006, 465-66, VPL.2000.0003.2051-2052; Exhibit RC0281 ICR3838 (049), 15 October 2006, 485, VPL.2000.0003.2071; Exhibit RC0281 ICR3838 (049), 16 October 2006, 485, VPL.2000.0003.2071; Exhibit RC0281 ICR3838 (049), 18 October 2006, 495, VPL.2000.0003.2081; Exhibit RC0281 ICR3838 (050), 22 October 2006, 515, VPL.2000.0003.2101; Exhibit RC0281 ICR3838 (051), 24 October 2006, 520, VPL.2000.0003.2106; Exhibit RC0281 ICR3838 (051), 26 October 2006, 523, VPL.2000.0003.2109; Exhibit RC0281 ICR3838 (051), 27 October 2006, 525-6, VPL.2000.0003.2111-2112; Exhibit RC0281 ICR3838 (052), 3 November 2006, 540, VPL.2000.0003.2126; Exhibit RC0281 ICR3838 (052), 4 November 2006, 543, VPL.2000.0003.2129; Exhibit RC0281 ICR3838 (052), 08 November 2006, 545, VPL.2000.0003.2131; Exhibit RC0281 ICR3838 (052), 10 November 2006, 551, VPL.2000.0003.2137; Exhibit RC0281 ICR3838 (057), 15 December 2006, 587, VPL.2000.0003.2173; Exhibit RC0281 ICR3838 (062), 15 January 2007, 605, VPL.2000.0003.2191; Exhibit RC0281 ICR3838 (063), 22 February 2007, 610, VPL.2000.0003.2196; Exhibit RC0281 ICR3838 (070), 15 March 2007, 708-9, VPL.2000.0003.2294-2295; Exhibit RC0281 ICR3838 (070), 16 March 2007, 712, VPL.2000.0003.2298; Exhibit RC0281 ICR3838 (070), 17 March 2007, 713, VPL.2000.0003.2299; Exhibit RC0281 ICR3838 (070), 18 March 2007, 714, VPL.2000.0003.2300; Exhibit RC0281 ICR3838 (072), 29 March 2007, 744, VPL.2000.0003.2330; Exhibit RC0281 ICR3838 (074), 11 April 2007, 780-81, VPL.2000.0003.2366-2367; Exhibit RC0281 ICR3838 (074), 12 April 2007, 782, VPL.2000.0003.2368; Exhibit RC0281 ICR3838 (075), 17 April 2007, 795, VPL.2000.0003.2381; Exhibit RC0281 ICR3838 (081), 29 May 2007, 866, VPL.2000.0003.2452; Exhibit RC0281 ICR3838 (084), 18 June 2007, 914, VPL.2000.0003.2500; Exhibit RC0281 ICR3838 (085), 26 June 2007, 940, VPL.2000.0003.2526; Exhibit RC0281 ICR3838 (085), 27 June 2007, 943, VPL.2000.0003.2529; Exhibit RC0281 ICR3838 (088), 5 June 2007, 988, VPL.2000.0003.2574. Exhibit RC0281 ICR2958 (019), 17 May 2008, 310, VPL.2000.0003.1050.

¹⁰⁰ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 4 May 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 May 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 18 June 2006, 24, CNS.0001.0003.0037 @.0060; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 July 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 November 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 21 September 2007, 26, CNS.0001.0003.0037 @.0062.

¹⁰¹ Exhibit RC0281 ICR3838 (031), 9 May 2006, 292, VPL.2000.0003.1878.

- 26.2. On 14 May 2006, she told her handlers that “ [REDACTED] Milad has \$Millions stashed with [REDACTED]”.¹⁰³
- 26.3. On 30 March 2007, she told police that Mr Milad Mokbel had sworn a false affidavit concerning a property in Brunswick that was related to Ms Renate Mokbel and Mr Tony Mokbel.¹⁰⁴
27. In addition, Ms Gobbo frequently reported the details of her telephone calls and professional visits with Mr Milad Mokbel to Victoria Police. For example, according to the ICRs:
- 27.1. On 24 May 2006, Ms Gobbo conducted a professional visit to Mr Milad Mokbel and afterwards conveyed aspects of their meeting to Mr Peter Smith, detail of which appears to have been passed onto Mr O’Brien.¹⁰⁵
- 27.2. On 30 May 2006, Mr Milad Mokbel telephoned Ms Gobbo, and discussed his legal matters, the basic details of which Ms Gobbo reported to Mr Green.¹⁰⁶
- 27.3. On 8 June 2006, Ms Gobbo told her handlers that she had received a call from Mr Milad Mokbel, and that he wishes to see the source and to apply for bail.¹⁰⁷
- 27.4. On 18 June 2006, she conducted a professional visit to Mr Milad Mokbel in prison and conveyed detail of their discussion to her handlers, including that he intended to apply for bail.¹⁰⁸
- 27.5. On 24 July 2006 and 6 August 2006, Ms Gobbo conducted further professional visits to Mr Milad Mokbel, and, on each occasion, reported aspects of the subject matter of their discussions to her handlers.¹⁰⁹
28. Whilst, in the period after his arrest, Ms Gobbo did not appear on Mr Milad Mokbel’s behalf in any proceedings before the courts, she followed them and was involved in the background. For example, according to the ICRs:
- 28.1. on 8 August 2006, Ms Gobbo attended his bail application before the Melbourne Magistrates’ Court¹¹⁰
- 28.2. on the morning of 2 June 2007, the first day of Mr Milad Mokbel’s committal in the Posse Case, Ms Gobbo visited him in the custody

¹⁰³ Exhibit RC0281 ICR3838 (031), 14 May 2006, 297, VPL.2000.0003.1883, “DDI O’Brien adv of above on 15/05/08”; Exhibit RC0464b Statement of Mr James (Jim) O’Brien (long), 37 [188(a)] VPL.0014.0040.0001 @.0037.

¹⁰⁴ Exhibit RC0281 ICR3838 (072), 30 March 2007, 748, VPL.2000.0003.2334-2335.

¹⁰⁵ Exhibit RC0281 ICR3838 (032), 24 May 2006, 300, VPL.2000.0003.1886, “DDI O’Brien adv ...”; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 May 2006, 24, CNS.0001.0003.0037 @.0060.

¹⁰⁶ Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898; See also Exhibit RC0281 ICR3838 (033), 2 June 2006, 315, VPL.2000.0003.1901.

¹⁰⁷ Exhibit RC0281 ICR3838 (034), 8 June 2006, 321, VPL.2000.0003.1907.

¹⁰⁸ Exhibit RC0281 ICR3838 (035), 18 June 2006, 333-4, VPL.2000.0003.1919-1920. Exhibit RC0281 ICR3838 (032), 24 May 2006, 300, VPL.2000.0003.1886, “DDI O’Brien adv ...”; Exhibit RC1359 Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 18 June 2006, 24, CNS.0001.0003.0037 @.0060.

¹⁰⁹ Exhibit RC0281 ICR3838 (039), 24 July 2006, 368, VPL.2000.0003.1954; Exhibit RC0281 ICR3838 (040), 6 August 2006, 385-6, VPL.2000.0003.1970-1971. Exhibit RC0281 ICR3838 (032), 24 May 2006, 300, VPL.2000.0003.1886, “DDI O’Brien adv ...”; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 July 2006, 25, CNS.0001.0003.0037 @.0061; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 6 August 2006, 25, CNS.0001.0003.0037 @.0061.

¹¹⁰ Exhibit RC0281 ICR3838 (040), 8 August 2006, 386, VPL.2000.0003.1972.

centre.¹¹¹ Although she did not attend the hearing itself, on 2 and 3 June, the handlers kept her updated and had ongoing discussions with her as to the hearing, especially in relation to the evidence of Mr Cooper.¹¹² She also discussed the committal hearing with Mr Flynn.¹¹³ In addition, she had direct discussions with Mr Cooper about his and others' evidence in the hearing prior to his giving evidence.¹¹⁴

29. Separately, between at least [REDACTED] 2006 information provided by Ms Gobbo to (and as a human source for) Victoria Police was used to obtain further surveillance warrants of which Mr Milad Mokbel was the target. The warrants appear to have been obtained to advance a separate investigation of Victoria Police which did not concern the three cases under review in this case study.¹¹⁵ The warrants obtained during this time, based (at least in part) on information from Ms Gobbo included:

- 29.1. On [REDACTED] 2006, Victoria Police obtained a surveillance device warrant, under the *Surveillance Devices Act 1999*, to monitor the private conversations of Mr Milad Mokbel [REDACTED].¹¹⁶ The affidavit relied upon in the application for the warrant, sworn by Detective Senior Sergeant Russell Fletcher, dated [REDACTED] 2006, makes express reference to information obtained by Ms Gobbo (as "Informer 21803838")¹¹⁷
- 29.2. On [REDACTED] 2006¹¹⁸ and [REDACTED] 2006,¹¹⁹ Victoria Police obtained two further warrants in similar terms and on the basis (in part) of the same information from Ms Gobbo which had been relied upon for the [REDACTED] 2006 warrant.

Ms Gobbo's Specific Conduct in relation to the Posse Case

30. Following Mr Milad Mokbel's arrest, Ms Gobbo continued to assist Victoria Police as a human source, whilst purporting to act as his lawyer. In particular, after the Posse Case had commenced, Ms Gobbo assisted police by reviewing the brief of evidence and offering advice. For example, according to the ICRs:
- 30.1. On 30 October 2006, Ms Gobbo met with the members of the Source Development Unit (SDU) to "peruse 5 x volumes of Purana Task Force – brief of evidence", in relation to Mr Milad Mokbel and other accused

¹¹¹ Exhibit RC0281 ICR3838 (087), 2 July 2007, 965, VPL.2000.0003.2551.

¹¹² Exhibit RC0281 ICR3838 (087), 2 July 2007, 965-69, VPL.2000.0003.2551-2555; Exhibit RC0281 ICR3838 (087), 2 July 2007, 969-10, 975, VPL.2000.0003.2555-2556, 2561.

¹¹³ Exhibit RC0281 ICR3838 (087), 2 July 2007, 966, VPL.2000.0003.2552.

¹¹⁴ Exhibit RC0281 ICR3838 (087), 3 July 2007, 969-70, 975, VPL.2000.0003.2546, 2555-2556, 2561.

¹¹⁵ The investigation in respect of which the warrants were obtained was Operation Primi, which was concerned with the killing of Mario Condello. See, eg, Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn [REDACTED] 2006, [11] VPL.2100.0006.0068 @.0069.

¹¹⁶ See Un-tendered Warrant VP0883, [REDACTED] 2006, VPL.2100.0009.0077; See also Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn [REDACTED] 2006, [8], VPL.2100.0006.0068 @.0069.

¹¹⁷ See Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, sworn [REDACTED] 2006, [54], [55] VPL.2100.0006.0068 @.0024.

¹¹⁸ See Un-tendered Warrant VP0904, [REDACTED] 2006, VPL.2100.0009.0095. See Un-tendered Affidavit of Detective Senior Sergeant Russell Fletcher, [REDACTED] 2006, [4], [56], [57], VPL.2100.0006.0100 @.0100, .0126.

¹¹⁹ See Un-tendered Warrant VP0936, [REDACTED] 2006, VPL.2100.0009.0098. See Affidavit of Sergeant Darren Hamilton-Scott, [REDACTED] 2006 at [4], [56], [57], VPL.2100.0006.0155 @.0155, .0182.

in the Posse Case.¹²⁰ Ms Gobbo provided her advice on the state of the brief.¹²¹ This information was passed on verbally to Mr Flynn.¹²²

- 30.2. On 15 April 2007, having read the version of the brief served upon Mr Milad Mokbel, Ms Gobbo advised Mr Anderson that there was a “real fuck up” in the brief concerning listening device evidence.¹²³ The ICR records that Mr Anderson discussed the issue with Mr Flynn of Purana Taskforce.¹²⁴
- 31. Significantly, material before the Commission suggests that Ms Gobbo played a material role in Mr Milad Mokbel gradually agreeing to plead guilty in the Posse Case.¹²⁵ Some of the salient examples of her role in that process are as follows:
 - 31.1. On [REDACTED] 2007, the ICRs record that Ms Gobbo and her handlers discussed Mr Milad Mokbel’s options for a possible plea deal, [REDACTED].¹²⁶ The ICR notes that the content of these discussions was passed onto Mr O’Brien.¹²⁷
 - 31.2. Thereafter, over the following weeks, Ms Gobbo acted on behalf of Mr Milad Mokbel in communicating with members of the Purana

¹²⁰ Exhibit RC0281 ICR3838 (051), 30 October 2006, 528-33, VPL.2000.0003.2114-2119.
¹²¹ Exhibit RC0281 ICR3838 (051), 30 October 2006, 528-33, VPL.2000.0003.2114-2119. See also Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Anderson, 30 October 2006, VPL.0005.0115.0407.
¹²² Exhibit RC0281 ICR3838 (051), 30 October 2006, 533, VPL.2000.0003.2119; See also Transcript of Inspector Dale Flynn, 2 October 2019, 089-94, TRN.2019.10.02.01.
¹²³ Exhibit RC0281 ICR3838 (075), 15 April 2007, 790, VPL.2000.0003.2376. See also Exhibit RC0281 ICR3838 (075), 16 April 2007, 790, VPL.2000.0003.2376.
¹²⁴ Exhibit RC0281 ICR3838 (075), 15 April 2007, 790, VPL.2000.0003.2376.

[REDACTED]

Taskforce¹²⁸ ([REDACTED])¹²⁹ in an attempt to broker a plea deal.¹³⁰

31.3. On [REDACTED] 2007, the ICRs record that she gave advice to her handlers on strategies [REDACTED] in relation to the plea negotiations. [REDACTED].¹³¹ In evidence before the Commission, Mr O'Brien said he didn't have a note of being told this information, and would have paid it scant regard in any case.¹³²

31.4. On 19 April 2007, Mr Anderson made an entry in the ICRs as follows:¹³³

[Ms Gobbo] would like to see Milad and assist him to plea to all charges.

[Ms Gobbo] states that Renee needs to stay in jail to enable 3838 to be able to convince Milad.

General conversation about not representing or providing legal advice to the Mokbels.

31.6. On 15 May 2007, she reported to her handlers that she had been talking to Mr Flynn about a potential plea deal for Mr Milad Mokbel, despite knowing that it was not appropriate for her to be acting for him and having apparently referred him to other counsel.¹³⁴ On this occasion, Mr Anderson advised Ms Gobbo that it was not appropriate for her to represent Mr Milad Mokbel.¹³⁵

31.7. On 30 May 2007, the ICRs note that Ms Gobbo provided her opinion to Mr Anderson as to how Mr Milad Mokbel's case could be resolved.¹³⁶

31.8. On 25 June 2007, the ICRs record that Ms Gobbo told the handlers that she was confident that she could "turn [Mr Milad Mokbel] around and get him to plea[d]".¹³⁷ Later that day, the handlers told Ms Gobbo that she could "speak to Milad if she thinks it will help ... [b]ut cannot represent him as already discussed numerous times."¹³⁸

[REDACTED]

¹³³ Exhibit RC0281 ICR3838 (075), 19 April 2007, 801, VPL.2000.0003.2387. See also Transcript of Ms Nicola Gobbo, 7 February 2020, 13440-1.

¹³⁴ Exhibit RC0281 ICR3838 (079), 15 May 2007, 837, VPL.2000.0003.2423.

¹³⁵ Exhibit RC0281 ICR3838 (079), 15 May 2007, 837, VPL.2000.0003.2423.

¹³⁶ Exhibit RC0281 ICR3838 (081), 30 May 2007, 870, VPL.2000.0003.2456.

¹³⁷ Exhibit RC0281 ICR3838 (085), 25 June 2007, 937, VPL.2000.0003.2523.

¹³⁸ Exhibit RC0281 ICR3838 (085), 25 June 2007, 937-8, VPL.2000.0003.2523. Cf. Exhibit RC0281 ICR3838 (085), 25 June 2007, 939, VPL.2000.0003.2525.

- 31.9. On 26 June 2007, the ICRs note that she informed her handlers that she had advised Mr Milad Mokbel that his “best course of action was to consolidate all matters and consider options re the between dates traffick charge”.¹³⁹
- 31.10. On 18 August 2007, the handlers record that Mr Milad Mokbel “understands that Sherrifs or HS will be s/t the crown to formalise his plea”.¹⁴⁰
- 31.11. On 13 September 2007, she rendered \$500 in fees to Mr Alastair Grigor, solicitor, in relation to Mr Milad Mokbel for a “[b]rief to advise, confer and settle charges”.¹⁴¹
- 31.12. Days later, on 18 September 2007, Ms Gobbo reported to her handlers that Mr Milad Mokbel’s then solicitor, Mr Grigor, had “sent a letter to the OPP [Office of Public Prosecutions] ... kicking the ball off regarding Milad’s plea.”¹⁴²
- 31.13. On 21 September 2007, Ms Gobbo attended a gaol conference with Mr Milad Mokbel, and her instructing solicitor, Mr Grigor, and later reported detail of the conference to her handlers, including that they had discussed his plea deal.¹⁴³
- 31.14. On [REDACTED] 2007, Ms Gobbo discussed Mr Milad Mokbel’s matters with Dale Flynn.¹⁴⁴
- 31.15. On [REDACTED] 2007, Ms Gobbo informed her handlers of the content of a phone conversation she had had with Mr Milad Mokbel, including disclosing his instructions and intentions in relation to his charges. Specifically, she informed them that despite Mr Flynn’s attitude to the plea deal, he “still intends pleading ... to all his charges”.¹⁴⁵ The ICRs record that this was passed on verbally to Mr Flynn.¹⁴⁶

Ms Gobbo’s Conduct in relation to the Blackmail Case

32. Ms Gobbo also ostensibly acted as Mr Milad Mokbel’s lawyer in relation to the Blackmail Case. In mid-November 2006, Mr Milad Mokbel sought Ms Gobbo’s advice on a matter involving a threat to kill charge (which, it can be inferred, concerned the Blackmail Case)¹⁴⁷ and she was provided with the brief of

¹³⁹ Exhibit RC0281 ICR3838 (085), 26 June 2007, 940, VPL.2000.0003.2526.

¹⁴⁰ Exhibit RC0281 ICR3838 (095), 18 August 2007, 1114, VPL.2000.0003.2700.

¹⁴¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 13 September 2007, 9, MIN.5000.7000.0103 @.0111. See also corresponding invoices from clerk: Exhibit RC1569 Meldrum and Hyland Barristers’ Clerk Invoice for fees due to Ms Gobbo, 17 September 2007, GMH.0001.0001.0006 @.0048. See also corresponding statement of account from clerk: Exhibit RC1569 Meldrum and Hyland Barristers’ Clerk Statement of Account for Ms Nicola Gobbo, 7 March 2019, GMH.0001.0001.0002 @.0025; Cf. Exhibit RC0281 ICR3838 (099), 10 September 2007, 1205, VPL.2000.0003.2791-2792; Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801.

¹⁴² Exhibit RC0281 ICR3838 (100), 10 September 2007, 1226, VPL.2000.0003.2812.

¹⁴³ Exhibit RC0281 ICR3838 (101), 21 September 2007, 1238, VPL.2000.0003.2824. See also Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 21 September 2007, 26, CNS.0001.0003.0037 @.0062; Exhibit RC1901 Corrections Victoria visitation record for Milad Mokbel, 21 September 2007, CNS.0001.0003.1356.

[REDACTED]

[REDACTED]

[REDACTED]

¹⁴⁷ That the threat to kill charge related to the Blackmail Case can be inferred from information in the following documents: Un-tendered Transcript of proceedings, *R v Mokbel* (Supreme Court of Victoria, Justice Curtain, 20 June 2008), 43-44, OPP.0039.0001.0002 @.0108-9; Exhibit RC0281 ICR3838

evidence.¹⁴⁸ He reportedly told her that there would be no problem with payment of fees for the advice.¹⁴⁹ Ms Gobbo received and reviewed the brief,¹⁵⁰ and she appeared to have reached an opinion on the matter.¹⁵¹ It seems, however, that she did not receive any relevant payment.¹⁵² The brief was eventually collected from her by Solicitor 2 in February 2007.¹⁵³ On 29 March 2007, she is recorded as having discussed the brief with Mr Milad Mokbel.¹⁵⁴ On 2 and 3 April 2007, when the committal hearing in the Blackmail Case was heard, she was in contact with senior counsel who appeared for Mr Milad Mokbel in the proceeding.¹⁵⁵ She continued to discuss the matter with Mr Milad Mokbel, following his committal.¹⁵⁶ The Blackmail Case eventually resolved to a plea of guilty and was heard alongside the Posse Case.

33. Significantly, during this period, she also discussed the matter with Victoria Police, contrary to Mr Milad Mokbel's interests. On 28 January 2007, Ms Gobbo reportedly recommended to her handlers that, in relation to his threat to kill matter, "police should restrain the property in Nicholson after reading the victims statement".¹⁵⁷ And, in February and March 2007, she discussed the brief of evidence and related subpoena issues in the Blackmail Case with her handlers.¹⁵⁸

Deterioration of Relationship

34. From late October 2007, the relationship between Ms Gobbo and Mr Milad Mokbel began to deteriorate. This appears to have been due to Mr Milad Mokbel becoming increasingly suspicious of the nature and extent of Ms Gobbo's role with Mr Cooper.¹⁵⁹ For example, the ICRs record that:

(063), 28 January 2007, 617, VPL.2000.0003.2203; *R v Mokbel* [2008] VSC 635, [2]-[5]; Un-tendered Prosecution Plea Opening, *R v Milad Mokbel*, undated, 1, 7-8, OPP.0039.0001.0002 @.0013, .0019-.0020.

¹⁴⁸ See Exhibit RC0281 ICR3838 (053), 13 November 2006, 554, VPL.2000.0003.2140; Exhibit RC0281 ICR3838 (053), 14 November 2006, 554, VPL.2000.0003.2140; Exhibit RC0281 ICR3838 (053), 17 November 2006, 559, VPL.2000.0003.2145; Exhibit RC0281 ICR3838 (053), 19 November 2006, 560, VPL.2000.0003.2146; Exhibit RC0281 ICR3838 (054), 22 November 2006, 564, VPL.2000.0003.2150.

¹⁴⁹ Exhibit RC0281 ICR3838 (053), 13 November 2006, 554, VPL.2000.0003.2140.

¹⁵⁰ Exhibit RC0281 ICR3838 (053), 17 November 2006, 559, VPL.2000.0003.2145; Exhibit RC0281 ICR3838 (053), 19 November 2006, 560, VPL.2000.0003.2146.

¹⁵¹ Exhibit RC0281 ICR3838 (053), 19 November 2006, 560, VPL.2000.0003.2146. See also Exhibit RC0281 ICR3838 (067), 19 February 2007, 641, VPL.2000.0003.2227 ("3838 stated that she had a number of comments to make in relation to the police brief ...").

¹⁵² Exhibit RC0281 ICR3838 (053), 19 November 2006, 560, VPL.2000.0003.2146. Cf. Exhibit RC0281 ICR3838 (054), 22 November 2006, 564, VPL.2000.0003.2150.

¹⁵³ Exhibit RC0281 ICR3838 (066), 15 February 2007, 638, VPL.2000.0003.2224.

¹⁵⁴ Exhibit RC0281 ICR3838 (072), 29 March 2007, 744, VPL.2000.0003.2330.

¹⁵⁵ Exhibit RC0281 ICR3838 (073), 2 April 2007, 760-2, VPL.2000.0003.2346-2348; Exhibit RC0281 ICR3838 (073), 3 April 2007, 762-3, VPL.2000.0003.2348-2349; See also Exhibit RC0281 ICR3838 (073), 5 April 2007, 768, VPL.2000.0003.2354.

¹⁵⁶ See e.g., Exhibit RC0281 ICR3838 (073), 4 April 2007, 767, VPL.2000.0003.2353.

¹⁵⁷ Exhibit RC0281 ICR3838 (063), 28 January 2007, 617, VPL.2000.0003.2203.

¹⁵⁸ Exhibit RC0281 ICR3838 (068), 27 February 2007, 660, VPL.2000.0003.2246. Cf. Exhibit RC0281 ICR3838 (069), 6 March 2007, 677, VPL.2000.0003.2263; Exhibit RC0281 ICR3838 (072), 27 March 2007, 736, VPL.2000.0003.2322.

¹⁵⁹ Exhibit RC0281 ICR3838 (106), 25 October 2006, 1320, VPL.2000.0003.2906 ("Horty & Milad are not talking to HS"); Exhibit RC0281 ICR3838 (106), 26 October 2006, 1321, VPL.2000.0003.2907. Cf. Exhibit RC0281 ICR3838 (109), 7 November 2007, 1370, VPL.2000.0003.2956; Exhibit RC0281 ICR3838 (109), 8 November 2007, 1375, VPL.2000.0003.2961-2; Exhibit RC0281 ICR3838 (110), 12 November 2007, 1393, VPL.2000.0003.2979. Exhibit RC0281 ICR3838 (113), 28 November 2007, 1474, VPL.2000.0003.3060; Exhibit RC0281 ICR2958 (003), 12 February 2008, 39, VPL.2000.0003.0779; Exhibit RC0281 ICR2958 (003), 13 February 2008, 40, VPL.2000.0003.0780;

- 34.1. On 25 and 26 October 2007, Ms Gobbo told her handlers that she had not had any contact with Mr Milad Mokbel and that he, and the other Mokbels, were all “annoyed” with her.¹⁶⁰
- 34.2. On 28 November 2007, Ms Gobbo commented that “it seems all too quiet at the moment on the Mokbel front ... No-one has spoken to her for a few weeks now from that side”. The handlers record that “[t]his makes her a little nervous ...”.¹⁶¹
- 34.3. On 12 February 2008, Ms Gobbo received a phone call from Mr Milad Mokbel, and told handlers that that was their first communication for some three months.¹⁶² During their phone call, Mr Milad Mokbel apparently told Ms Gobbo that the Mokbel family “were very disappointed in her” and that “they knew about Cooper”.¹⁶³
- 34.4. At around the same time, Mr Grigor, following a visit to Mr Milad Mokbel, reported to Ms Gobbo that the “Mokbels were disappointed in her”.¹⁶⁴
- 34.5. On 12 April 2008, Ms Gobbo told her handlers that Mr Milad Mokbel, and others, are calling her “a dog”.¹⁶⁵
- 34.6. On 11 May 2008, it is recorded that, apparently, “word on the street” was that Mr Milad Mokbel was calling her “a dog” and claiming that “all roads are leading to her”.¹⁶⁶
- 34.7. By 17 May 2008, her contact numbers had been removed from Mr Milad Mokbel’s phone list.¹⁶⁷
35. By mid-June 2008, the relationship appears to have completely broken-down.¹⁶⁸ On 13 and 14 June 2008, Ms Gobbo was told by Mr Grigor, solicitor, that “Milad wants to murder her”,¹⁶⁹ and that he was “disappointed with [Ms Gobbo’s]

Exhibit RC0281 ICR2958 (003), 13 February 2008, 41, VPL.2000.0003.0781; Exhibit RC0281 ICR2958 (008), 13 March 2008, 97, VPL.2000.0003.0837; Exhibit RC0281 ICR2958 (010), 20 March 2008, 110, VPL.2000.0003.0850; Exhibit RC0281 ICR2958 (013), 9 April 2008, 148, VPL.2000.0003.0888; Exhibit RC0281 ICR2858 (013), 12 April 2008, 154, VPL.2000.0003.0894; Exhibit RC0281 ICR2958 (017), 30 April 2008, 246, VPL.2000.0003.0986; Exhibit RC0281 ICR2958 (019), 11 May 2008, 289, VPL.2000.0003.1029; Exhibit RC0281 ICR2958 (019), 17 May 2008, 310, VPL.2000.0003.1050. See also Anonymous Submission 035, 9 [27]-[28].

¹⁶⁰ Exhibit RC0281 ICR3838 (106), 25 October 2006, 1320, VPL.2000.0003.2906; Exhibit RC0281 ICR3838 (106), 26 October 2006, 1321, VPL.2000.0003.2907. Cf. Exhibit RC0281 ICR3838 (109), 7 November 2007, 1370, VPL.2000.0003.2956; Exhibit RC0281 ICR3838 (109), 8 November 2007, 1375, VPL.2000.0003.2961-2; Exhibit RC0281 ICR3838 (110), 12 November 2007, 1393, VPL.2000.0003.2979.

¹⁶¹ Exhibit RC0281 ICR3838 (113), 28 November 2007, 1474, VPL.2000.0003.3060; Cf. Exhibit RC0281 ICR3838 (113), 30 November 2007, 1485, VPL.2000.0003.3071; Exhibit RC0281 ICR2958 (003), 12 February 2008, 39, VPL.2000.0003.0779.

¹⁶² Exhibit RC0281 ICR2958 (003), 13 February 2008, 40, VPL.2000.0003.0780.

¹⁶³ Exhibit RC0281 ICR2958 (003), 13 February 2008, 40, VPL.2000.0003.0780. Cf. Exhibit RC0281 ICR2958 (008), 13 March 2008, VPL.2000.0003.0837.

¹⁶⁴ Exhibit RC0281 ICR2958 (003), 13 February 2008, 41, VPL.2000.0003.0781. Cf. Exhibit RC0281 ICR2958 (008), 13 March 2008, VPL.2000.0003.0837.

¹⁶⁵ Exhibit RC0281 ICR2958 (013), 12 April 2008, 154, VPL.2000.0003.0894.

¹⁶⁶ Exhibit RC0281 ICR2958 (019), 11 May 2008, 289, VPL.2000.0003.1029.

¹⁶⁷ Exhibit RC0281 ICR2958 (019), 17 May 2008, 310, VPL.2000.0003.1050.

¹⁶⁸ It was submitted to the Commission: “Sometime in 2008, [it was revealed] that Gobbo had helped turn Cooper into a Crown witness and to give evidence against the Mokbels. After this was revealed ... [a client] telephoned Gobbo and informed her never to contact him ... again. From that point on, he had no further contact with her.”; Anonymous Submission 035, [27]-[28].

¹⁶⁹ Exhibit RC0281 ICR2958 (023), 13 June 2008, 431, VPL.2000.0003.1171.

actions”.¹⁷⁰ And, on 16 June 2008, Ms Gobbo commented to her handlers that she believed the Mokbels thought she was “an informer because of not telling them about Cooper.”¹⁷¹

Ms Gobbo’s Conduct in relation to the Matchless Case

36. On 17 June 2008, the ICRs record that Ms Gobbo “complain[ed]” to her handlers about the fact that Mr Milad Mokbel had not yet been charged in relation to the Rye offending, which became the subject of the Matchless Case. She told them that she had read the briefs and that the evidence against him is “overwhelming”.¹⁷² On 19 June 2008, she is reported as again “asking ... if Milad Mokbel is to get further charges re Rye Lab ...”¹⁷³ Later that same day, the ICRs record that Mr Flynn informed Mr Peter Smith that “Milad would definitely be charged re Rye Lab in 2003”, with a note that Ms Gobbo “can be advised.”¹⁷⁴ Mr Peter Smith then conveyed this information to Ms Gobbo.¹⁷⁵
37. On 30 June 2008, Milad Mokbel was charged with the offences in the Matchless Case.¹⁷⁶ By that time, as described above, based on evidence before the Commission, it appears that Ms Gobbo’s relationship with Mr Milad Mokbel had significantly deteriorated.
38. It was submitted to the Commission that following Mr Mokbel’s being charged in the Matchless Case, Ms Gobbo conferred with him in prison, and during the conference he disclosed to her how he proposed to challenge the matter.¹⁷⁷ It was submitted that Ms Gobbo must have passed that information onto police because she was the only person who he told and Mr Flynn raised it with him on a subsequent occasion.¹⁷⁸ It should be noted that the visitation records of Corrections Victoria do not record any visits by Ms Gobbo to Mr Milad Mokbel in 2008, with the last visit being on 21 September 2007.¹⁷⁹ Given the absence of corroborating evidence, and the evidence tending to the contrary concerning the decline in their relationship (as set out above), Counsel Assisting submit that it would not be open for the Commissioner to accept the assertions made in the submission concerning Ms Gobbo acting for Mr Mokbel in the Matchless Case.

Relevant Conduct in relation to Mr Cooper

39. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Mokbel’s case. As set out in

¹⁷⁰ Exhibit RC0281 ICR2958 (023), 14 June 2008, 432, VPL.2000.0003.1172.

¹⁷¹ Exhibit RC0281 ICR2958 (024), 16 June 2008, 440, VPL.2000.0003.1180. See also Anonymous Submission 035, [27]–[28].

¹⁷² Exhibit RC0281 ICR2958 (024), 17 June 2008, 450, VPL.2000.0003.1190.

¹⁷³ Exhibit RC0281 ICR2958 (025), 19 June 2008, 466, VPL.2000.0003.1206.

¹⁷⁴ Exhibit RC0281 ICR2958 (025), 19 June 2008, 467, VPL.2000.0003.1207. See also Exhibit RC0281 ICR2958 (026), 2 July 2008, 478, VPL.2000.0003.1218.

¹⁷⁵ Exhibit RC0281 ICR2958 (025), 19 June 2008, 467, VPL.2000.0003.1207. See also Exhibit RC0281 ICR2958 (026), 2 July 2008, 478, VPL.2000.0003.1218.

¹⁷⁶ *DPP v Mokbel* [2011] VSC 328, [6].

¹⁷⁷ Anonymous Submission 035, 7-8 [23]–[25]. Cf. Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 26-27, CNS.0001.0003.0037 @.0062-.0063, where no record of any visit in 2008 to Milad Mokbel and the final visit to him being 21 September 2007.

¹⁷⁸ Anonymous Submission 035, 7-8 [23]–[25]. Cf. Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 26-27, CNS.0001.0003.0037 @.0062-.0063, where no record of any visit in 2008 to Milad Mokbel and the final visit to him being 21 September 2007.

¹⁷⁹ See Cf. Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 26-27, CNS.0001.0003.0037 @.0062-.0063.

the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:

- 39.1. the discovery of the offending the subject of Operation Posse;
 - 39.2. Mr Cooper being arrested in Operation Posse;
 - 39.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by delivering [REDACTED] package on 25 April 2006 which incriminated Mr Milad Mokbel and by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 39.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Mokbel (in the Posse Case and the Matchless Case).
40. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
41. Further, as set out in case study of [REDACTED], it is submitted that it is open to find that there was a causal link (even if indirect) between the conduct of Ms Gobbo and Victoria Police which led Mr Cooper to agree to assist and co-operate with authorities, and to the subsequent decision of a [REDACTED] to do so.
42. On this basis, it may be argued that the evidence of [REDACTED], relied upon in the prosecution of Mr Mokbel, may have been obtained illegally or improperly by virtue of its causal connection (even if indirect) to the circumstances surrounding Mr Cooper.
43. In addition, it appears that other information provided by Ms Gobbo to her handlers was pertinent to the investigation in the period leading up to the execution of the Parkdale Search Warrant on 5 September 2006.¹⁸⁰ In particular, on 6 July 2006, Ms Gobbo conveyed to her handler, Mr Peter Smith, that, according to Mr Cooper, large amounts of cash were being stored at the residence of Ms Renate Mokbel's aunty.¹⁸¹ She also told Mr Peter Smith that Mr Cooper had conveyed the information to Mr Bartlett.¹⁸² The ICRs record that Mr Ryan was also advised of the information.¹⁸³ The next day, on 7 July 2006, Ms Gobbo reported to her handlers that Mr Cooper had been visited by Mr Rowe and told him the information.¹⁸⁴ In addition, on 28 July 2006, Ms Gobbo

¹⁸⁰ See above at [5].

¹⁸¹ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937.

¹⁸² Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937.

¹⁸³ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937. See also, Transcript of Mr James (Jim) O'Brien, 6 September 2019, 5792 [24]-[26].

¹⁸⁴ Exhibit RC0281 ICR3838 (037), 7 July 2006, 351, VPL.2000.0003.1937.

informed her handlers that “Auntie Marie” is a relative of Ms Renate Mokbel, and that she has large amounts of cash buried on behalf of Mr Milad Mokbel.¹⁸⁵

44. It is clear, however, that it was information provided to police directly from Mr Cooper which advanced the investigation and led to the execution of the Parkdale Search Warrant on 5 September 2006, which resulted in the obtaining of the incriminating evidence of proceedings of crime. In particular, in a statement made by Mr Cooper on 13 November 2006, he sets out the relevant information he provided police.¹⁸⁶ In addition, the affidavit in support of the Parkdale Search Warrant, sworn by Mr O’Brien, makes express reference to intelligence provided by Mr Cooper as founding the basis for the search warrant.¹⁸⁷ On this basis, it is arguable that the evidence the product of the Parkdale Search Warrant was also obtained in consequence (albeit indirect) of the potentially improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper.

Relevant Conduct in relation to Mr Thomas

45. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is also relevant to an assessment of Mr Mokbel’s matter. As set out in the Narrative Submissions at Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led Mr Thomas to his decision to assist and co-operate with authorities. As with Mr Cooper, such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr Mokbel, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.
46. It is important to recognise that, as noted in the Legal Principles Submissions at [191]-[222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁸⁸ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁸⁹

¹⁸⁵ Exhibit RC0281 ICR3838 (039), 28 July 2006, 374, VPL.2000.0003.1960; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 28 July 2006, 157-159, VPL.0005.0104.0440 @.0596-.0598.

¹⁸⁶ See Un-tendered Statement of Mr Cooper, 13 November 2006, RCMPPI.0028.0002.0001, 0001-0003; See also Un-tendered Witness List, *Police v Garry James Gibbs*, 1, RCMPPI.0070.0003.0028 @.0008. See also Un-tendered Summary of Charges”, *Police v Garry James Gibbs*, RCMPPI.0070.0003.0028 @.0003-.0005.

¹⁸⁷ See Un-tendered Affidavit for a search warrant of then Detective Acting Inspector James (Jim) O’Brien, undated, VPL.6111.0200.1258. The identification of Mr Cooper in this affidavit was made verbally to Ms Alexandra Tighe, Solicitor Assisting the Commission, on 20 May 2020.

¹⁸⁸ See Legal Principles Submissions at [210].

¹⁸⁹ See Legal Principles Submissions at [222].

Evidence of Ms Gobbo before the Commission relevant to Mr Milad Mokbel

47. In her evidence before the Commission, Ms Gobbo was questioned specifically about the cases of Mr Milad Mokbel. Under cross-examination, she accepted that Mr Milad Mokbel did not receive “independent legal advice” from her on 25 April 2006.¹⁹⁰ She further accepted that she later provided him with advice concerning a plea deal in the Posse Case, and that she was “keen” for him to plead guilty.¹⁹¹ Significantly, Ms Gobbo accepted that she was motivated by a desire that there not be a contested hearing in the Posse Case because that would have increased the prospect of the Mokbels finding out about her involvement with respect to Mr Cooper.¹⁹² She accepted that she was conflicted and was thus not in a position to represent Mr Milad Mokbel properly.¹⁹³ In her own words, when it came to Mr Milad Mokbel, she described having “an enormous conflict for a multitude of reasons”.¹⁹⁴
48. Ms Gobbo was also taken specifically to the entry in the ICRs of 19 April 2007, which is in the following terms:¹⁹⁵
- [Ms Gobbo] would like to see Milad and assist him to plea to all charges.*
- [Ms Gobbo] states that Renee needs to stay in jail to enable 3838 to be able to convince Milad.*
- General conversation about not representing or providing legal advice to the MOKBELS.*
49. Ms Gobbo accepted the general accuracy of that record, and said that the problems of conflict in relation to her acting for the Mokbels was a common topic of conversation between her and the handlers.¹⁹⁶ She accepted that, upon Mr Milad Mokbel’s arrest on 25 April 2006, she was told by Mr Anderson, “Don’t act for the Mokbels”, but she claimed that the “practical application” of that advice “proved to be more difficult”.¹⁹⁷
50. As noted elsewhere in these submissions, Ms Gobbo was also asked about the possibility that she committed the offence of obtaining a financial advantage or property by deception in rendering fees for legal services to persons on whom she was informing as a human source. In her evidence, Ms Gobbo accepted that she “practis[ed] a deception on [her] clients, people ... [she] was purporting to represent ... by not telling them that [she] was an informer”.¹⁹⁸ However, while Ms Gobbo accepted that the deception was “wrong”, and amounted to a “breach of [her clients’] confidence”, she did not agree that she was as a result not entitled to the money because she claimed that she “did ... what [she] said [she] was going to do”.¹⁹⁹

¹⁹⁰ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13438, TRN.2020.02.07.01.

¹⁹¹ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13439, TRN.2020.02.07.01.

¹⁹² See Transcript of Ms Nicola Gobbo, 7 February 2020, 13439, TRN.2020.02.07.01.

¹⁹³ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13439, TRN.2020.02.07.01.

¹⁹⁴ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13439, TRN.2020.02.07.01. See also 13440, where Ms Gobbo describes other aspects of her “conflicts” in relation to Mr Milad Mokbel.

¹⁹⁵ Exhibit RC0281 ICR3838, 19 April 2007, 801, VPL.2000.0003.2387. See also Transcript of Ms Nicola Gobbo, 7 February 2020, 13440-1, TRN.2020.02.07.01. See also above at [31.4].

¹⁹⁶ Transcript of Ms Nicola Gobbo, 7 February 2020, 13440-1, TRN.2020.02.07.01.

¹⁹⁷ Transcript of Ms Nicola Gobbo, 7 February 2020, 13755-6, TRN.2020.02.07.01.

¹⁹⁸ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13454, TRN.2020.02.07.01.

¹⁹⁹ See Transcript of Ms Nicola Gobbo, 7 February 2020, 13454, TRN.2020.02.07.01.

51. Finally, it is notable that, in her letter to Assistant Commissioner Fontana dated 30 June 2015, Ms Gobbo referred to named Mr Milad Mokbel as among “[t]he most significant crimes and/or arrests” in which she assisted police.²⁰⁰

Submission to the Commission regarding Mr Mokbel

52. Submissions made to the Commission regarding Milad Mokbel have already been addressed, in part, above. In addition to those matters, the following parts of those submissions are especially pertinent: ²⁰¹

[29] During the relevant period M.Mokbel considered himself to have an ongoing professional relationship with Gobbo, he never waived his rights to confidentiality or legal professional privilege between himself and Gobbo.

...

[35] During the relevant period if M. Mokbel was aware or had been informed of the fact and circumstances of Gobbo’s involvement with Mr Cooper and Victoria Police, he would not have firstly had a legal professional relationship or a social one. Secondly, he would have not pleaded guilty to either the Posse or Matchless charges and thirdly, he would have challenged the admissibility of the evidence of Mr Cooper and any other evidence obtained by the police where they relied upon the information of Gobbo to obtain warrants for searches, intercepted telephone communications, listening and tracking devices.

Submissions under Terms of Reference 1 and 2 in relation to Mr Mokbel

53. It is submitted that it is open to the Commissioner to find that the three cases of Mr Milad Mokbel may have been affected (in different ways, as set out below) by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
54. This case is linked to the cases of Mr Thomas and Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo’s conduct and police conduct contained in the Narrative Submissions, Chapters 7 (concerning Mr Thomas) and 11 (concerning Mr Cooper).
55. These submissions should be read in conjunction with the Narrative Submissions, Chapters 5, 10, and 16, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Mokbel.
56. The extent to which the three cases may have been affected can be measured by virtue of the following matters.

²⁰⁰ As cited in *AB & EF v CD* [2017] VSC 350, [19].

²⁰¹ Anonymous Submission 035, [29].

Conduct of Ms Gobbo

57. First, Category 1A²⁰² applies in relation to the Posse Case and the Blackmail Case, in that, between 25 April 2006 and approximately 2008,²⁰³ Ms Gobbo acted for Mr Mokbel while she was a human source,²⁰⁴ and did not disclose same to him.²⁰⁵
58. Secondly, Category 1B²⁰⁶ applies in relation to the Posse Case and the Blackmail Case, in that, between September 2005 and 2008,²⁰⁷ which was before and during the period that Ms Gobbo acted for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁰⁸ and, in relation to the Posse Case, she otherwise assisted (or attempted to assist) in his prosecution.²⁰⁹
59. Thirdly, Category 2A²¹⁰ applies:
 - 59.1. in relation to the Posse Case, in that evidence relied upon by the prosecution in the case against Mr Mokbel, namely the evidence of Mr Cooper,²¹¹ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police;²¹² and
 - 59.2. in relation to the Matchless Case, in that evidence relied upon by the prosecution in the case against Mr Mokbel, namely the evidence of Mr Cooper,²¹³ [REDACTED],²¹⁴ and Mr Thomas,²¹⁵ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²¹⁶
60. Fourthly, Category 2B²¹⁷ applies in relation to the Posse Case, in that Ms Gobbo had knowledge of the circumstances founding the above [59.1] and failed to disclose same to her client, Mr Mokbel, thereby depriving him of the ability to object to the admission of that evidence.
61. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²¹⁸ Further, in certain

²⁰² See Legal Principles Submissions at [249].

²⁰³ See above analysis at [13.2].

²⁰⁴ See Legal Principles Submissions at [20].

²⁰⁵ See Legal Principles Submissions at [239].

²⁰⁶ See Legal Principles Submissions at [249].

²⁰⁷ See above analysis at [15]-[36].

²⁰⁸ See above analysis at [15]-[36].

²⁰⁹ See above analysis, especially at [22.2], [24.3], [26], [27], [30], [31], [33], [43], and [47].

²¹⁰ See Legal Principles Submissions at [249].

²¹¹ See above analysis at [4] and [39]-[44].

²¹² See Legal Principles Submissions at [249].

²¹³ See above analysis at [4] and [10]-[44].

²¹⁴ See above analysis at [10] and [41]-[42].

²¹⁵ See above analysis at [10] and [45].

²¹⁶ See Legal Principles Submissions at [249].

²¹⁷ See Legal Principles Submissions at [249].

²¹⁸ See Legal Principles Submissions at [320]-[329] and [307]-[309].

instances identified above,²¹⁹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²²⁰

62. Further, in certain instances identified above,²²¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²²²
63. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

64. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²²³
 - 64.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Mokbel;
 - 64.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Mokbel, appropriate disclosure was made; or alternatively
 - 64.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
65. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [64.1] were taken, and accordingly there was the potential for the right of Mr Mokbel to a fair trial to have been interfered with.
66. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Mokbel and/or his legal representatives.
67. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest

²¹⁹ See especially [22.1] and [31.15].

²²⁰ See Legal Principles Submissions at [310]-[319] and [301]-[306].

²²¹ See especially [22.1] and [31.15].

²²² See Legal Principles Submissions at [310]-[319] and [301]-[306].

²²³ See Legal Principles Submissions at [384] and [452]-[457].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²²⁴

68. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²²⁵
69. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²²⁶
70. Category 3A²²⁷ applies in relation to the Posse and Blackmail Cases, in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
71. Category 3B²²⁸ applies in relation to the Posse Case and the Blackmail Case, in that, between September 2005 and 2008,²²⁹ which was before and during the period that Ms Gobbo acted for Mr Mokbel in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²³⁰ and, in relation to the Posse Case, she otherwise assisted (or attempted to assist) in his prosecution,²³¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
72. Category 4A²³² applies in relation to the Posse and Matchless Cases, in that, as noted above at [59], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
73. Category 4B²³³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
74. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²²⁴ See Legal Principles Submissions at [380]-[385].

²²⁵ See Legal Principles Submissions at [351], [362]-[373].

²²⁶ See Legal Principles Submissions at [351] and [374].

²²⁷ See Legal Principles Submissions at [465].

²²⁸ See Legal Principles Submissions at [465].

²²⁹ See above analysis at [15]-[36].

²³⁰ See above analysis at [15]-[36].

²³¹ See above analysis, especially at [22.2], [24.3], [26], [27], [30], [31], [33], [43], and [47].

²³² See Legal Principles Submissions at [465].

²³³ See Legal Principles Submissions at [465].

CASE STUDY: RENATE MOKBEL

The Relevant Case of Ms Mokbel

1. The one relevant criminal case of Ms Renate Mokbel concerns her conviction before the County Court in October 2008 of two counts of perjury.¹ She was charged with the offences on 28 February 2007.² The convictions arose as a consequence of Ms Mokbel's involvement in acting as a surety for the bail of her brother-in-law, Mr Antonios (Tony) Mokbel.³
2. Significantly, the prosecution case relied upon the evidence of [REDACTED], and the product of a search warrant executed [REDACTED] on 5 September 2006.⁴ The relevant background may be summarised as follows.
3. As stated in the case analysis of Mr Tony Mokbel,⁵ on 24 August 2001, Mr Mokbel was charged with various drug-related offences under both Commonwealth and Victorian legislation.⁶
4. Mr Tony Mokbel was initially granted bail in the Victorian Supreme Court on 4 September 2002.⁷
5. On 26 November 2004, Mr Tony Mokbel was committed to stand trial on the Commonwealth matters and his bail was again fixed.⁸ On this date, Ms Mokbel attended at the Melbourne Magistrates' Court and signed Mr Tony Mokbel's undertaking of bail as his first surety in the sum of \$1 million.⁹ In support of the undertaking as surety, Ms Mokbel executed an affidavit and provided documents as evidence of ownership of various properties and assets.¹⁰
6. Throughout Mr Tony Mokbel's proceedings for the Commonwealth drug charges, Ms Mokbel continued to sign a series of undertakings as the surety for his bail.¹¹

¹ Un-tendered Presentment No. W00509334, 2008, *R v Renate Mokbel*, 11, RCMPI.0119.0001.0001 @0011.

² Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 12 [36] – 13 [37], COR.1016.0001.0026 @.0012.

³ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 2 [4]-[6], COR.1016.0001.0026 @.0002.

⁴ Un-tendered Presentment No. W00509334, *R v Renate Lisa Mokbel*, 17 July 2008, 1, RCMPI.0119.0001.0001 @.0007; *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [76]; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 16 [6.34], RCMPI.0119.0001.0001 @.0329.

⁵ See Case Study of Mr Antonios Mokbel.

⁶ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 2 [5], COR.1016.0001.0026 @.0002; *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [2], [4].

⁷ *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [5].

⁸ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 2 [6] – 3 [7], COR.1016.0001.0026 @.0002-0003; *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [6].

⁹ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 3 [8], COR.1016.0001.0026 @.0003; *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [6].

¹⁰ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 3 [9], COR.1016.0001.0026 @.0003; *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [6].

¹¹ *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [6].

7. On 29 November 2005 (prior to the commencement of Mr Tony Mokbel's trial), Ms Mokbel attended before the Deputy Prothonotary and signed an undertaking of bail as first surety, undertaking to pay the Prothonotary the amount of bail specified in the event that Mr Tony Mokbel failed to observe his conditions of bail.¹²
8. Mr Tony Mokbel's trial commenced on 13 February 2006 and he failed to appear on 20 March 2006.¹³
9. As a result, both the Commonwealth and State of Victoria sought orders against Ms Mokbel in relation to forfeiture of the surety.¹⁴ On 26 April 2006, an order was made against Ms Mokbel for payment of the \$1 million. Further orders were made with the effect that if Ms Mokbel did not pay the amount required, her property would be seized sold to meet that sum, and in default of seizure and sale, in whole or in part, that she be imprisoned for a period of two years (the surety orders).¹⁵
10. On 16 May 2006, Ms Mokbel made an application to vary or rescind the surety orders (the surety application).¹⁶
11. On 15 June 2006, Ms Mokbel swore an affidavit in support of the surety application relating to financial matters.¹⁷ As referred to in paragraph 20.1 below, the first of the charges against Ms Mokbel arose out of this affidavit.
12. The surety application was heard over numerous days in August 2006 and September 2006 in the Supreme Court at Melbourne, and on 1 August 2006 Ms Mokbel gave sworn evidence.¹⁸ As referred to in [20.2] below, the second charge against Ms Mokbel arose out of this evidence, which essentially involved her confirming her affidavit in her evidence.

¹² Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 4 [12], COR.1016.0001.0026 @.0004;

R v Antonios Sajih Mokbel & Renate Lisa Mokbel [2006] VSC 158, [11]; *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [10].

¹³ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 4 [13], COR.1016.0001.0026 @.0004;

R v Antonios Sajih Mokbel & Renate Lisa Mokbel [2006] VSC 158, [12], [14].

¹⁴ *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [1]; Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 5 [14], COR.1016.0001.0026 @.0005.

¹⁵ *R v Antonios Sajih Mokbel & Renate Lisa Mokbel* [2006] VSC 158, [60]; Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 5 [14], COR.1016.0001.0026 @.0005; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 10-11 [6.19], RCMP.0119.0001.0001 @.0323-.0324; Un-tendered Outline of Submission of the Respondent, *R v Renate Lisa Mokbel*, undated, 6 -7 [22], RCMP.0119.0001.0001 @.0114-.0015.

¹⁶ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 5 [15], COR.1016.0001.0026 @.0005;

Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 2 [3.1], RCMP.0119.0001.0001 @.0315.

¹⁷ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 6 [17], COR.1016.0001.0026 @.0006.

¹⁸ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 6 [18], COR.1016.0001.0026 @.0006;

Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 3 [3.4], RCMP.0119.0001.0001 @.0316.

13. On 5 September 2006, a search warrant was executed at the address of Mr Garry Gibbs.¹⁹ The items seized included the sum of \$336,700 cash and jewellery worth in excess of \$200,000.²⁰
14. [REDACTED] provided a statement to police on 5 September 2006, and on 13 September 2006 he provided a sworn affidavit and gave evidence at Ms Mokbel's surety application hearing.²¹ [REDACTED].²²
15. On 14 December 2006, the surety application was dismissed, and the surety orders stayed pending an appeal²³ (which was subsequently dismissed on 2 February 2007).²⁴ There were other applications for leave to appeal in relation to the surety orders, including an application for special leave to appeal in the High Court, which was refused on 23 May 2008.²⁵
16. On 28 February 2007, Ms Mokbel was arrested, interviewed and charged with perjury offences concerning the evidence she gave during the surety application.²⁶ She was released on bail on the same date.²⁷
17. The prosecution alleged that Ms Mokbel failed to depose to items of property in her affidavit,²⁸ misrepresenting that her entire assets were those deposed in her affidavit, as well as the extent of her liabilities.²⁹
18. On 15 March 2007, following a failure to pay the \$1 million (or offer sufficient property to pay this amount) required under the surety orders, a 'Warrant to imprison for want of seizure and sale of property due under forfeited undertaking' was issued against Ms Mokbel, and she was subsequently remanded in custody.³⁰

¹⁹ *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [76]; Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 8 [24], undated, COR.1016.0001.0026 @.0008.

²⁰ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 8 [25], COR.1016.0001.0026 @.0008;

Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 16 [6.34], RCMP.0119.0001.0001 @.0329.

²¹ Un-tendered Presentment No. W00509334, *R v Renate Lisa Mokbel*, 17 July 2008, 1, RCMP.0119.0001.0001 @.0007; *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [76]; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 16 [6.34], RCMP.0119.0001.0001 @.0329.

²² Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 8 [25], COR.1016.0001.0026 @.0008; *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [77].

²³ *Renate Lisa Mokbel v DPP & CDPP* [2006] VSC 487, [108]; Un-tendered General Form of Judgment Given, *Renate Lisa Mokbel v DPP & CDPP*, 2 [1], RCMP.0119.0001.0001 @.0147; Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, 6 [20], COR.1016.0001.0026 @.0006.

²⁴ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 6 [20], COR.1016.0001.0026 @.0006; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 3 [3.6], RCMP.0119.0001.0001 @.0316.

²⁵ *Renate Lisa Mokbel v DPP & Anor* [2008] HCATrans 205.

²⁶ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 12 [36] – 13 [37], COR.1016.0001.0026 @.0012-.0013.

²⁷ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 12 [36] – 13 [37], COR.1016.0001.0026 @.0012-.0013.

²⁸ Un-tendered Reasons for Sentence, *R v Renate Lisa Mokbel* (County Court of Victoria, Judge Wood, 21 October 2008), 5 [22], RCMP.0119.0001.0001_0404.

²⁹ Un-tendered Reasons for Sentence, *R v Renate Lisa Mokbel* (County Court of Victoria, Judge Wood, 21 October 2008), 6 [25], RCMP.0119.0001.0001_0405.

³⁰ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 7 [21], 13 [37],

COR.1016.0001.0026 @.0007, .0013; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 3 [3.7], RCMP.0119.0001.0001 @.0316.

19. On 20 September 2007, Ms Mokbel was committed to stand trial on the perjury charges.³¹
20. On 17 July 2008, Ms Mokbel was arraigned and entered a plea of guilty to the following two counts:³²
 - 20.1. Count 1: Ms Mokbel knowingly falsely swore an affidavit (on 15 June 2006) involving false statements as to the particulars of the major assets of Ms Mokbel and her company, and as to the fact that monthly loan repayments in relation to a loan of \$300,000 were being paid by another person.³³
 - 20.2. Count 2: Ms Mokbel knowingly falsely swore on oath in the Supreme Court at Melbourne on 1 August 2006, that the major assets of herself and her company as described in her affidavit on 15 June 2006 was a complete list of the said assets, and that the monthly loan repayments in relation to the loan of \$300,000 were being paid by another person.³⁴
21. A plea hearing was conducted on 29 September 2008.³⁵
22. On 21 October 2008, Ms Mokbel was sentenced to total effective sentence of two years and nine months' imprisonment, partially suspended for a period of three years commencing 14 September 2009.³⁶
23. Ms Mokbel lodged an appeal against sentence, which was abandoned on 29 January 2009.³⁷

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Ms Mokbel

24. Based on the material reviewed by Counsel Assisting, as outlined below, it appears that Ms Gobbo provided legal representation to Ms Mokbel in relation to her various applications concerning the surety orders, but not in relation to the perjury charges which resulted in the criminal conviction.

³¹ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 12-13 [37], COR.1016.0001.0026 @.0012- .0013.

³² Un-tendered Reasons for Sentence, *R v Renate Lisa Mokbel* (County Court of Victoria, Judge Wood, 21 October 2008), 2 [1], RCMP.0119.0001.0001_0401; Un-tendered Presentment No. W00509334, *R v Renate Lisa Mokbel*, 2008, 1, RCMP.0119.0001.0001_0011.

³³ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 1 [1], COR.1016.0001.0026 @.0001; Un-tendered Particulars of Offence, 2008, *R v Renate Lisa Mokbel*, 1, RCMP.0119.0001.0001 @.0005.

³⁴ Un-tendered Prosecution Opening, *R v Renate Lisa Mokbel*, undated, 1 [2], COR.1016.0001.0026 @.0001; Un-tendered Particulars of Offence, 2008, *R v Renate Lisa Mokbel*, 1, RCMP.0119.0001.0001 @.0005.

³⁵ Un-tendered Reasons for Sentence, *R v Renate Lisa Mokbel* (County Court of Victoria, Judge Wood, 21 October 2008), 1, RCMP.0119.0001.0001 @.0400; Un-tendered Transcript of Proceedings, *R v Renate Lisa Mokbel*, 29 September 2008, 1, RCMP.0119.0001.0001 @0423.

³⁶ Un-tendered Reasons for Sentence, *R v Renate Lisa Mokbel* (County Court of Victoria, Judge Wood, 21 October 2008), 14 [53], RCMP.0119.0001.0001 @.0413; Un-tendered Victoria Police Criminal History Report, *Renate Lisa Mokbel*, 14 December 2019, VPL.0099.0193.3564.

³⁷ Un-tendered Notification of Result of Appeal or Application, *R v Renate Lisa Mokbel*, 17 February 2009, RCMP.0119.0001.0001 @.0313; Un-tendered Notification of Result of Appeal or Application, *R v Renate Lisa Mokbel*, 17 February 2009, COR.1019.0001.0001; Un-tendered Victoria Police Criminal History Report, *Renate Lisa Mokbel*, 14 December 2019, VPL.0099.0193.3564.

25. Prior to her arrest on 28 February 2007 in relation to the perjury charges, Ms Gobbo appears to have provided the following representation to Ms Mokbel:
 - 25.1. On 7 May 2006, Ms Gobbo told her handler that Mr Milad Mokbel rang her and thanked her for seeing Ms Mokbel.³⁸
 - 25.2. On 22 June 2006, Ms Gobbo told her handler that Horty Mokbel, Jacques El-Hage and another male attended for a meeting with her in relation to Ms Mokbel. She said that the 'reason for meeting was Renee received subpoenas from C'wealth DPP [Director of Public Prosecutions] re bail surety revocation, had been to see Solicitor 2 but also wanted HS [human source] advice.'³⁹ However, it is not clear from the evidence whether Mr Horty Mokbel and the others wanted Ms Gobbo's advice on the matter, whether they wanted it on behalf of Ms Mokbel, or whether Ms Mokbel herself received the advice.
 - 25.3. Whilst court and Office of Public Prosecutions records do not indicate that Ms Gobbo appeared on behalf of Ms Mokbel at any court hearing, often those records would not record junior counsel if senior counsel was appearing. On 31 July 2006, in the context of discussing Mr Horty Mokbel, Ms Gobbo mentioned to her handler that Ms Mokbel had a court hearing the following morning. The relevant Informer Contact Report entry records: 'Horty going to Darwin tomorrow PM late flight, has Crt w. Renee in the morning, returning on the 8th'.⁴⁰ It is not entirely clear whether this entry refers to Mr Horty Mokbel attending Ms Mokbel's hearing, or whether Ms Gobbo appeared in court on that date. There is also an entry in Ms Gobbo's diary on 1 August 2006, stating 'Mokbel surety argument.'
 - 25.4. On 20 November 2006, Ms Gobbo submitted an invoice for a 'brief to advise and draft subpoenas' in relation to Ms Mokbel' matter.⁴¹
 - 25.5. On 25 January 2007, Ms Gobbo told her handlers that she received a call from Renate Mokbel, who wanted to talk to Ms Gobbo 'for advice on what to do re house and bail'.⁴²
 - 25.6. On 11 February 2007, Ms Gobbo told her handler that Ms Mokbel contacted her and wanted advice regarding her house and bail surety, and that Ms Gobbo had agreed to meet with her.⁴³
 - 25.7. On 20 February 2007, Ms Gobbo told handlers that she met with Ms Mokbel the previous night, and they discussed the 'bail surety situation'.⁴⁴
 - 25.8. On 22 February 2007, Ms Gobbo told her handler that Mr Horty Mokbel had arranged for Ms Mokbel's brief of evidence to be delivered to Ms

³⁸ Exhibit RC0281, ICR3838 (031), 7 May 2006, 290, VPL.2000.0003.1871.

³⁹ Exhibit RC281, ICR3838 (036), 22 June 2006, 339, VPL.2000.0003.1925.

⁴⁰ Exhibit RC281, ICR3838 (039), 31 July 2006, 371, VPL.2000.0003.1962; Exhibit RC0273 Ms Nicola Gobbo diary, 1 August 2006, 25, MIN.0005.0003.0212 @.0236.

⁴¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 20 November 2006, 101, MIN.5000.7000.0001 @.0101; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 39, GMH.0001.0001.0002 @.0039; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 20 November 2006, 19, GMH.0001.0001.0008 @.0019.

⁴² Exhibit RC0281 ICR3838 (063), 25 January 2007, 613, VPL.2000.0003.2199.

⁴³ Exhibit RC0281, ICR3838 (065), 11 February 2007, 632, VPL.2000.0003.2218.

⁴⁴ Exhibit RC0281, ICR3838 (067), 20 February 2007, 645, VPL.2000.0003.2231.

Gobbo for consideration.⁴⁵ It is unclear as to whether this was done at the behest of Ms Mokbel.

- 25.9. On 27 February 2007, Ms Gobbo told her handler that she had spoken to Ms Mokbel and provided her opinion that 'Renee will not do anything without first consulting 3838'.⁴⁶
26. On 28 February 2007 (the date of Ms Mokbel's arrest for the perjury charges), Ms Gobbo told her handlers that she had been requested to represent Ms Mokbel at a bail application but declined as she was interstate.⁴⁷
27. The ICR entries following this date are either unclear as to whether Ms Gobbo provided representation to Ms Mokbel or indicate that the representation occurred in the context of the surety application and not the perjury charges resulting in the recording of a criminal conviction. For example:
 - 27.1. On 1 March 2007, the ICR entry records that there was a 'general discussion' regarding Ms Mokbel's case and the affidavits to be submitted.⁴⁸ However, it is unclear from the material reviewed as to whether the discussion occurred between Ms Gobbo and her handlers, or between Ms Gobbo and Ms Mokbel. In addition, it is unclear as to whether the discussion concerned the surety application or the perjury charges or both.
 - 27.2. On 2 April 2007, Ms Gobbo advised her handlers that she was 'involved in the submissions to the Appeal Court'.⁴⁹ The reference to representation involving appellate court matters in 2007 related to the surety application.
 - 27.3. On 11 April 2007, the ICR entry records: 'discussed possible defences open for Renee in her surety case'. However, it is unclear from the material reviewed as to whether the discussion was between Ms Gobbo and her handlers, or between Ms Gobbo and Ms Mokbel.⁵⁰

The Conduct of Ms Gobbo as a Human Source in relation to Ms Mokbel

28. Ms Gobbo provided information to Victoria Police concerning Ms Mokbel between at least October 2005 and June 2008.⁵¹ The information provided by Ms Gobbo during this period included:
 - 28.1. personal details, including her phone number,⁵² her maiden name,⁵³ and information concerning family members⁵⁴

⁴⁵ Exhibit RC0281, ICR3838 (067), 22 February 2007, 651, VPL.2000.0003.2237.

⁴⁶ Exhibit RC0281, ICR3838 (068), 27 February 2007, 660, VPL.2000.0003.2246.

⁴⁷ Exhibit RC0281, ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248.

⁴⁸ Exhibit RC0281, ICR3838 (068), 1 March 2007, 665, VPL.2000.0003.2251.

⁴⁹ Exhibit RC0281, ICR3838 (073), 2 April 2007, 760, VPL.2000.0003.2346.

⁵⁰ Exhibit RC0281 ICR3838 (074), 11 April 2007, 781, VPL.2000.0003.2367.

⁵¹ Exhibit RC0281 ICR3838 (005), 5 October 2005, 26, VPL.2000.0003.1612.

⁵² Exhibit RC0281 ICR3838 (023), 20 March 2006, 199, VPL.2000.0003.1785; Exhibit RC0281 ICR3838 (052), 3 November 2006, 540, VPL.2000.0003.2126.

⁵³ Exhibit RC0281 ICR3838 (030), 2 May 2006, 280, VPL.2000.0003.1866.

⁵⁴ Exhibit RC0281 ICR3838 (030), 30 April 2006, 277, VPL.2000.0003.1863; Exhibit RC0281 ICR3838 (033), 27 May 2006, 311, VPL.2000.0003.1897; Exhibit RC0281 ICR3838 (039), 25 July 2006, 370, VPL.2000.0003.1956; Exhibit RC0281 ICR3838 (039), 28 July 2006, 370, VPL.2000.0003.1959; Exhibit RC0281 ICR3838 (052), 3 November 2006, 540, VPL.2000.0003.2126.

- 28.2. information concerning Ms Mokbel's businesses,⁵⁵ including the fact that Ms Mokbel's hair salon business with Ms Danielle McGuire was being financed by Messrs Tony and Milad Mokbel⁵⁶ and information concerning a company with Mr Ketch⁵⁷
- 28.3. information concerning Ms Mokbel's relationship with known associates⁵⁸
- 28.4. the fact that Ms Mokbel had been arrested⁵⁹ and information concerning the nature of the charges against Ms Mokbel⁶⁰
- 28.5. information concerning Ms Mokbel's court hearings,⁶¹ including dates of proceedings,⁶² hearing outcomes⁶³ and documents to be filed⁶⁴
- 28.6. information concerning meetings conducted with, and phone calls received from, Ms Mokbel⁶⁵
- 28.7. provision of a copy of material apparently relied on by the Australian Federal Police⁶⁶

⁵⁵ Exhibit RC0281 ICR3838 (032), 19 May 2006, 303, VPL.2000.0003.1889; Exhibit RC0281 ICR3838 (036), 29 June 2006, 347, VPL.2000.0003.1933; Exhibit RC0281 ICR3838 (037), 30 June 2006, 349, VPL.2000.0003.1935.

⁵⁶ Exhibit RC0281 ICR3838 (005), 5 October 2005, 26, VPL.2000.0003.1612; Exhibit RC0281 ICR3838 (007), 28 October 2005, 42, VPL.2000.0003.1628.

⁵⁷ Exhibit RC0281 ICR3838 (030), 2 May 2006, 280, VPL.2000.0003.1866; Exhibit RC0281 ICR3838 (034), 9 June 2006, 323, VPL.2000.0003.1909; Exhibit RC0281 ICR3838 (039), 27 July 2006, 371, VPL.2000.0003.1957; Exhibit RC0281 ICR3838 (040), 2 August 2006, 380, VPL.2000.0003.1966; Exhibit RC0281 ICR3838 (044), 7 September 2006, 417, VPL.2000.0003.2003.

⁵⁸ Exhibit RC0281 ICR3838 (031), 11 May 2006, 295, VPL.2000.0003.1881; Exhibit RC0281 ICR3838 (032), 24 May 2006, 308, VPL.2000.0003.1894; Exhibit RC0281 ICR3838 (035), 16 June 2006, 332, VPL.2000.0003.1918; Exhibit RC0281 ICR3838 (036), 29 June 2006, 347, VPL.2000.0003.1933.

⁵⁹ Exhibit RC0281 ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248; Exhibit RC0281 ICR3838 (070), 15 March 2007, 708, VPL.2000.0003.2294.

⁶⁰ Exhibit RC0281 ICR3838 (036), 22 June 2006, 340, VPL.2000.0003.1926; Exhibit RC0281 ICR3838 (036), 23 June 2006, 340, VPL.2000.0003.1926; Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248.

⁶¹ Exhibit RC0281 ICR3838 (036), 28 June 2006, 345, VPL.2000.0003.1931.

⁶² Exhibit RC0281 ICR3838 (028), 18 April 2006, 251, VPL.2000.0003.1837; Exhibit RC0281 ICR3838 (039), 31 July 2006, 376, VPL.2000.0003.1962; Exhibit RC0273 Ms Nicola Gobbo diary, 1 August 2006, 25, MIN.0005.0003.0212 @.0236; Exhibit RC0281 ICR3838 (072), 27 March 2007, 737, VPL.2000.0003.2323.

⁶³ Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (040), 2 August 2006, 380, VPL.2000.0003.1964; Exhibit RC0281 ICR3838 (064), 2 February 2007, 624, VPL.2000.0003.2210.

⁶⁴ Exhibit RC0281 ICR3838 (068), 1 March 2007, 665, VPL.2000.0003.2251; Exhibit RC0281 ICR3838 (073), 2 April 2007, 760, VPL.2000.0003.2346.

⁶⁵ Exhibit RC0281 ICR3838 (028), 19 April 2006, 252, VPL.2000.0003.1838; Exhibit RC0281 ICR3838 (029), 25 April 2006, 271, VPL.2000.0003.1857; Exhibit RC0281 ICR3838 (030), 2 May 2006, 279, VPL.2000.0003.1865; Exhibit RC0281 ICR3838 (031), 13 May 2006, 297, VPL.2000.0003.1883; Exhibit RC0281 ICR3838, (032), 17 May 2006, 301, VPL.2000.0003.1887; Exhibit RC0281 ICR3838 (037), 1 July 2006, 349, VPL.2000.0003.1935; Exhibit RC0281 ICR3838 (063), 25 January 2007, 613, VPL.2000.0003.2199; Exhibit RC0281 ICR3838 (065), 11 February 2007, 632, VPL.2000.0003.2218; Exhibit RC0281 ICR3838 (065), 12 February 2007, 634, VPL.2000.0003.2220; Exhibit RC0281 ICR3838 (067), 19 February 2007, 644, VPL.2000.0003.2230; Exhibit RC0281 ICR3838 (068), 27 February 2007, 660, VPL.2000.0003.2246.

⁶⁶ Exhibit RC0281 ICR3838 (028), 20 April 2006, 253-254, VPL.2000.0003.1839-.1840.

- 28.8. the name of Ms Mokbel's solicitors⁶⁷ and information concerning who was paying her legal fees⁶⁸
- 28.9. further information concerning Ms Mokbel's attitude towards her lawyers⁶⁹
- 28.10. advice provided to Ms Mokbel and Mr Milad Mokbel by her solicitor and by Ms Gobbo as to whether they would be required to forfeit their property⁷⁰
- 28.11. advice provided to Ms Mokbel concerning the likelihood of her receiving a term of imprisonment⁷¹ and her attitude towards same⁷²
- 28.12. advice provided by Ms Gobbo to Mr Milad Mokbel concerning Ms Mokbel and an application for bankruptcy⁷³
- 28.13. information concerning alleged misconduct, particularly in relation to her financial circumstances relevant to the case⁷⁴
- 28.14. [REDACTED]
- 28.15. information concerning Ms Mokbel's finances⁷⁶
- 28.16. information concerning [REDACTED]
- 28.17. information concerning Ms Mokbel's defence tactics, including the fact that Mr Horthy Mokbel wanted Ms Gobbo to sign documents in relation to Ms Mokbel's defence and discussion as to whether Ms Gobbo should get involved,⁷⁸ and information concerning Solicitor 1's

⁶⁷ Exhibit RC0281 ICR3838 (030), 29 April 2006, 275, VPL.2000.0003.1861; Exhibit RC0281 ICR3838 (036), 23 June 2006, 340, VPL.2000.0003.1926; Exhibit RC0281 ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248; Exhibit RC0281 ICR3838 (068), 1 March 2007, 665, VPL.2000.0003.2251; Exhibit RC0281 ICR3838 (069), 6 March 2007, 677, VPL.2000.0003.2263; Exhibit RC0281 ICR3838 (070), 14 March 2007, 701, VPL.2000.0003.2287; Exhibit RC0281 ICR2958 (019), 12 May 2008, 292, VPL.2000.0003.1032; Exhibit RC0281 ICR2958 (025), 22 June 2008, 471, VPL.2000.0003.1211.

⁶⁸ Exhibit RC0281 ICR3838 (045), 12 September 2006, 422, VPL.2000.0003.2008; Exhibit RC0281 ICR3838 (053), 14 November 2006, 554, VPL.2000.0003.2140; Exhibit RC0281 ICR3838 (055), 1 December 2006, 570, VPL.2000.0003.2156; Exhibit RC0281 ICR3838 (070), 14 March 2007, 701, VPL.2000.0003.2287; Exhibit RC0281 ICR3838 (073), 3 April 2007, 765, VPL.2000.0003.2351; Exhibit RC0281 ICR3838 (082), 5 June 2007, 880, VPL.2000.0003.2466.

⁶⁹ Exhibit RC0281 ICR3838 (067), 21 February 2007, 649, VPL.2000.0003.2235.

⁷⁰ Exhibit RC0281 ICR3838 (029), 25 April 2006, 268, VPL.2000.0003.1854.

⁷¹ Exhibit RC0281 ICR3838 (067), 20 February 2007, 645, VPL.2000.0003.2231.

⁷² Exhibit RC0281 ICR3838 (069), 9 March 2007, 686, VPL.2000.0003.2272.

⁷³ Exhibit RC0281 ICR3838 (067), 23 February 2007, 655, VPL.2000.0003.2241.

⁷⁴ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937; Exhibit RC0281 ICR3838 (039), 28 July 2006, 373, VPL.2000.0003.1959.

⁷⁶ Exhibit RC0281 ICR3838 (069), 9 March 2007, 686, VPL.2000.0003.2272.

⁷⁸ Exhibit RC0281 ICR3838 (069), 8 March 2007, 681, VPL.2000.0003.2267; Exhibit RC0281 ICR3838 (069), 8 March 2007, 682, VPL.2000.0003.2268; Exhibit RC0281 ICR3838 (070), 15 March 2007, 712, VPL.2000.0003.2298.

involvement⁷⁹ and involvement of Mr Milad Mokbel in signing an affidavit resigning from a company⁸⁰

- 28.18. discussion about whether Ms Gobbo would provide a statement to police concerning the signing of surety documents by Ms Mokbel⁸¹
- 28.19. the fact that [REDACTED] had been 'contacted by Purana to make a statement' in Ms Mokbel's case, and Ms Gobbo's opinion that 'he is a material witness to a fact in issue'⁸²
- 28.20. discussion about possible defences open for Ms Mokbel 'in her surety case'⁸³
- 28.21. discussion about persons 'prepared to give evidence in relation to Ms Renee Mokbel's surety case'.⁸⁴

The Search Warrant Executed on 5 September 2006 at Mr Gibbs' Address

29. As mentioned at [2] above, the prosecution case relied upon the product of a search warrant executed at Mr Gibbs' address on 5 September 2006,⁸⁵ and the evidence of [REDACTED]
[REDACTED]
[REDACTED].⁸⁶ As addressed below, it may be argued that the product of the search warrant against Ms Mokbel was obtained as a consequence of improper or illegal conduct.
30. In relation to the evidence of the product of the search warrant, the conduct of Ms Gobbo and members of Victoria Police concerning Mr Cooper is a relevant consideration. As described at [11] in the case study of Mr Garry Gibbs, it is clear that Mr Cooper provided information to Victoria Police concerning items being held at Mr Gibbs' address, and it was this information which led to the execution of the search warrant on 5 September 2006. In particular, in a statement made by Mr Cooper on 13 November 2006, he sets out the relevant information he provided police.⁸⁷ In addition, the affidavit in support of the search warrant on [REDACTED] (executed on 5 September 2006), sworn by Mr O'Brien, makes express reference to intelligence provided by Mr Cooper as founding the basis for the search warrant.⁸⁸

⁷⁹ Exhibit RC0281 ICR3838 (069), 9 March 2007, 685, VPL.2000.0003.2271; Exhibit RC0281 ICR3838 (070), 16 March 2007, 708, VPL.2000.0003.2294; Exhibit RC0281 ICR3838 (072), 28 March 2007, 739, VPL.2000.0003.2325.

⁸⁰ Exhibit RC0281 ICR3838 (070), 16 March 2007, 708, VPL.2000.0003.2294; Exhibit RC0281 ICR3838 (072), 29 March 2007, 739, VPL.2000.0003.2325; Exhibit RC0281 ICR3838 (072), 27 March 2007, 737, VPL.2000.0003.2323.

⁸¹ Exhibit RC0281 ICR3838 (072), 30 March 2007, 753, VPL.2000.0003.2339.

⁸² Exhibit RC0281 ICR3838 (073), 4 April 2007, 766, VPL.2000.0003.2352.

⁸³ Exhibit RC0281 ICR3838 (074), 11 April 2007, 781, VPL.2000.0003.2367.

⁸⁴ Exhibit RC0281 ICR3838 (075), 15 April 2007, 790, VPL.2000.0003.2376.

⁸⁵ *Renate Lisa Mabel v DPP & CDPP* [2006] VSC 487, [76]; Un-tendered Summary for the Court of Appeal, *Renate Lisa Mokbel v DPP & CDPP*, undated, 16 [6.34], RCMPI.0119.0001.0001 @.0329.

⁸⁶ Un-tendered Particulars of Offence, *R v Renate Lisa Mokbel*, 2008, 1, RCMPI.0119.0001.0001 @0009; *R v Gibbs, Garry* [2007] VCC 1809, [3].

⁸⁷ Un-tendered Statement of Mr Cooper, 13 November 2006, RCMPI.0028.0002.0001 @. 0001-.0003; Un-tendered Police v Garry James Gibbs Witness List, undated, 1, RCMPI.0070.0003.0028 @.0008; Un-tendered Police v Garry James Gibbs, Summary of Charges, undated, 1-3, RCMPI.0070.0003.0028 @.0003-0005.

⁸⁸ Un-tendered Affidavit for a Search Warrant of Mr James (Jim) O'Brien, undated VPL.6111.0200.1258.

31. Further, as described at [10] in the case study of Mr Garry Gibbs, Ms Gobbo provided the following information to Victoria Police concerning Mr Gibbs' address:
 - 31.1. On 6 July 2006, she informed her handler that, according to Mr Cooper, large amounts of cash were being stored at the residence of Ms Mokbel's aunty.⁸⁹
 - 31.2. On 7 July 2006, she told her handler that Mr Cooper had advised her he was visited by Detective Senior Constable Paul Rowe and 'told him re Renee and Aunty'.⁹⁰
 - 31.3. On 28 July 2006, Ms Gobbo informed her handlers that "Auntie Marie" is a relative of Ms Renate Mokbel, and that she has large amounts of cash buried on behalf of Mr Milad Mokbel.⁹¹
32. For the reasons set out in the Narrative Submissions at Chapter 11 (concerning Mr Cooper), it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 32.1. the discovery of the offending the subject of Operation Posse;
 - 32.2. Mr Cooper being arrested in Operation Posse;
 - 32.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 32.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Gibbs (among others).
33. On this basis, it may be argued that the product of the search warrant was tainted by the information provided by Mr Cooper to Victoria Police, and as a result, was obtained in consequence of improper or illegal conduct and may have been liable to exclusion. It is submitted that the absence of any disclosure meant that Ms Mokbel may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions under Terms of Reference 1 and 2 in relation to Ms Mokbel

34. It is submitted that it is open to the Commissioner to find that the case of Ms Mokbel may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

⁸⁹ Exhibit RC0281 ICR3838 (037), 6 July 2006, 351, VPL.2000.0003.1937.

⁹⁰ Exhibit RC0281 ICR3838 (037), 7 July 2006, 351, VPL.2000.0003.1937.

⁹¹ Exhibit RC0281 ICR3838 (039), 28 July 2006, 374, VPL.2000.0003.1960; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 28 July 2006, 157-159. VPL.0005.0104.0440 @.0596-0598.

35. This case is linked to the case of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
36. As well as this Chapter, these submissions should be read in conjunction with Chapter 16 of the Narrative Submissions which contains an account of the conduct of Ms Gobbo and members of Victoria Police in relation to this case in the context of the prosecution of the case of her husband, Milad Mokbel.
37. The extent to which the case of Ms Mokbel may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

38. First, Category 2A⁹² applies in that evidence relied upon by the prosecution in Ms Mokbel's case, namely the product of the search warrant that was obtained based on Mr Cooper's intelligence⁹³ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹⁴
39. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

40. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁵
 - 40.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Ms Mokbel;
 - 40.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Ms Mokbel, appropriate disclosure was made; or alternatively
 - 40.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
41. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [40.1] were taken, and accordingly there was the potential for the right of Ms Mokbel to a fair trial to have been interfered with.

⁹² See Legal Principles Submissions at [249].

⁹³ See above analysis at [2], [13], [29], [30], [31] and [33].

⁹⁴ See Legal Principles Submissions at [196]-[222].

⁹⁵ See Legal Principles Submissions at [384] and [452]-[457].

42. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Ms Mokbel and/or her legal representatives.
43. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹⁶
44. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹⁷
45. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her guilty plea.⁹⁸
46. Category 4A⁹⁹ applies in that, as noted above at [38], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
47. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁶ See Legal Principles Submissions at [384] and [452]-[457].

⁹⁷ See Legal Principles Submissions at [351], [362]-[373].

⁹⁸ See Legal Principles Submissions at [351], [374].

⁹⁹ See Legal Principles Submissions at [465].

CASE STUDY: ZAHAROULA MOKBEL

The Relevant Case of Ms Mokbel

1. The one relevant case of Ms Zaharoula Mokbel concerns her convictions before the County Court in 2009 for three counts of obtaining financial advantage by deception, concerning her obtaining of mortgage loans in 2002, 2004 and 2005 by signing blank application forms which she knew would be populated with false employment and income information.¹ In relation to two of the charges, Mr Ketch was the broker who had populated the forms.²
2. On 9 November 2006, Ms Mokbel was arrested upon execution of a section 465 Evidence Warrant at her home.³ She was subsequently charged with the offending and committal proceedings were commenced.
3. Ms Mokbel was found guilty on the three counts before the County Court and was sentenced on 18 December 2009 to a total effective sentence of two years and nine months' imprisonment, which was suspended for a period of two years and nine months.⁴

Ms Gobbo's Legal Representation of Ms Mokbel

4. Material before the Commission shows that Ms Gobbo acted for Ms Mokbel, and marked fees for same on three occasions, namely:
 - 4.1. On 18 April 2007, Ms Gobbo marked fees for a brief from Law Firm 1 to draft a Form 8A (Notice of Defence) for Ms Mokbel.⁵
 - 4.2. On 27 August 2007, Ms Gobbo marked fees for a brief from Grigor Lawyers to appear at a Committal and Conference for Ms Mokbel.⁶
 - 4.3. On 18 September 2007, Ms Gobbo marked fees for a brief from Grigor Lawyers to advise, confer and appear at a Conference for Ms Mokbel.⁷
5. It was submitted to the Commission that during the multiple conferences between Ms Mokbel and her solicitor Alistair Grigor in the lead up to her committal hearing... [in September 2007], Ms Gobbo was in attendance "on most occasions and participated in the conference where she would provide

¹ *R v Zaharoula Mokbel*, [2009] VCC 1817, [1]; Un-tendered Presentment No. U02663623, *R v Zaharoula Mokbel*, 2009, 1, OPP.0095.0001.0031 @.0008.

² *R v Zaharoula Mokbel*, [2009] VCC 1817, [5]-[6].

³ Un-tendered Summary of Charges, *Police v Zaharoula Mokbel*, undated, 4-5, OPP.0095.0001.0031 @.0013-.0014.

⁴ *R v Zaharoula Mokbel*, [2009] VCC 1817, [29].

⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 18 April 2007, 4, MIN.5000.7000.0103 @.0106; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 23 April 2007, 32, GMH.0001.0001.0002 @.0032; Exhibit RC1569 Meldrum Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 23 April 2007, 27, GMH.0001.0001.0007 @.0027; Exhibit RC0281 ICR3838 (068), 1 March 2007, 666, VPL.2000.0003.2252.

⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 27 August 2007, 8, MIN.5000.7000.0103 @.0110.

⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 27 August 2007, 9, MIN.5000.7000.0103 @.0111.

her advice and actively asked questions and appeared to have a working knowledge of her case despite not being briefed in the matter.”⁸

6. The timespan represented by the above fees, combined with other material before the Commission indicates that Ms Gobbo ostensibly acted for Ms Mokbel from April 2007 until at least September 2007, despite formal representation by other counsel. For example:
 - 6.1. On 29 March 2007, Ms Gobbo reported that she was not available to represent Ms Mokbel at her committal mention,⁹ but later reported on 30 March 2007 that “Horty and his wife are at court for Zahroula’s committal mention.”
 - 6.2. On 7 May 2007, she is recorded to refer to delays in relation to the briefs of evidence.”¹⁰
 - 6.3. On 14 August 2007, Ms Gobbo is recorded as having informed handlers that she was meeting with Ms Mokbel at Solicitor 1’s office,¹¹ and that, while she did not represent Ms Mokbel, and was reluctant to do so, she spoke with Ms Mokbel about her committal, which had been set down for Monday 17 September 2007, the process involved and what she should expect.¹²
 - 6.4. On 13 September 2007, Ms Gobbo spoke with Detective Sergeant Jim Coghlan, who told her to ring the Office of Public Prosecutions (OPP) if she was seeking an adjournment.¹³

The Conduct of Ms Gobbo as a Human Source in relation to Ms Mokbel

7. Ms Mokbel was the subject of communications between Ms Gobbo (in her capacity as human source) and Victoria Police from as early as December 2005,¹⁴ some 11 months before her arrest, and during the period that she represented Ms Mokbel. In particular:

Prior to representation

8. On 16 June 2006, Ms Gobbo is recorded as expressing incredulity to Mr Sandy White and Mr Green at Ms Mokbel’s financial assets 2006, in the context of suggesting a civil forfeiture order designed to “put a bit of pressure” on her husband, Horty Mokbel.¹⁵
9. Also, on 6 October 2006, Ms Gobbo, who was representing Mr Ketch at the time, is recorded as informing police that she was informed by her client that documents seized from him by Purana include one used by Ms Mokbel “which indicates she had employment with a Co. ‘Roadstar’ that was submitted to

⁸ Anonymous Submission 032, 4 [2].

⁹ Exhibit RC0281 ICR3838 (072), 29 March 2007, 744, VPL.2000.0003.2330.

¹⁰ Exhibit RC0281 ICR3838 (078), 7 May 2007, 829, VPL.2000.0003.2415.

¹¹ Exhibit RC0281, ICR3838 (094), 14 August 2007, 1086, VPL.2000.0003.2672.

¹² Exhibit RC0281, ICR3838 (094), 14 August 2007, 1088, VPL.2000.0003.2674.

¹³ Exhibit RC1232, Statement of Detective Sergeant Jim Coghlan, 12 November 2019, 13 [82], VPL.0014.0086.0001 @.0013.

¹⁴ Exhibit RC0281 ICR3838 (013), 23 December 2005, 96, VPL.2000.0003.1682.

¹⁵ Exhibit RC0282 Transcript of meeting between Green, Sandy White and Nicola Gobbo, 16 June 2006, 44-45, VPL.0005.0115.0201 @.0244-.0245.

Westpac, after which a \$1 million loan was granted".¹⁶ She further informed them that "The owner of Roadstar was or is a Rocco PRATICO or similar, HS [human source] believe that if he was under pressure (of gaol) may make statements against Mr Ketch/Horty".¹⁷ That information, which was directly relevant to the third charge ultimately laid against Ms Mokbel, is recorded as having been passed on to Detective Inspector Gavan Ryan at the Purana Taskforce.¹⁸ [REDACTED]

[REDACTED].¹⁹

10. Further, the basis of the 465 Evidence Warrants executed by investigators from the Purana Taskforce which led to Ms Mokbel's arrest, were described as based on "information received, and investigations conducted on the 4th of October 2006",²⁰ which was the date on which Mr Ketch was interviewed and charged [REDACTED].²¹
11. Following Ms Mokbel's arrest, in February 2007, Ms Gobbo is recorded as discussing Ms Mokbel's bail application with police,²² and the fact that Horty Mokbel wanted her to represent Ms Mokbel.²³ It is unclear how she came to see the brief. She is also recorded as discussing the poor standard of the brief against Ms Mokbel,²⁴ including to the effect that due to missing statements, police will be unable to prove the requisite "deception".²⁵ That information is recorded as having been provided to Detective Inspector James (Jim) O'Brien at the Purana Taskforce.²⁶
12. In March 2007, Ms Gobbo was recorded as saying she was resisting requests to represent Ms Mokbel on account of her acknowledged conflicts of interest.²⁷ In particular, she expressed concerns about a subpoena for Purana documents in relation to the defence of Ms Mokbel which may reveal recordings and transcripts that will highlight Ms Gobbo's involvement with Mr Cooper (see Chapter 11 of the Narrative Submissions) and [REDACTED] (See the Case Study of [REDACTED]).²⁸ An Informer Contact Report (ICR) subsequently recorded that police assured her that "the matter relating to the subpoena for material for Zahroula case is being monitored by [REDACTED] and no material that will highlight 3838 involvement or knowledge with not be release to the defence."²⁹
13. During this period, while maintaining her reluctance to represent Ms Mokbel, Ms Gobbo is recorded as stating her belief that given that "the brief is poorly

¹⁶ Exhibit RC0281 ICR3838 (047), 6 October 2006, 453, VPL.2000.0003.2039.

¹⁷ Exhibit RC0281 ICR3838 (047), 6 October 2006, 453, VPL.2000.0003.2039.

¹⁸ Exhibit RC0281 ICR3838 (047), 6 October 2006, 453, VPL.2000.0003.2039.

¹⁹ Un-tendered Presentment No. U02663623, *R v Zaharoula Mokbel*, 2008, 1-2, OPP.0095.0001.0031 @.0005-.0006; Un-tendered Presentment No. U02663623, *R v Zaharoula Mokbel*, 2009, 1-2, OPP.0095.0001.0031 @.0008-.0009.

²⁰ Un-tendered Summary of Charges, *Police v Zaharoula Mokbel*, undated, 3, OPP.0095.0001.0031 @.0012.

²¹ Un-tendered Summary of Charges, *Police v Zaharoula Mokbel*, undated, 4, OPP.0095.0001.0031 @.0013.

²² Exhibit RC0281 ICR3838 (065), 7 February 2007, 629, VPL.2000.0003.2215.

²³ Exhibit RC0281 ICR3838 (067), 20 February 2007, 647, VPL.2000.0003.2233.

²⁴ Exhibit RC0281 ICR3838 (067), 19 February 2007, 643, VPL.2000.0003.2229.

²⁵ Exhibit RC0281 ICR3838 (067), 24 February 2007, 656, VPL.2000.0003.2242; Exhibit RC0281 ICR3838 (069), 5 March 2007, 674, VPL.2000.0003.2260.

²⁶ Exhibit RC0281 ICR3838 (067), 24 February 2007, 656, VPL.2000.0003.2242.

²⁷ Exhibit RC0281 ICR3838 (068), 1 March 2007, 666, VPL.2000.0003.2252; Exhibit RC0281 ICR3838 (070), 12 March 2007, 692, VPL.2000.0003.2278; Exhibit RC0281 ICR3838 (072), 29 March 2007, 744, VPL.2000.0003.2330.

²⁸ Exhibit RC0281 ICR3838 (072), 27 March 2007, 735, VPL.2000.0003.2321.

²⁹ Exhibit RC0281 ICR3838 (072), 28 March 2007, 738, VPL.2000.0003.2324.

prepared and has holes in it...she could assist Roula in getting off charges if she represented her”, but also agrees that “she cannot assist police in undermining a client’s defence”.³⁰

During Actual or Ostensible Representation

14. Having acted for Ms Mokbel in around April 2007 in relation to the Form 8A, Ms Gobbo is recorded between June and September 2007 as saying she was resisting requests to further represent Ms Mokbel at her committal due to conflicts of interest.³¹ Her handlers are recorded as repeatedly cautioning her against representing Ms Mokbel on account of her conflicts.³²
15. However, as noted above, she continued to mark fees in August and September 2007.
16. In August 2007, at around the time that Ms Gobbo marked fees for representing Ms Mokbel, she provided police with Ms Mokbel’s new mobile number, which Ms Gobbo “stored ... straight away” after it came up on her phone.³³ That number is recorded as having been “verbally disseminated” to Mr Ryan at Purana.³⁴
17. Ms Gobbo appears to have continued discussions with police about weaknesses in the prosecution brief of evidence against Ms Mokbel while she was (actually or ostensibly) representing her.³⁵
18. On 12 September 2007, Mr Fox recorded in his diary receiving information from Ms Gobbo including that Mr Ketch had told her he would check with Mr Coghlan the following day about whether or not they were happy with Ms Gobbo representing Ms Mokbel.³⁶ Whilst Mr Fox’s diary entry does not record whether he disseminated the information received by Ms Gobbo, the ICR which he later ‘cut and paste’ had added to it, “Action: Verbally disseminated above information to Gavin Ryan and Jim Coughlin [sic]”.³⁷
19. On 13 September 2007, Mr Coghlan, recorded an exchange with Mr Ketch in his diary:

Mr Ketch: Do you want me to tell Nicola not to represent Zaharoula next Monday?

Coghlan: What are you talking about? Why are you asking me this? Why doesn’t Nicola ring me?

³⁰ Exhibit RC0281 ICR3838 (069), 5 March 2007, 674, VPL.2000.0003.2260.

³¹ Exhibit RC0281 ICR3838 (082), 5 June 2007, 880, VPL.2000.0003.2466; Exhibit RC0281 ICR3838 (094), 14 August 2006, 1088, VPL.2000.0003.2674; Exhibit RC0281 ICR3838 (100), 13 September 2007, 1216, VPL.2000.0003.2802.

³² Exhibit RC0281 ICR3838 (099), 11 September 2007, 1207, VPL.2000.0003.2793; Exhibit RC0281 ICR3838 (100), 12 September 2007, 1210, VPL.2000.0003.2796.

³³ Exhibit RC0281 ICR3838 (096), 23 August 2007, 1136, VPL.2000.0003.2722.

³⁴ Exhibit RC0281 ICR3838 (096), 23 August 2007, 1136, VPL.2000.0003.2722.

³⁵ Exhibit RC0281 ICR3838 (085), 26 June 2007, 942, VPL.2000.0003.2528; Exhibit RC0281 ICR3838 (099), 11 September 2007, 1209, VPL.2000.0003.2795; Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801; Exhibit RC0281 ICR3838 (100), 17 September 2007, 1224, VPL.2000.0003.2810.

³⁶ Exhibit RC0507 Mr Fox diary, 12 September 2007, 40, VPL.2000.0001.3058 @.3097.

³⁷ Exhibit RC0281 ICR3838 (085), 12 September 2007, 1210, VPL.2000.0003.2796

Mr Ketch: They're going to try and blame me for all loans but Nicola's representing me. There's a conflict?

Coghlan: I don't know Mr Ketch. I'll make some enquiries but really it's got to be a decision for Nicola to make not me or you.³⁸

20. Mr Coghlan subsequently spoke to Ms Gobbo's handler, Mr Fox to update him who said he would ring Ms Gobbo to ascertain what was going on.³⁹ Mr Fox then had a number of conversations with Ms Gobbo in which she indicated that she felt compelled to appear at Ms Mokbel's committal hearing the following Monday as other preferred counsel were not available, and she would not recommend other barristers who were available. Mr Fox suggested that Ms Mokbel should make an application for an adjournment and the OPP's attitude should be sought. During the conversation Ms Gobbo referred to having a meeting that afternoon with Ms Mokbel and her husband, Horthy Mokbel.⁴⁰
21. Following this, at 1:48pm, Mr Fox received a call from Mr Coghlan who reported having received a call from Ms Gobbo indicating that the defence were going to apply for an adjournment as the barrister briefed was unavailable. Mr Coghlan said he had told her to ring the OPP.⁴¹
22. Then in a call at 1:52pm, Ms Gobbo is recorded as informing Fox that the brief is lacking a particular statement from [REDACTED].⁴² In his diary, recorded contemporaneously with the conversation, Mr Fox had recorded underneath this information, "I will tell Jim Coghlan".⁴³ In the ICR, which was 'cut and paste' from his diary, he had added the entry "Action: Verbally disseminated above information to Jim Coghlan – Purana".⁴⁴
23. When asked about this matter in his evidence, Mr Fox said that he had identified some anomalies between his diary and the ICRs. He agreed that the ICRs constituted the formal document by which other handlers and the SDU would understand how information was used and to the best of his ability he would take great care in recording what had occurred in the ICR. When it was put that he had written of his intention to pass on the information to Mr Coghlan, Mr Fox said that he might have written the words "I will tell Jim Coghlan" to placate Ms Gobbo. He agreed that if that had occurred, he would possibly have recorded the entry to indicate "I told 3838 that I will tell Jim Coghlan". Mr Fox said that he could either have told Mr Coghlan, or made an error when he compiled the ICR. In a subsequent answer he said he believed he would have recorded having told Mr Coghlan.⁴⁵ It is noted that in the relevant entries related to communications on 12 September 2007 referred to above, Mr Fox had added in to the ICR disseminations to Mr Ryan and Mr Coghlan, which were not in his diary. Presumably, such entries were added on the basis of his memory or some other record at the time he compiled the ICR.

³⁸ Exhibit RC1232, Statement of Detective Sergeant Jim Coghlan, 12 November 2019, 13 [80], VPL.0014.0086.0001 @.0013.

³⁹ Exhibit RC1232, Statement of Detective Sergeant Jim Coghlan, 12 November 2019, 13 [81], VPL.0014.0086.0001 @.0013.

⁴⁰ Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801.

⁴¹ Exhibit RC0507 Mr Fox diary, 13 September 2007, 42, VPL.2000.0001.3058 @.3099.

⁴² Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801.

⁴³ Exhibit RC0507 Mr Fox diary, 13 September 2007, 42, VPL.2000.0001.3058 @.3099.

⁴⁴ Exhibit RC0281 ICR3838 (100), 13 September 2007, 1215, VPL.2000.0003.2801.

⁴⁵ Transcript of Mr Fox, 13 September 2019, 6325-6328, TRN.2019.09.13.01.P.

24. Mr Coghlan in his first statement to the Commission that he had no recollection of having received this information from Mr Fox and had no record of it in his diary.⁴⁶ In his second statement he referred to Mr Fox's evidence and disputed receiving such information.⁴⁷
25. In the event, ██████████ appeared as a witness on a revised presentment.⁴⁸
26. On the evening of 13 September 2007, Ms Gobbo advised Mr Fox that Mr Phillip Priest QC had been briefed for the committal, and she would not appear as his junior.⁴⁹ Despite this, as described below, Ms Gobbo told her handler she participated in pre-committal and post-committal conferences with Mr Priest regarding the case against Ms Mokbel.
27. 14 September 2007, Ms Gobbo is recorded as informing police that Mr Priest requested an "urgent" conference with her to discuss the brief and defence tactics, which tactics she promptly passed onto her handlers.⁵⁰ Also in the days following the committal, Ms Gobbo is recorded as having informed police that she has been in meetings with Mr Priest regarding strategies for Ms Mokbel's upcoming trial, and passed on some of those strategies.⁵¹ On both occasions, the ICRs record that the information was deliberately not disseminated due to its nature as defence legal strategy.⁵² There is no material before the Commission to suggest that such information was ultimately considered by the prosecution.

Following Representation

28. On 4 December 2007, Ms Gobbo told her handler that she was provided with a copy of ██████████ draft statement, reviewed the statement and provided advice to him about the making of the statement.⁵³
29. The following day, she told her handler she intended to contact ██████████ and advise him as to matters in the statement which required amendment, including a sentence to the effect that anything said in the statement could not be used against ██████████.⁵⁴ It is recorded that the handler Fox 'updated ██████████ at Purana Task Force re ██████████ statement.'⁵⁵
30. There is evidence before the Commission suggesting that during the committal proceeding of Horty Mokbel in July 2009, ██████████ had given evidence

⁴⁶ Exhibit RC1232 Statement of Detective Sergeant Jim Coghlan, 12 November 2019, 13 [81],

⁴⁷ Exhibit RC1232 Statement of Detective Sergeant Jim Coghlan, 12 November 2019, 7 [35], VPL.0014.0086.0001 @.0007.

⁴⁸ Un-tendered Presentment No. U02663623, *R v Zaharoula Mokbel*, 2009, 1-2, OPP.0095.0001.0031 @.0008-.0009.

⁴⁹ Exhibit RC0281 ICR3838 (100), 13 September 2007, 1216, VPL.2000.0003.2802,

⁵⁰ Exhibit RC0281 ICR3838 (100), 14 September 2007, 1218, VPL.2000.0003.2804; Exhibit RC0281 ICR3838 (100), 14 September 2007, 1219, VPL.2000.0003.2805.

⁵¹ Exhibit RC0291 ICR3838 (101), 20 September 2007, 1236, VPL.2000.0003.2822.

⁵² Exhibit RC0281 ICR3838 (100), 14 September 2007, 1219, VPL.2000.0003.2805; Exhibit RC0281 ICR3838 (101), 20 September 2007, 2822.

⁵³ Exhibit RC0281 ICR3838 (114), 4 December 2007, 1499, VPL.2000.0003.3085.

⁵⁴ Exhibit RC0281 ICR3838 (114), 5 December 2007, 1505, VPL.2000.0003.3091.

⁵⁵ Exhibit RC0281 ICR3838 (114), 5 December 2007, 1505, VPL.2000.0003.3091.

claiming that he had not written his own statement, and that it had been prepared by his barrister (Ms Gobbo) and signed by him on her advice.⁵⁶

31. It is apparent that in November 2009, shortly prior to the commencement of Ms Mokbel's trial, Victoria Police, were monitoring whether any issue related to Ms Gobbo would arise in Ms Mokbel's trial. On 9 November 2009, Mr Coghlan emailed a report to Inspector Bernie Edwards, the Officer in Charge of the Purana Taskforce and Inspector Steven Smith, the Officer in Charge of the Petra Taskforce (for whom Ms Gobbo was now to be a witness in an unrelated proceeding):⁵⁷

The matter of Roula MOKBEL:

Steven SHIREFFS appeared for Roula this morning in the County Court. Basically the following occurred:

- Horty MOKBEL may be used as a witness for the defence in his wife's trial. He is currently on trial himself.*
- The statement made by ██████████ was prepared by his Barrister. The fact that ██████████ has previously stated that his Barrister had been involved in the preparation of the statement may now require that his Barrister be subpoenaed to give evidence in Roula's trial.*
- There was no discussion of the possibility of Roula's trial being adjourned so it would appear that next Monday 16/11/09 is still a goer.*
- There was no mention of the name of 3838*

Jim

32. On 26 November 2009, Mr Coghlan emailed Mr Smith and Mr Shane O'Connell from the Petra Taskforce, and Mr Edwards informing them:⁵⁸

Gents,

The Roula MOKBEL trial is finishing up today. Final submissions are being made as we speak..... ██████████ was in the box for nearly two days. He only referred to his solicitor a couple of times and even then I don't think her name was even mentioned. He referred to his legal advisor as providing him with advice re his criminal charges and later assisting him with the preparation of his statement for the police. From day one there was never any indication from the other side that they intended to call her.

A storm in a tea cup !!!

Jim

⁵⁶ Exhibit RC1041 Email from Ms Catherine Gobbo to Ms Nicola Gobbo, 27 October 2009, MIN.5000.0001.7484.

⁵⁷ Exhibit RC1593 Email from Detective Sergeant Jim Coghlan to Detective Inspector Steven (Steve) Smith and Mr Bernie Edwards, 9 November 2009 and Inspector Bernie Edwards, VPL.6111.0021.4881.

⁵⁸ Exhibit RC1905 Email from Detective Sergeant Jim Coghlan, Inspector Steven (Steve) Smith, Mr Shane O'Connell, and Inspector Bernie Edwards, 26 November 2009, 1, VPL.6111.0024.1185 @.1185.

Submissions under Terms of Reference 1 and 2 in relation to Ms Mokbel

33. It is submitted that it is open to the Commissioner to find that the case of Ms Mokbel may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
34. These submissions should be read in conjunction with Chapter 15 of the Narrative Submissions, which contains an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Ms Mokbel.
35. The extent to which the case of Ms Mokbel may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

36. First, Category 1A⁵⁹ applies in that, between April and September 2007,⁶⁰ Ms Gobbo acted for Ms Mokbel while she was a human source,⁶¹ and did not disclose same to her.⁶²
37. Secondly, Category 1B⁶³ applies in that, before and during the period that Ms Gobbo acted for Ms Mokbel in relation to the case, Ms Gobbo provided information in relation to her to members of Victoria Police and/or otherwise assisted (or attempted to assist) in her prosecution.⁶⁴
38. Thirdly, Category 2A⁶⁵ applies in that evidence relied upon by the prosecution in Ms Mokbel's case, namely the evidence of ██████████,⁶⁶ and ██████████,⁶⁷ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁸
39. Fourthly, Category 2B⁶⁹ applies in that Ms Gobbo had knowledge of the circumstances founding the above [38] and failed to disclose same to her client, Ms Mokbel, thereby depriving her of the ability to object to the admission of that evidence.
40. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷⁰ Further, in certain

⁵⁹ See Legal Principles Submissions at [249]

⁶⁰ See above analysis at [4]-[6].

⁶¹ See Legal Principles Submissions at [20]

⁶² See Legal Principles Submissions at [239]

⁶³ See Legal Principles Submissions at [249].

⁶⁴ See above case analysis at [8]-[13].

⁶⁵ See Legal Principles Submissions at [249].

⁶⁶ See above analysis at [22] and [25].

⁶⁷ See above analysis at [9], [10], [12], [18] and [19].

⁶⁸ See Legal Principles Submissions at [196]-[222].

⁶⁹ See Legal Principles Submissions at [249].

⁷⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

instances identified above,⁷¹ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁷²

41. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

42. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷³
 - 42.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Ms Mokbel;
 - 42.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Ms Mokbel, appropriate disclosure was made; or alternatively
 - 42.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
43. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [42.1] were taken, and accordingly there was the potential for the right of Ms Mokbel to a fair trial to have been interfered with.
44. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Ms Mokbel and/or her legal representatives.
45. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁴
46. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

⁷¹ See above analysis at [13].

⁷² See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁷³ See Legal Principles Submissions at [384] and [452]-[457].

⁷⁴ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.⁷⁵

47. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her conviction.⁷⁶
48. Category 3A⁷⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
49. Category 3B⁷⁸ applies in that, before and during the period that Ms Gobbo acted for Ms Mokbel in relation to the case, Ms Gobbo provided information in relation to her to members of Victoria Police and/or otherwise assisted (or attempted to assist) in her prosecution,⁷⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
50. Category 4A⁸⁰ applies in that, as noted above at [38], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
51. Category 4B⁸¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
52. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁵ See Legal Principles Submissions at [351], [362]-[373].

⁷⁶ See Legal Principles Submissions at [351] and [374].

⁷⁷ See Legal Principles Submissions at [465].

⁷⁸ See Legal Principles Submissions at [465].

⁷⁹ See above case analysis at [8]-[27].

⁸⁰ See Legal Principles Submissions at [465].

⁸¹ See Legal Principles Submissions at [465].

CASE STUDY: MR NEWTON (A PSEUDONYM)

The Relevant Case of Mr Newton

1. The one relevant case of Mr Newton arose from an investigation by Purana Taskforce, codenamed 'Operation Tweaks', into the trafficking of 3,4-Methylenedioxymethamphetamine (MDMA) by Mr Abdullah Radi and his brother-in-law, Mr Newton.¹
2. Mr Newton was initially interviewed on 9 July 2007 at the Brunswick Police Station and released pending further investigation.²
3. On 24 September 2007, following the execution of a search warrant at his address, Mr Newton was reinterviewed and charged with drug trafficking offences.³
4. The prosecution case was that Mr Newton assisted Mr Abdullah Radi to traffick MDMA.⁴ It was alleged that Mr Newton attended a number of meetings with Mr Radi and others during which drug deals were discussed, and was involved in driving Mr Radi and carrying bags of powder 'as requested'.⁵
5. Significantly, the prosecution case against Mr Newton relied on the evidence of Mr Bickley.⁶
6. On 12 October 2009, Mr Newton was arraigned and pleaded guilty to one count of trafficking in not less than a large commercial quantity of MDMA between 16 November 2006 and 23 January 2007.⁷
7. A plea hearing was conducted on 13 October 2009.⁸

¹ Un-tendered Remand/Bail application summary, *Police v Mr Newton*, 2009, 12[1], RCMP.0070.0003.0008 @ .0012.

² Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 56 [9], RCMP.0070.0003.0008 @.0056.

³ Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 56 [9], RCMP.0070.0003.0008 @.0056; Summary of prosecution opening, *The Queen v Abdullah Radi and Mr Newton*, 2009, 51 [63], RCMP.0070.0003.0008 @.0051.

⁴ Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 55 [3], RCMP.0070.0003.0008 @.0055.

⁵ Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 56 [10] RCMP.0070.0003.0008 @.0056.

⁶ Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, OPP.0056.0001.0001; Un-tendered Presentment no: C0806327.1, *The Queen v Abdullah Radi and Mr Newton*, 2009, 23, RCMP.0070.0003.0008 @.0023.

⁷ Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 55[1], RCMP.0070.0003.0008 @.0055; Un-tendered Record of Orders, Mr Newton, 20 October 2009, 8, COR.1015.0002.0007 @.0008.

⁸ Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, OPP.0056.0001.0001; Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 60 [28], RCMP.0070.0003.0008 @.0060.

8. On 20 October 2009, Mr Newton was sentenced to two years and nine months' imprisonment, with a non-parole period of one year and three months' imprisonment.⁹
9. Mr Newton made an application for leave to appeal against sentence,¹⁰ but ultimately abandoned the appeal on 8 June 2010.¹¹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Newton

10. Based on the material reviewed by Counsel Assisting, there is no evidence to suggest that Ms Gobbo provided any legal representation to Mr Newton during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Newton

11. Although Ms Gobbo provided information to Victoria Police concerning Mr Newton on at least two occasions in February 2008,¹² there is nothing to suggest she provided any legal representation to him. However, as outlined above, the prosecution case against Mr Newton relied upon the evidence of Mr Bickley.¹³

Relevant Conduct in relation to Mr Bickley

12. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Bickley is also relevant to an assessment of Mr Newton's matter. For the reasons set out in the case study in relation to Mr Bickley, it is submitted that it is open to find that Mr Bickley's evidence may have been obtained improperly or illegally in two distinct ways.
13. First, it is submitted that his evidence may have been obtained improperly or illegally to the extent it was obtained as a consequence (albeit indirect) of the arguably improper or illegal conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper. Secondly, it is submitted that Mr Bickley's evidence may have been obtained improperly to the extent it was obtained as a consequence of the conduct of Ms Gobbo and members of Victoria Police in (direct) relation to him which may have been improper or illegal.

⁹ Un-tendered Reasons for sentence, *R v Mr Newton* [2010] VCC, 60 [26], RCMP.0070.0003.0008 @.0060; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Mr Newton, 14 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.3625; Un-tendered Record of Orders, Mr Newton, 20 October 2009, 8, COR.1015.0002.0007 @.0008.

¹⁰ Un-tendered Notice of Application for Leave to Appeal Against Sentence, *The Queen v Mr Newton*, 2009, 61, RCMP.0070.0003.0008 @.0061.

¹¹ Un-tendered Notification of Result of Appeal or Application, 8 June 2010, 1, COR.1015.0002.0007 @.0001; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', Mr Newton, 14 December 2019, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0099.0193.3625;

¹² Exhibit RC0281 ICR2958 (002), 4 February 2008, 27, VPL.2000.0003.0761 @ .0767, Exhibit RC0281 ICR2958 (002), 5 February 2008, 28, VPL.2000.0003.0761 @.0768.

¹³ Un-tendered, Office of Public Prosecutions Victoria, Annexure A – Witnesses and Related Accused Matter Outcomes', 29 May 2020, 3, OPP.0056.0001.0001; Un-tendered Presentment no: C0806327.1, *The Queen v Abdullah Radi and Mr Newton*, 2009, 23, RCMP.0070.0003.0008 @.0023.

14. On this basis, it may be argued that the evidence of Mr Bickley, relied upon in the prosecution of Mr Newton, may have been obtained in consequence of improper or illegal conduct (in the two ways described above), and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Newton may have been deprived of any opportunity to object to the admissibility of this evidence.
15. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁴ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Newton

16. It is submitted that it is open to the Commissioner to find that the case of Mr Newton may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
17. The extent to which the case of Mr Newton may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

18. First, Category 2A¹⁶ applies in that evidence relied upon by the prosecution in Mr Newton’s case, namely the evidence of Mr Bickley,¹⁷ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁸
19. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

20. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁹

¹⁴ See Legal Principles Submissions at [210].

¹⁵ See Legal Principles Submissions at [212]-[213].

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See above analysis at [5] and [12]-[14].

¹⁸ See Legal Principles Submissions at [196]-[222].

¹⁹ See Legal Principles Submissions at [384] and [452]-[457].

- 20.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Newton;
 - 20.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Newton, appropriate disclosure was made; or alternatively
 - 20.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
21. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [20.1] were taken, and accordingly there was the potential for the right of Mr Newton to a fair trial to have been interfered with.
 22. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Newton and/or his legal representatives.
 23. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁰
 24. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²¹
 25. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²²
 26. Category 4A²³ applies in that, as noted above at [18], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
 27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁰ See Legal Principles Submissions at [380]-[385].

²¹ See Legal Principles Submissions at [351], [362]-[373].

²² See Legal Principles Submissions at [351], [374].

²³ See Legal Principles Submissions at [465].

CASE STUDY: FARUK ORMAN

1. The submissions in this case study should be read in conjunction with the following relevant parts of Chapters 7, 16 and 17 of the Narrative Submission, which contain a detailed account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Faruk Orman:
2. It should be noted, in particular, that Chapter 16 contains considerable detail concerning the circumstances of Mr Orman's proceedings. Those matters are not repeated here, but this case study should be read together with those of parts of Chapter 16.

The Relevant Cases of Faruk Orman

3. It is submitted that two of Mr Orman's cases may have been affected by the conduct of Ms Gobbo as a human source:
 - 3.1. First, his conviction at trial and sentence in 2009, before the Supreme Court, for the murder of Victor Peirce (the Murder Case).¹
 - 3.2. Secondly, his conviction and fine before the Sunshine Magistrates' Court on 18 July 2007 for one count of recklessly causing serious injury (the Summary Case).²

The Murder Case

4. On 22 June 2007, Mr Orman was charged with the murder of Victor Peirce,³ who was killed on 1 May 2002.⁴ The prosecution case was that Mr Orman had acted in concert with the shooter, Andrew Veniamin, by having driven him to and from the scene.⁵
5. Following committal proceedings in the Magistrates' Court in 2007–2008,⁶ Mr Orman was tried in the Supreme Court in 2009.⁷ He pleaded not guilty. The case against him depended essentially upon the evidence of Mr Thomas.⁸ In the end, Mr Orman was convicted. On 25 November 2009, he was sentenced to 20 years' imprisonment, with a non-parole period of 14 years.⁹

¹ *R v Orman* [2009] VSC 538; *Orman v The Queen* [2010] VSCA 246; *Orman v R* [2019] VSCA 163; Un-tendered Transcript of Proceedings *Orman v The Queen* [2011] HCA Trans 018, 828, RCMP1.0010.0003.0001 @ .0828; *Orman v The Queen* [2019] VSCA 163.

² See Un-tendered Victoria Police Criminal History Report, Faruk Orman, 14 December 2019, 2, VPL.0099.0193.3998 @ .3998.

³ Un-tendered Summary of Proceedings, *DPP v Faruk Orman*, 23 July 2010, 2 [3], RCMP1.0010.0003.0001 @ .0679.

⁴ *R v Orman* [2009] VSC 538, [2]; Un-tendered Particulars of Offence of Presentment C0806619, *DPP v Faruk Orman*, 2008, 2, RCMP1.0010.0003.0001 @ .0002.

⁵ *R v Orman* [2009] VSC 538, [2]; Un-tendered Summary of Evidence, *DPP v Faruk Orman*, 23 July 2010, 695, RCMP1.0010.0003.0001 @ .0695.

⁶ Un-tendered Summary of Proceedings, *DPP v Faruk Orman*, 23 July 2010, 679 [4]-[5], RCMP1.0010.0003.0001 @ .0679.

⁷ *R v Orman* [2009] VSC 538, [1]; Un-tendered Summary of Proceedings, *DPP v Faruk Orman*, 23 July 2010, 680 – 693 [9], RCMP1.0010.0003.0001 @ .0680 -.0693.

⁸ *R v Orman* [2009] VSC 538, [12]; *Orman v The Queen* [2010] VSCA 246, [8]; *R v Orman* [2009] VSC 538, [2]; Un-tendered Summary of Evidence, *DPP v Faruk Orman*, 23 July 2010, 725 [T, 856] – 740 [T, 1227], RCMP1.0010.0003.0001 @ .0725-.0740.

⁹ *R v Orman* [2009] VSC 538, [47]-[48].

6. In 2010, Mr Orman applied for leave to appeal against conviction before the Victorian Court of Appeal, which was dismissed.¹⁰ In 2011, he applied for special leave to appeal before the High Court of Australia, which was refused.¹¹
7. In February 2019, Mr Orman commenced a petition for the exercise of Her Majesty's mercy and requested that the Attorney-General refer his matter to the Court of Appeal. On 25 June 2019, the Attorney-General referred Mr Orman's matter to the Court of Appeal to be heard as an appeal.¹²
8. On the appeal, the Director of Public Prosecutions (DPP) made a number of concessions, including:
 - (a) *from as early as October 2002, Ms Gobbo represented a person [Mr Thomas], on whose evidence the murder case against Mr Orman substantially depended. Ms Gobbo continued to represent [Mr Thomas] from time to time until 8 August 2008;*
 - (b) *on 11 October 2006, Ms Gobbo was engaged by Mr Orman to represent him in relation to charges he was then facing in Queensland. She continued to represent him from time to time until at least 10 December 2008;*
 - (c) *on 9 November 2007, at a time when she was engaged to act on behalf of Mr Orman, Ms Gobbo improperly took active steps to ensure that [Mr Thomas] gave evidence against Mr Orman in the murder trial.¹³*
9. The Director conceded that as a result of Ms Gobbo's conduct on 9 November 2007, there was a substantial miscarriage of justice, within the meaning of section 276(1)(c) of the *Criminal Procedure Act 2009* (Vic). The Director's submission, which was supported by counsel for Mr Orman, was that the appeal must therefore be allowed.¹⁴
10. On 26 July 2019, the Court of Appeal allowed Mr Orman's appeal, and set aside his conviction for murder. In its place, a judgment of acquittal was entered.¹⁵ In doing so, the Court held:

On the facts as conceded, Ms Gobbo's conduct subverted Mr Orman's right to a fair trial and went to the very foundations of the system of criminal trial. There was, accordingly, a substantial miscarriage of justice. The appeal must therefore be allowed.¹⁶

The Summary Case

11. The summary case addressed in this case study arose for consideration as part of Stage 4 in the methodology of counsel assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 4 was broad and based on the application of limited criteria to identify

¹⁰ *Orman v The Queen* [2010] VSCA 246, [175].

¹¹ *Orman v The Queen* [2011] HCA Trans 018.

¹² *Orman v The Queen* [2019] VSCA 163, [3].

¹³ *Orman v The Queen* [2019] VSCA 163, [8].

¹⁴ *Orman v The Queen* [2019] VSCA 163, [9].

¹⁵ *Orman v The Queen* [2019] VSCA 163, [16].

¹⁶ *Orman v The Queen* [2019] VSCA 163, [12], citing *Wilde v The Queen* (1988) 164 CLR 365, 373; *OKS v Western Australia* [2019] HCA 10 [36].

instances where Ms Gobbo represented a person upon the disposition of their summary case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.

12. On 18 July 2007, Mr Orman appeared before the Sunshine Magistrates' Court to be dealt with for one count of recklessly causing serious injury.¹⁷ The Court disposed of the matter by imposing a fine of \$2500, with conviction.¹⁸

Ms Gobbo's Legal Representation of Mr Orman

The Murder Case

13. Between approximately June 2007 and December 2008, Ms Gobbo acted for Mr Orman in the Murder Case as junior counsel.¹⁹ During committal proceedings, as junior counsel, she: analysed and provided advice on the brief of evidence;²⁰ conferred with and obtained instructions from Mr Orman;²¹ appeared in administrative and subpoena hearings;²² assisted senior counsel in preparation;²³ and attended court.²⁴ Between committal and trial, Ms Gobbo continued to work on the case with senior counsel.²⁵ She was originally briefed as junior counsel for the trial,²⁶ and she appeared at directions and administrative hearings before the Supreme Court.²⁷ She did not appear at trial.

¹⁷ See Un-tendered Victoria Police Criminal History Report. Faruk Orman, 14 December 2019, 2, VPL.0099.0193.3998 @ .3998.

¹⁸ See Un-tendered Victoria Police Criminal History Report, Faruk Orman, 14 December 2019, 2, VPL.0099.0193.3998 @ .3998.

¹⁹ See, eg: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 67, OPP.0001.0004.0025 @.0091; Exhibit RC1898 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 29 October 2007, 69, OPP.0001.0004.0025 @.0093; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 February 2008, 67, OPP.0001.0004.0025 @.0091; Exhibit RC1898 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 17 June 2008, 71, OPP.0001.0004.0025 @.0095; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 13 August 2008, 69, OPP.0001.0004.0025 @.0093.

²⁰ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 3 [9], RCMP.0115.0001.0001 @.0003; Exhibit RC0281 ICR3838 (101), 24 September 2007, 1242, VPL.2000.0003.2828.

²¹ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 3 [10], 5 [18], RCMP.0115.0001.0001 @ .0003,0005; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 17 October 2007, 10, MIN.5000.7000.0103 @.0112; Exhibit RC0281 ICR2958 (009), 17 March 2008, VPL.2000.0003.0840; Exhibit RC0882 Mr Wolf Diary, 17 March 2008, 1, VPL.2000.0001.0134 @ .0134.

²² Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 3 [11], RCMP.0115.0001.0001 @.0003; Exhibit RC0281 ICR3838 (107) 29 October 2007, 1326, VPL.2000.0003.2912, Exhibit RC0281 ICR3838 (113), 26 November 2007, 1461, VPL.2000.0003.3047; Exhibit RC0507c Mr Fox Diary, 26 November 2007, 9-10, VPL.2000.0001.3422 @.3430-.3431; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 8 November 2007, 11, MIN.5000.7000.0103 @.0113; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 7 March 2008, 15, MIN.5000.7000.0103 @.0117.

²³ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 5-6 [19], RCMP.0115.0001.0001 @.0005-.0006; Exhibit RC0281 ICR2958 (007), 8 March 2008, 83, VPL.2000.0003.0823; Exhibit RC0882c Mr Wolf diary, 8 March 2008, 14, VPL.2000.0001.0098 @ .0111.

²⁴ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 5-6 [19], RCMP.0115.0001.0001 @.0005-.0006.

²⁵ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 6 [23], RCMP.0115.0001.0001 @.0006.

²⁶ Exhibit RC0977 Statement of Mr Robert Richter, 25 November 2019, 6 [23], RCMP.0115.0001.0001 @.0006.

²⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 May 2007, 67, OPP.0001.0004.0025 @.0091; Exhibit RC1898 Office of Public

The Summary Case

14. On 18 July 2007, Ms Gobbo appeared on behalf of Mr Orman upon the disposition of his case before the Sunshine Magistrates' Court.²⁸

The Conduct of Ms Gobbo as a Human Source in relation to Mr Orman

Relevant Conduct in relation to Mr Thomas

15. The conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is highly relevant to an assessment of Mr Orman's matter. As set out in the Narrative Submissions at Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led Mr Thomas to his decision to assist and co-operate with authorities. Such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr Orman, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Orman may have been deprived of any opportunity to object to the admissibility of this evidence.

Relationship with Mr Orman prior to the Murder Case

16. Between (at least) 4 March 2006 and Mr Orman's arrest in the Murder Case on 22 June 2007, Ms Gobbo maintained an association with Mr Orman, having been introduced to him by Mr Thomas.²⁹ In particular, during this period, she acted as Mr Orman's barrister in other legal proceedings³⁰ and frequently

Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 29 October 2007, 69, OPP.0001.0004.0025 @.0093; Exhibit RC1898 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 29 February 2008, 67, OPP.0001.0004.0025 @.0091; Exhibit RC1898 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 17 June 2008, 71, OPP.0001.0004.0025 @.0095; Exhibit RC1898 Office of Public Prosecutions Victoria Ms Nicola Gobbo data from PRISM case database, 13 August 2008, 69, OPP.0001.0004.0025 @.0093; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 9 June 2003, 63, MIN.5000.7000.0001 @.0063; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 10 November 2006, 101, MIN.5000.7000.0001 @.0101.

²⁸ See Exhibit 1841 Magistrates' Court of Victoria Persons represented by Ms Gobbo, 18 July 2007, 20, MCV.0001.0001.0001 @ .00018.

²⁹ See generally Un-tendered Summary of extracts from Faruk Orman disclosure material, RCMP.0004.0001.0006; Exhibit RC0281 ICR3838 (049), 19 October 2006, 506, VPL.2000.0003.2092.

³⁰ See, eg: Exhibit RC0281 ICR3838 (048), 10 October 2006 – 11 October 2006, 467, 469, VPL.2000.0003.2053, .2055; Exhibit RC0281 ICR3838 (048), 11 October 2006, 471, VPL.2000.0003.2057; Exhibit RC0281 ICR3838 (049), 19 October 2006, 502, 506, VPL.2000.0003.2088, .2092; Exhibit RC0281 ICR3838 (050), 21 October 2006, 514, VPL.2000.0003.2100; Exhibit RC0281 ICR3838 (051), 24 October 2006, 520, VPL.2000.0003.2106, Exhibit RC0281 ICR3838 (051), 25 October 2006, 521, VPL.2000.0003.2107; Un-tendered Diary of Mr Anderson, 25 October 2006, 2, VPL.0009.0001.2276 @ .2277; Exhibit RC0281 ICR3838 (057), 14 December 2006 -16 December, 585-587, VPL.2000.0003.2171-.2173, Exhibit RC0281 ICR3838 (057), 19 December 2006 – 22 December 2006, 591-593, VPL.2000.0003.2177-.2179; Exhibit RC0281 ICR3838 (065), 11 February 2007, 631, VPL.2000.0003.2217; Exhibit RC0281 ICR3838 (067), 19 February 2007 – 22 February 2007, 643-650, VPL.2000.0003.2229-2236; Exhibit RC0281 ICR3838 (067), 23 February 2007, 654, VPL.2000.0003.2240; Exhibit RC1590 Mr Anderson diary, 23 February 2007, 60, VPL.2000.0001.6757, Exhibit RC0281 ICR3838 (068), 26 February 2007- 28 February 2007, 660-662, VPL.2000.0003.2246-2248; Exhibit RC0281 ICR3838 (070), 27 March 2007, 735,

socialised with him and his associates.³¹ She also provided Victoria Police with a range of information about him. According to the Informer Contact Reports (ICRs), such information included:

- 16.1. the registration and other identifying details of his motor vehicles³²
- 16.2. his telephone number³³
- 16.3. details of persons with whom he was said to be associated³⁴
- 16.4. information relating to his other legal proceedings.³⁵

VPL.2000.0003.2321; Exhibit RC1590 Mr Anderson diary, 27 March 2007, 2, VPL.0009.0001.2813 @ .2814, Exhibit RC0281 ICR3838 (070), 29 March 2007, 742, VPL.2000.0003.2328; Exhibit RC0281 ICR3838 (072), 30 March 2007, 746, VPL.2000.0003.2332; Exhibit RC0281 ICR3838 (073), 3 April 2007, 765, VPL.2000.0003.2351; Exhibit RC1590 Mr Anderson diary, 3 April 2007, 7, VPL.0009.0001.0154 @.0160, Exhibit RC0281 ICR3838 (075), 18 April 2007, 798, VPL.2000.0003.2384; Exhibit RC0281 ICR3838 (075), 19 April 2007, 802, VPL.2000.0003.2388, Exhibit RC0281 ICR3838 (076), 22 April 2007, 806, VPL.2000.0003.2392, Exhibit RC0281 ICR3838 (080), 23 May 2007, 851, VPL.2000.0003.2437; Exhibit RC1590 Mr Anderson diary, 23 May 2007, 2, VPL.0009.0001.0465 @ .0466 and Exhibit RC0281 ICR3838 (080), 25 May 2007, 858, VPL.2000.0003.2444; Exhibit RC0281 ICR3838 (081), 28 May 2007, 864, VPL.2000.0003.2450; Exhibit RC1590 Mr Anderson diary, 28 May 2007, 6, VPL.0009.0001.0540 @ .0545; Exhibit RC1568 Ms Nicola Gobbo fee book 1, 10 November 2006, 101, MIN.5000.7000.0001 @.0101, Exhibit RC1568 Ms Nicola Gobbo fee book 1, 24 January 2007, 102, MIN.5000.7000.0001 @.0102; Exhibit RC1568 Ms Nicola Gobbo fee book 2, 28 February 2007, 2, MIN.5000.7000.0103 @.0104; Exhibit RC1568 Ms Nicola Gobbo fee book 2, 2 June 2007, 5 MIN.5000.7000.0103 @.0107.

³¹ See, eg: Exhibit RC0281 ICR3838 (055), 3 December 2006, 571, VPL.2000.0003.2157; Exhibit RC0281 ICR3838 (057), 586, VPL.2000.0003.2172; Exhibit RC0281 ICR3838 (058), 24 December 2006, 593, VPL.2000.0003.2179; Exhibit RC0281 ICR3838 (061), 8 January 2007, 600, VPL.2000.0003.2186; Un-tendered Summary of extracts from Faruk Orman disclosure material, 8 February 2007, 13, RCMP.I.0004.0001.0006 @.0013; Exhibit RC0281 ICR3838 (065), 8 February 2007, 629, VPL.2000.0003.2215; Exhibit RC0281 ICR3838 (071), 23 March 2007, 728, VPL.2000.0003.2314; Exhibit RC0281 ICR3838 (021), 23 March 2007, 729, VPL.2000.0003.2315; Exhibit RC0281 ICR3838 (021), 24 March 2007, 729, VPL.2000.0003.2315.

³² Exhibit RC0283 Information Report IRSID 456, 4 March 2006, 1, VPL.2000.0003.8571; Exhibit RC0283 Information Report IRSID 456, 4 March 2006, 1, VPL.2000.0003.8571; Exhibit RC0281 ICR3838 (021), 4 March 2006, 176, VPL.2000.0003.1762 and Exhibit RC0283 Information Report IRSID 515, 12 March 2006, 1, VPL.2000.0003.8616; Exhibit RC0281 ICR3838 (022), 13 March 2006, 185, VPL.2000.0003.1771

³³ Exhibit RC0281 ICR3838 (031), 30 October 2006, 529, VPL.2000.0003.2115; Exhibit RC1590 Mr Anderson diary, 30 October 2006, 3, VPL.0009.0001.2306 @ .2308.

³⁴ Exhibit RC0281 ICR3838 (049), 19 October 2006, 502, VPL.2000.0003.2088; Exhibit RC0281 ICR3838 (049), 19 October 2006, 506, VPL.2000.0003.2092; Exhibit RC0283 Information Report IRSID 956, 21 October 2006, 1, VPL.2000.0003.8912; Exhibit RC0281 ICR3838 (050), 21 October 2006, 514, VPL.2000.0003.2100, Exhibit RC0281 ICR3838 (051), 25 October 2006, 522, VPL.2000.0003.2108; Exhibit RC1590 Mr Anderson diary, 25 October 2006, 2, VPL.0009.0001.2276 @ .2277; Exhibit RC0281 ICR3838 (065), 8 February 2007, 629, VPL.2000.0003.2215; Exhibit RC0283 Information Report IRSID 1002, 12 February 2007, 1, VPL.2000.0003.8316; Exhibit RC0281 ICR3838 (065), 10 February 2008, 631, VPL.2000.0003.2217.

³⁵ See, eg: Exhibit RC0283 Information Report IRSID 456, 4 March 2006, 1, VPL.2000.0003.8571; Exhibit RC0281 ICR3838 (021), 176, VPL.2000.0003.1762; Exhibit RC0281 ICR3838 (049), 19 October 2006, 506, VPL.2000.0003.2092; Exhibit RC0283 Information Report IRSID 956, 21 October 2006, 1, VPL.2000.0003.8912; Exhibit RC0281 ICR3838 (050), 21 October 2006, 514, VPL.2000.0003.2100; Exhibit RC0281 ICR3838 (051), 23 October 2006, 519, VPL.2000.0003.2105; Exhibit RC1590 Mr Anderson diary, 23 October 2006, 3, VPL.0009.0001.0109 @ .0111; Exhibit RC0281 ICR3838 (057), 585, VPL.2000.0003.2171; Exhibit RC0281 ICR3838 (067), 19 February 2007, 643, VPL.2000.0003.2229; Exhibit RC0281 ICR3838 (069), 681, VPL.2000.0003.2267, Exhibit RC0281 ICR3838 (070), 14 March 2007, 708, VPL.2000.0003.2294; Exhibit RC0281 ICR3838 (071), 23 March 2007, 728, VPL.2000.0003.2314; Exhibit RC0281 ICR3838 (072), 27 March 2007, 735, VPL.2000.0003.2321; Exhibit RC1590 Mr Anderson diary, 27 March 2007, 2, VPL.0009.0001.2813 @ .2814; Exhibit RC0281 ICR3838 (072), 30 March 2007, 745, VPL.2000.0003.2331.

During the Proceedings

17. Ms Gobbo continued to provide information to Victoria Police in relation to Mr Orman in the course of proceedings in the Murder Case. For example, according to the ICRs, during this time she provided her handlers with:
 - 17.1. her views on the admissibility of certain items of evidence in the brief,³⁶ and on who else may be charged³⁷
 - 17.2. detail of defence forensic considerations, including disclosing the 'defence' itself³⁸
 - 17.3. detail of certain decisions made by the legal team, including in relation to bail applications³⁹
 - 17.4. advice about strategic matters, including the importance of resisting subpoenas which called for transcripts of Mr Thomas' previous evidence as "there were 30-40 lies on it and contradictions to his statement"⁴⁰
 - 17.5. Mr Orman's senior counsel's thoughts about aspects of the case.⁴¹
18. At this time, Ms Gobbo had some insight (albeit inadequate) into the "conflict issues" involved in acting for Mr Orman whilst also informing on him, having previously acted for Mr Thomas, the central prosecution witness against Mr Orman.⁴² On 27 May 2008, Ms Gobbo told police that "Purana [Taskforce]

³⁶ Un-tendered Summary of extracts from Faruk Orman disclosure material, 24 September 2007, 32, RCMP1.0004.0001.0006 @.0032, Exhibit RC0281 ICR3838 (101), 1240, VPL.2000.0003.2826; Un-tendered Summary of extracts from Faruk Orman disclosure material, 11 October 2007, 32, RCMP1.0004.0001.0006 @.0034; Exhibit RC0281 ICR3838 (104), 11 October 2007, 1289, VPL.2000.0003.2875.

³⁷ Un-tendered Summary of extracts from Faruk Orman disclosure material, 12 November 2007, 39, RCMP1.0004.0001.0006 @.0039; Exhibit RC0281 ICR3838 (110), 12 November 2007, 1394, VPL.2000.0003.2980.

³⁸ Un-tendered Summary of extracts from Faruk Orman disclosure material, 11 October 2007, 32, RCMP1.0004.0001.0006 @.0034, Exhibit RC0281 ICR3838 (104), 11 October 2007, 1289, VPL.2000.0003.2875.

³⁹ Un-tendered Summary of extracts from Faruk Orman disclosure material, 18 October 2007, 35, RCMP1.0004.0001.0006 @.0035; Exhibit RC0281 ICR3838 (105), 18 October 2007, 1309, VPL.2000.0003.2895 and Un-tendered Summary of extracts from Faruk Orman disclosure material, 14 April 2008, 57, RCMP1.0004.0001.0006 @ .0057; Exhibit RC0281 ICR2958 (014), 14 April 2008, 160, VPL.2000.0003.0898; Exhibit RC0507c Mr Fox diary, 14 April 2008, 4, VPL.2000.0001.3609 @ .3612.

⁴⁰ Un-tendered Summary of extracts from Faruk Orman disclosure material, 12 March 2008, 53, RCMP1.0004.0001.0006 @.0053; Exhibit RC0281 ICR2958 (008), 12 March 2008, 94, VPL.2000.0003.0834; Exhibit RC0882c Mr Wolf diary, 12 March 2008, 27, VPL.2000.0001.0098 @.0124.

⁴¹ Exhibit RC0281 ICR2958 (046), 17 November 2008, 709, VPL.2000.0003.1449.

⁴² Un-tendered Summary of extracts from Faruk Orman disclosure material, 24 September 2007, 32, RCMP1.0004.0001.0006 @.0032; Exhibit RC0281 ICR3838 (101), 24 September 2007, 1241, VPL.2000.0003.2827; Un-tendered Summary of extracts from Faruk Orman disclosure material, 3 October 2007, 33, RCMP1.0004.0001.0006 @.0033; Exhibit RC0281 ICR3838 (103), 3 October 2007, 1261, VPL.2000.0003.2847; Un-tendered Summary of extracts from Faruk Orman disclosure material, 17 October 2007, 34, RCMP1.0004.0001.0006 @.0034 and Un-tendered Summary of extracts from Faruk Orman disclosure material, 19 October 2007, 35, RCMP1.0004.0001.0006 @.0033; Exhibit RC0281 ICR3838 (105), 17 October 2007, 1307, VPL.2000.0003.2893; Exhibit RC0281 ICR3838 (105), 17 October 2007, 1310, VPL.2000.0003.2896; Un-tendered Summary of extracts from Faruk Orman disclosure material, 5 November 2007, 38, RCMP1.0004.0001.0006 @ .0038; Exhibit RC0281 ICR3838 (108), 5 November 2007, 1359, VPL.2000.0003.2945; Un-tendered Diary of Mr Fox, 5 November 2007, 4, VPL.0009.0001.2441 @ .2444; Un-tendered Summary of extracts from Faruk Orman disclosure material, 19 February 2008, 49, RCMP1.0004.0001.0006 @.0049; Exhibit RC0281 ICR2958 (004), 19 February 2008, 48, VPL.2000.0003.0788; Exhibit RC0882c Mr Wolf diary, 19 February 2008, 4, VPL.2000.0001.0066 @.0069.

would not have even known half the stuff about Orman if [she] did not tell them”.⁴³

19. During the proceedings against Mr Orman, she continued to maintain contact with Mr Thomas and she continued to communicate with Victoria Police in relation to Mr Thomas. The details of such conduct are addressed in Chapter 16 of the Narrative Submissions. One event was of particular significance. As set out in Chapter 16 of the Narrative Submissions, on 9 November 2007, Ms Gobbo reported to her handler, Mr Fox, that Mr Thomas was really down and seriously contemplating telling the Purana Taskforce to “get fucked”. She reported that Mr Thomas was talking about being resentenced and not giving evidence against Mr Orman, and that she thought “he needs a visit from Purana to put him straight, otherwise he was going to give it all in”. She advised that Mr Thomas was very stubborn, and if pushed he would do this in principle. This information was reported to Mr Ryan.⁴⁴ Subsequently members Messrs Stuart Bateson and Mark Hatt visited Mr Thomas and spoke with him on numerous occasions, and also had dealings with prison officials in order to placate Mr Thomas.⁴⁵ Mr Thomas went on to give evidence against Mr Orman at his committal and at his trial. The foregoing events were decisive in the Court of Appeal’s decision in *Orman v The Queen* [2019] VSCA 163.
20. Notably, in her letter to Assistant Commissioner Stephen Fontana dated 30 June 2015, Ms Gobbo referred to “Thomas” and “Mr Orman (for the murder of Victor Pierce)” as among “[t]he most significant crimes and/or arrests” in which she assisted police.⁴⁶ According to Mr Orman’s submission to the Commission, Ms Gobbo “continued to discuss [the] case with him after he was convicted”.⁴⁷

Other Details concerning the Conduct of Ms Gobbo and Victoria Police in relation to Mr Orman

21. As noted above, Chapter 16 of the Narrative Submissions contains considerable detail concerning the circumstances of Mr Orman’s proceedings. Those matters are not repeated here, but this case study should be read together with those of parts of Chapter 16.

Submission of Mr Orman to the Commission

22. Mr Orman submitted, inter alia, that by reason of the conduct of Victoria Police and Ms Gobbo, there had been “a substantial miscarriage of justice” in the case. Further, he submitted that Mr Orman’s “trial and appeals were corrupted in a most egregious way”, and that he was denied fair trial and appeal proceedings.⁴⁸ Plainly, the Court of Appeal’s decision in 2019 has already validated such submissions.⁴⁹

⁴³ Un-tendered Summary of extracts from Faruk Orman disclosure material, 22 April 2007, 25, RCMP1.0004.0001.0006 @.0025; Exhibit RC0281 ICR3838 (076), 22 April 2007, 806, VPL.2000.0003.2392.

⁴⁴ Exhibit RC0281 ICR3838 (109), 9 November 2007, 1381, VPL.2000.0003.2967.

⁴⁵ Exhibit RC0272 Commander Stuart Bateson diary, 14, 16, 26 November, 20 December 2007, 15 January 2008, 80, 81, 84, VPL.0005.0058.0404 @ .0483, .0484, .0487.

⁴⁶ As cited in *AB & EF v CD* [2017] VSC 350, at [19].

⁴⁷ See Submission 041, Faruk Orman, 4 [8.12], WEBSUB.000100 [Public].

⁴⁸ See Submission 041, Faruk Orman, WEBSUB.000100 [Public].

⁴⁹ See *Orman v The Queen* [2019] VSCA 163.

Submissions under Terms of Reference 1 and 2 in relation to Mr Orman

23. It is submitted that it is open to the Commissioner to find that the two cases of Mr Orman may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
24. The Murder Case is linked to the case of Mr Thomas and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, at Chapter 7. As noted above, these submissions should be also be read in conjunction with the Narrative Submissions, especially at Chapter 16, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to these cases.
25. The extent to which the two cases of Mr Orman may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

26. First, Category 1A⁵⁰ applies:
 - 26.1. in relation to the Murder Case, in that, between approximately June 2007 and December 2008,⁵¹ Ms Gobbo acted for Mr Orman in relation to the case while she was a human source,⁵² and did not disclose same to him;⁵³
 - 26.2. in relation to the Summary Case, in that, on 18 July 2007,⁵⁴ Ms Gobbo acted for Mr Orman in relation to the case while she was a human source,⁵⁵ and did not disclose same to him;⁵⁶
27. Secondly, Category 1B⁵⁷ applies:
 - 27.1. in relation to the Murder Case, in that, between approximately March 2006 and December 2008,⁵⁸ which was before and during the period that Ms Gobbo acted for Mr Orman in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police⁵⁹ and otherwise assisted (or attempted to assist) in his prosecution,⁶⁰ and did not disclose same to him;
 - 27.2. in relation to the Summary Case, in that, between approximately March 2006 and 18 July 2007, which was before the date on which Ms Gobbo acted for Mr Orman in relation to the case, Ms Gobbo provided

⁵⁰ See Legal Principles Submissions at [249].

⁵¹ See above analysis at [13].

⁵² See Legal Principles Submissions at [20].

⁵³ See Legal Principles Submissions at [239].

⁵⁴ See above analysis at [14].

⁵⁵ See Legal Principles Submissions at [20].

⁵⁶ See Legal Principles Submissions at [239].

⁵⁷ See Legal Principles Submissions at [249].

⁵⁸ See above analysis at [13].

⁵⁹ See above analysis at [16]–[17].

⁶⁰ See above analysis at [8]–[10], [15] and [18]. See also Chapter 16 of the Narrative Submissions.

information in relation to him to members of Victoria Police⁶¹ and did not disclose same to him;

28. Thirdly, Category 2A⁶² applies in the Murder Case in that evidence relied upon by the prosecution in Mr Orman case, namely the evidence of Mr Thomas,⁶³ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁴
29. Fourthly, Category 2B⁶⁵ applies in that Ms Gobbo had knowledge of the circumstances founding the above [28] and failed to disclose same to her client, Mr Orman, thereby depriving him of the ability to object to its admission.
30. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁶⁶ Further, in certain instances identified above,⁶⁷ Ms Gobbo's conduct may constitute a breach of legal professional privilege and confidence.⁶⁸
31. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

32. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶⁹
 - 32.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Orman;
 - 32.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Orman, appropriate disclosure was made; or alternatively

⁶¹ See above analysis at [16]–[17].

⁶² See Legal Principles Submissions at [249].

⁶³ See above analysis at [5], [8]–[10], [15] and [18].

⁶⁴ See Legal Principles Submissions at [196]–[222].

⁶⁵ See Legal Principles Submissions at [249].

⁶⁶ See Legal Principles Submissions at [320]–[329] and [307]–[309].

⁶⁷ See above analysis at [17].

⁶⁸ See Legal Principles Submissions at [310]–[319] and [301]–[306].

⁶⁹ See Legal Principles Submissions at [384] and [452]–[457].

- 32.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
33. In circumstances set out in this case study in relation to the Murder Case, it is submitted that not all necessary steps referred to in sub-paragraph [32.1] were taken, and accordingly there was the potential for the right of Mr Orman to a fair trial to have been interfered with.
34. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Orman and/or his legal representatives.
35. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁰
36. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷¹
37. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁷²
38. Category 3A⁷³ applies (in both the Summary Case and the Murder Case) in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
39. Category 3B⁷⁴ applies (in both the Summary Case and the Murder Case) in that, before and/or during the period Ms Gobbo acted for Mr Orman, she provided information in relation to him to members of Victoria Police and (in relation to the Murder Case) otherwise assisted the prosecution of the accused,⁷⁵ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
40. Category 4A⁷⁶ applies in the Murder Case in that, as noted above at [28], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
41. Category 4B⁷⁷ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of

⁷⁰ See Legal Principles Submissions at [380]-[385].

⁷¹ See Legal Principles Submissions at [351], [362]-[373].

⁷² See Legal Principles Submissions at [351], [374].

⁷³ See Legal Principles Submissions at [465].

⁷⁴ See Legal Principles Submissions at [465].

⁷⁵ See above analysis at [27].

⁷⁶ See Legal Principles Submissions at [465].

⁷⁷ See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

42. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: SALEH OSMAN

The Relevant Case of Mr Osman

1. The case addressed in this case study arose for consideration as part of Stage 5 in the methodology of counsel assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 5 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
2. The one relevant case of Mr Osman concerns his conviction and sentence before the Geelong Magistrates' Court on 22 January 2008 for counts of possession of ecstasy, trafficking ecstasy, and possession of amphetamine.¹

Ms Gobbo's Legal Representation of Mr Osman

3. Material before the Commission indicates that Ms Gobbo represented Mr Osman and appeared on his behalf at:
4. committal hearings on 20 and 21 August and 27 November 2007; and
5. a summary plea hearing on 22 January 2008.²

The Conduct of Ms Gobbo as a Human Source in relation to Mr Osman

6. Material before the Commission indicates that Mr Osman was the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police prior to the 22 January 2008 hearing. On 7 January 2008, she is recorded as informing her handler of a drug supply connection between Mr Osman and Mr Mohammed Oueida,³ and updating her handler on the outcome of Mr Osman's bail application.⁴

¹ Un-tendered Victoria Police Criminal History Report, Saleh Osman, 13 December 2019, 17, VPL.0099.0193.4006 @.4022.

² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 66, OPP.0001.0004.0025 @.0090; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 7 March 2019, 20, GMH.0001.0001.0002 @_0020; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoice, 23 January 2008, 68, GMH.0001.0001.0005 @_0068; Exhibit RC1841 Magistrates' Court of Victoria Record of Persons represented by Ms Nicola Gobbo, 27 November 2007, 20, MCV.0001.0001.0001 @_00018; Exhibit RC1568 Ms Gobbo fee book 02, 29 November 1999, 13, MIN.5000.7000.0103 @_0115.

³ Exhibit RC0281 ICR3838 (118), 7 January 2008, 1555, VPL.2000.0003.3141.

⁴ Exhibit RC0281 ICR3838 (119), 21 January 2008, 1584, VPL.2000.0003.3170.

Submissions under Terms of Reference 1 and 2 in relation to Mr Osman

7. It is submitted that it is open to the Commissioner to find that the case of Mr Osman may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
8. The extent to which the case of Mr Osman may have been affected can be measured by virtue of the following matters:

Conduct of Ms Gobbo

9. First, Category 1A⁵ applies in that, on 22 January 2008,⁶ Ms Gobbo acted for Mr Osman while she was a human source,⁷ and did not disclose same to him.⁸
10. Secondly, Category 1B⁹ applies in that, apparently prior to 22 January 2008, Ms Gobbo provided information to members of Victoria Police in relation to him.¹⁰
11. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹¹
12. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

13. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²

⁵ See Legal Principles Submissions at [249].

⁶ See above analysis at [3].

⁷ See Legal Principles Submissions at [20].

⁸ See Legal Principles Submissions at [239].

⁹ See Legal Principles Submissions at [249].

¹⁰ See above analysis at [6].

¹¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹² See Legal Principles Submissions at [384] and [452]-[457].

- 13.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Osman;
- 13.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Osman, appropriate disclosure was made; or alternatively
- 13.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
14. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [13.1] were taken, and accordingly there was the potential for the right of Mr Osman to a fair trial to have been interfered with.
15. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Osman and/or his legal representatives.
16. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹³
17. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁴
18. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.¹⁵
19. Category 3A¹⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
20. Category 3B¹⁷ applies in that, prior to 22 January 2008 when Ms Gobbo acted for Mr Osman, she provided information in relation to him to members of Victoria Police,¹⁸ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
21. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

¹³ See Legal Principles Submissions at [380]-[385].

¹⁴ See Legal Principles Submissions at [351], [362]-[373].

¹⁵ See Legal Principles Submissions at [351], [374].

¹⁶ See Legal Principles Submissions at [465].

¹⁷ See Legal Principles Submissions at [465].

¹⁸ See above analysis at [6].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT PUBLISHED

CASE STUDY: ANASTASIOS PAPADOPOULOS

The Relevant Case of Mr Papadopoulos

1. The one relevant case of Mr Anastasios Papadopoulos concerns his convictions before the County Court in June 2008, which arose from Operation Pecks.¹
2. In September 2006, the Moonee Valley Crime Investigation Unit commenced Operation Pecks, which was an investigation into the trafficking of ecstasy and amphetamine by a drug trafficking syndicate.²
3. On 13 April 2007, following the execution of a search warrant at Mr Papadopoulos' address, he was arrested and charged with drug trafficking related offences in relation to his role in the syndicate.³
4. The prosecution case relied on evidence gathered by a covert police operative, as well as evidence obtained through authorised telephone intercepts and search warrants.⁴
5. On 2 June 2008, a plea hearing was conducted, and Mr Papadopoulos was arraigned and entered a plea of guilty to:
 - 5.1. one count of trafficking in not less than a large commercial quantity of 3,4-Methylenedioxymethamphetamine (MDMA);
 - 5.2. one count of trafficking in not less than a commercial quantity of cocaine;
 - 5.3. five counts of trafficking in drugs of dependence, including in amphetamine, testosterone, nandrolene, stanozolol and mesterolone;
 - 5.4. one count of possession of substances, material, documents or equipment, namely a cocaine press, with the intention of using same for the purposes of trafficking in a drug of dependence;⁵ and

¹ Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 9 [39] – [40], COR.1026.0001.0010 @ .0009; Un-tendered Victoria Police, Victoria Police Criminal History Report, 'Anastasios Papadopoulos', 13 December 2019, VPL.0099.0193.4082.

² Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 2 [5], COR.1026.0001.0010 @ .0002; Exhibit RC1925 Initial Assessment Form, Anastasios Papadopoulos MNI: 855357917, VPL.0004.0002.0064; Un-tendered Presentment No: W00935817, *The Queen v Anastasios Papadopoulos*, 2008, 4, 30, OPP.0043.0004.0002 @ .0004, .0030; Un-tendered Report drafted for OPP – RE individuals identified as not requiring a disclosure letter, PAPADOPOULOS, Anastasio[s], 1, RCMP.0006.0001.0021 @ .0001.

³ Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 6 [21], COR.1026.0001.0010 @ .0006; Un-tendered Prosecution Opening, *R v Papadopoulos & Ors*, 30, OPP.0043.0004.0002 @ .0030.

⁴ Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 2 [5], COR.1026.0001.0010 @ .0002; Un-tendered Prosecution Opening, *R v Papadopoulos & Ors*, 30, OPP.0043.0004.0002 @ .0030.

⁵ *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 2 [1] – [2], COR.1026.0001.0010 @ .0002; Un-tendered Presentment No: W00935817, *R v Anastasios Papadopoulos*, 2008, 5, OPP.0043.0004.0002 @ .0005.

- 5.5. a summary charge of dealing with property, namely money, suspected of being the proceeds of crime.⁶
6. On the same date, the court ordered by consent that Mr Papadopoulos pay a pecuniary penalty in the sum of \$436,820.⁷ According to Mr Papadopoulos, he agreed to this order on the advice of Ms Gobbo.⁸
7. On 26 June 2008, Mr Papadopoulos was sentenced to a total effective sentence of eight years and nine months' imprisonment, with a non-parole period of five years' imprisonment.⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Papadopoulos

8. Based on the following circumstances, it appears that Ms Gobbo provided legal representation to Mr Papadopoulos between around October 2007 and June 2008:
9. On 2 October 2007, Ms Gobbo told her handler that she had Mr Papadopoulos' brief.¹⁰
10. In December 2007 she charged fees for a brief 'to advise, peruse materials, confer, negotiate settlement and settle documents' in Mr Papadopoulos' matter.¹¹
11. On 2 June 2008, Ms Gobbo appeared on behalf of Mr Papadopoulos in the County Court for a plea hearing.¹² She charged fees for this appearance, including for two days preparation and conferences.¹³

The conduct of Ms Gobbo as a human source in relation to Mr Papadopoulos

12. Ms Gobbo provided information to Victoria Police concerning Mr Papadopoulos during her representation of him, on at least one occasion. On 2 October 2007,

⁶ Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 2 [3], COR.1026.0001.0010 @ .0002.

⁷ Un-tendered Pecuniary Penalty Order by Consent, *in the Matter of the Conviction of Anastasios Papadopoulos between the DPP and Anastasios Papadopoulos*, ACO.0002.0001.0433.

⁸ Submission 074, Anastasios Papadopoulos, 1, SUB.0074.0001.0001.

⁹ Un-tendered *The Queen v Anastasios Papadopoulos* [2008] VCC 0753, 9, [39] – [40], COR.1026.0001.0010 @ .0009; Un-tendered Victoria Police, Victoria Police Criminal History Report, 'Anastasios Papadopoulos', 13 December 2019, VPL.0099.0193.4082.

¹⁰ Exhibit RC0281, ICR3838 (102), 2 October 2007, 1255, VPL.2000.0003.2841.

¹¹ Exhibit RC1568 Ms Nicola Gobbo's fee book 02, 12 December 2007, 12, MIN.5000.7000.0103 @ .0114; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo invoices, 12 December 2007, 5, GMH.0001.0001.0006 @ .0006; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 12 December 2007, 21, GMH.0001.0001.0002 @ .0021.

¹² Un-tendered Report drafted for OPP – RE individuals identified as not requiring a disclosure letter, PAPAPOULOS, Anastasio[s], 1, RCMPI.0006.0001.0021 @ .0001; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 2 June 2008, 68, OPP.0001.0004.0025 @ .0092; Exhibit RC1568 Ms Gobbo fee book 02, 5 June 2008, 18, MIN.5000.7000.0103 @ .0120.

¹³ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Nicola Gobbo invoices, 5 June 2008, 15, GMH.0001.0001.0005 @ .0015; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 5 June 2008, 14, GMH.0001.0001.0002 @ .0014.

Ms Gobbo told her handlers she had Mr Papadopoulos' brief and advised as to the name of the informant and the Taskforce to which he belonged.¹⁴

13. Whilst it appears that Ms Gobbo may have referred to Mr Papadopoulos during a meeting with her handlers on 2 May 2007, the quality of the recording is poor and, as such, the nature and content of the discussion is unclear. It is difficult to decipher what was said other than the fact that she appeared to state Mr Papadopoulos' name. The transcript refers to 'What about that idiot last week...Idiot trafficker ...he has \$180,000 sitting in his bank account ...inaudible... PAPAPOULOS.....'. It is difficult to determine whether the preceding comments concerning drug trafficking and financial circumstances relate to Mr Papadopoulos, a co-accused or an unrelated person.¹⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Papadopoulos

14. It is submitted that it is open to the Commissioner to find that the case of Mr Papadopoulos may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
15. The extent to which the case of Mr Papadopoulos may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

16. First, Category 1A¹⁶ applies in that, between October 2007 and June 2008,¹⁷ Ms Gobbo acted for Mr Papadopoulos while she was a human source,¹⁸ and did not disclose same to him.¹⁹
17. Secondly, Category 1B²⁰ applies in that, in October 2007, which was during the period that Ms Gobbo acted for Mr Papadopoulos in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²¹
18. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²²
19. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not

¹⁴ Exhibit RC0281, ICR3838 (102), 2 October 2007, 1254, VPL.2000.0003.2840.

¹⁵ Exhibit RC0282, Transcript of meeting between Nicola Gobbo, Green and Anderson, 2 May 2007, 9, VPL.0005.0115.0689 @ .0697.

¹⁶ See Legal Principles Submissions at [249].

¹⁷ See above analysis at [8].

¹⁸ See Legal Principles Submissions at [20].

¹⁹ See Legal Principles Submissions at [239].

²⁰ See Legal Principles Submissions at [249].

²¹ See above analysis at [12].

²² See Legal Principles Submissions at [320]-[329] and [307]-[309].

appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

20. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²³
 - 20.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Papadopoulos;
 - 20.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Papadopoulos, appropriate disclosure was made; or alternatively
 - 20.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
21. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [20.1] were taken, and accordingly there was the potential for the right of Mr Papadopoulos to a fair trial to have been interfered with.
22. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Papadopoulos and/or his legal representatives.
23. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁴
24. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁵
25. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²⁶

²³ See Legal Principles Submissions at [384] and [452]-[457].

²⁴ See Legal Principles Submissions at [380]-[385].

²⁵ See Legal Principles Submissions at [351], [362]-[373].

²⁶ See Legal Principles Submissions at [351], [374].

26. Category 3A²⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. Category 3B²⁸ applies in that, during the period Ms Gobbo acted for Mr Papadopoulos, she provided information in relation to him to members of Victoria Police,²⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
28. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁷ See Legal Principles Submissions at [465].

²⁸ See Legal Principles Submissions at [465].

²⁹ See above analysis at [12].

CASE STUDY: MR PARRISH (A PSEUDONYM)

The Relevant Case of Mr Parrish

1. The one relevant case of Mr Parrish concerns his convictions in 2005 before the County Court on six counts of obtain financial advantage by deception (the case).¹ The offending occurred between October 2001 and July 2003.² On 16 March 2004, Mr Parrish was arrested.³ On 25 and 26 October 2005, plea hearings were conducted before the County Court.⁴ On 2 November 2005, Mr Parrish was sentenced to a total effective sentence of 18 months' imprisonment, which was wholly suspended for a period of two years and six months.⁵

Ms Gobbo's Legal Representation of Mr Parrish

2. Evidence before the Commission indicates that Ms Gobbo acted on behalf of Mr Parrish in relation to the case between July 2005 and October 2005.⁶ In particular, it is notable that:
 - 2.1. On 25 and 26 October 2005, Ms Gobbo appeared on behalf of Mr Parrish in his plea hearings before the County Court.⁷
 - 2.2. On 6 November 2005, Ms Gobbo marked fees of \$4,285 in the matter of "[t]he Queen v Mr Parrish", for "[b]rief to appear at County Court on

¹ Un-tendered Presentment no: T00079762 & C0404342; *R v Mr Parrish* [2005] VCC 1170, Undated, OPP.0050.0001.0008.

² Un-tendered Presentment no: T00079762 & C0404342; *R v Mr Parrish* [2005] VCC 1170, Undated, 4 – 5, OPP.0050.0001.0008 @ .0013-14.

³ Un-tendered Statement of Material Facts Relevant to the Charges, *Police v Daniel Chaabani*, Undated, 55, OPP.0050.0001.0008 @ .0065.

⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 53, OPP.0001.0004.0025 @ .0077; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 54, OPP.0001.0004.0025 @ .0078; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 55, OPP.0001.0004.0025 @ .0079.

⁵ Un-tendered Reasons for Sentence, *R v Mr Parrish*, [2005] VCC 1170, Undated, 65 [12], OPP.0050.0001.0008 @ .0075.

⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 53, OPP.0001.0004.0025 @ .0077; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 54, OPP.0001.0004.0025 @ .0078; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 55, OPP.0001.0004.0025 @ .0079; Exhibit RC1568 Ms Gobbo fee book 01, 29 November 1999, 92, MIN.5000.7000.0001, @ .0092; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 7 March 2019, 53, GMH.0001.0001.0002 @ 0053; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 7 March 2019, 23, GMH.0001.0001.0010 @ .0023.

⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 53, OPP.0001.0004.0025 @ .0077; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 54, OPP.0001.0004.0025 @ .0078; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 55, OPP.0001.0004.0025 @ .0079.

29/7/05, 17/8/05, 22/8/05, 8/9/05, 25/10/05 ... & 26/10/05".⁸ Those fees were paid in full.⁹

The Conduct of Ms Gobbo as a Human Source in Relation to Mr Parrish

3. Mr Parrish was the subject of communications between Ms Gobbo (in her capacity as a human source) and Victoria Police during the period that she represented him. On 26 September 2005, soon after her third registration as a source, Ms Gobbo discussed Mr Parrish and his case in a meeting with her controller, Mr Sandy White, and handler, Mr Peter Smith.¹⁰ In the course of the discussion, she provided them with details of the case,¹¹ and told them, inter alia, that she had "[REDACTED]".¹²
4. It is noted that, following his conviction, Mr Parrish continued to occasionally feature in communications between Ms Gobbo and her handlers at Victoria Police.¹³

Submissions under Terms of Reference 1 and 2 in relation to Mr Parrish

5. It is submitted that it is open to the Commissioner to find that the case of Mr Parrish may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
6. The extent to which the case of Mr Parrish may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

7. First, Category 1A¹⁴ applies in that, between July 2005 and October 2005,¹⁵ Ms Gobbo acted for Mr Parrish in relation to the cases while she was a human source,¹⁶ and did not disclose same to him.¹⁷

⁸ Exhibit RC1568 Ms Gobbo Fee Book 1, 29 November 1999, 92, MIN.5000.7000.0001, @ .0092; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 7 March 2019, 53, GMH.0001.0001.0002 @ 0053; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 7 March 2019, 23, GMH.0001.0001.0010 @ .0023.

⁹ Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Invoice for fees due to Ms Gobbo, 7 March 2019, 53, GMH.0001.0001.0002 @ 0053;

¹⁰ Exhibit RC0282 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005, 207-210, VPL.0005.0076.0004 @ .0210-0213.

¹¹ Exhibit RC0282 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005, 208-210, VPL.0005.0076.0004 @ .0211-0213.

¹² Exhibit RC0282 Transcript of conversation between Nicola Gobbo, Sandy White and Peter Smith, 26 September 2005, 208-210, VPL.0005.0076.0004 @ .0211-0213.

¹³ Exhibit RC0281 ICR3838 (023), 20 March 2006, 198, VPL.2000.0003.1784; Exhibit RC0281 ICR3838 (049), 15 October 2006, 487, VPL.2000.0003.2073. Exhibit RC0281 ICR3838 (094), 14 August 2007, 1092, VPL.2000.0003.2678; Exhibit RC0283 Information Report SID 546, 27 April 2006, VPL.2000.0003.8652; Exhibit RC0281 ICR3838 (034) 20 August 2008, 561, VPL.2000.0003.1301.

¹⁴ See Legal Principles Submissions at [249].

¹⁵ See above analysis at [2].

¹⁶ See Legal Principles Submissions at [20].

¹⁷ See Legal Principles Submissions at [239].

8. Secondly, Category 1B¹⁸ applies in that, on 26 September 2005, which was during the period that Ms Gobbo acted for Mr Parrish in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹⁹
9. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁰ Further, on 26 September 2005,²¹ Ms Gobbo's conduct may have constituted breaches of legal professional privilege and confidence.²²
10. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

11. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²³
 - 11.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Parrish;
 - 11.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Parrish, appropriate disclosure was made; or alternatively
 - 11.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
12. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [11.1] were taken, and accordingly there was the potential for the right of Mr Parrish to a fair trial to have been interfered with.

¹⁸ See Legal Principles Submissions at [249].

¹⁹ See above analysis at [3].

²⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²¹ See above analysis at [3].

²² See Legal Principles Submissions at [310]-[319] and [301]-[306].

²³ See Legal Principles Submissions at [384] and [452]-[457].

13. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Parrish and/or his legal representatives.
14. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁴
15. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁵
16. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.²⁶
17. Category 3A²⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
18. Category 3B²⁸ applies in that, during the period Ms Gobbo acted for Mr Parrish, she provided information in relation to him to members of Victoria Police,²⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
19. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁴ See Legal Principles Submissions at [380]-[385].

²⁵ See Legal Principles Submissions at [351], [362]-[373].

²⁶ See Legal Principles Submissions at [351], [374].

²⁷ See Legal Principles Submissions at [465].

²⁸ See Legal Principles Submissions at [465].

²⁹ See above analysis at [3].

CASE STUDY: VASILIOS PILARINOS (AKA PETER ADAM PILARINOS)

The Relevant Cases of Mr Pilarinos

1. The two relevant cases of Mr Vasilios Pilarinos, aka Peter Adam Pilarinos,¹ concern his convictions before the County Court in August 2010 (indictable case)² and his conviction before the Melbourne Magistrates' Court on 29 August 2007 (summary case).³

The Indicable Case

2. In July 2007, Mr Pilarinos provided a false name and address, accompanied and supported by false documentation, to secure finance for the purchase of a vehicle.⁴ The name he provided was [REDACTED] (who was a person known to Mr Pilarinos, and who became a prosecution witness against Mr Pilarinos).⁵
3. On 19 July 2007, Mr Pilarinos was intercepted driving the vehicle. The police searched the vehicle and located a firearm and drugs, and subsequently executed a search warrant at Mr Pilarinos' address.⁶ Mr Pilarinos was arrested and remanded in custody.⁷ He was interviewed on 19 July 2007 and 3 August 2007.⁸
4. On 12 August 2010, Mr Pilarinos entered a plea of guilty to:
 - 4.1. one count of obtaining a financial advantage by deception;
 - 4.2. one count of being a prohibited person in possession of a registered firearm; and

¹ NB: Mr Pilarinos' father is also called Peter Pilarinos and, at times, it is difficult to distinguish between the two in the material before the Commission. Mr Pilarinos is also known as Peter Adam Pilarinos, Billy Pilarinos and Peters Marcs, and his DOB is [REDACTED]: Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 2-3 [3] – [8], COR.1026.0001.0011 @ .0002; Un-tendered Prosecution Report Peter Pilarinos, 1, CDP.0002.0001.0202.

Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 10 [48] COR.1026.0001.0011 @ .0011; Un-tendered LEAP Criminal History Report, Peter Adam Pilarinos, 4, VPL.0098.0013.0129 @ .0132.

³ Un-tendered LEAP Criminal History Report, Peter Adam Pilarinos, VPL.0098.0013.0129.

⁴ Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 2 [3] - [4], COR.1026.0001.0011 @ .0002; Un-tendered Summary of Prosecution Opening, *R v Peter Adam Pilarinos*, 153, 12 August 2010, OPP.0051.0001.0019 @ .0153.

⁵ Un-tendered Summary of Prosecution Opening, *R v Peter Adam Pilarinos*, 1, 12 August 2010, OPP.0051.0001.0019 @ .0153.

⁶ Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 3 [9]–[11], 4 [12]–[15], COR.1026.0001.0011 @ .0005; Un-tendered Summary of Prosecution Opening, *R v Peter Adam Pilarinos*, 155, 12 August 2010, OPP.0051.0001.0019 @ .0155.

⁷ Un-tendered Summary of Charges – Peter Pilarinos, 1, OPP.0051.0001.0019 @ .0134.

⁸ Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 4 [16], COR.1026.0001.0011 @ .0005; Un-tendered Summary of Charges – Peter Pilarinos, 2-3, OPP.0051.0001.0019 @ .0135 – .0136.

- 4.3. six counts of possession of a drug of dependence.⁹
5. On 27 August 2010, Mr Pilarinos was sentenced to a total effective sentence of three years' imprisonment, with a non-parole period of 16 months' imprisonment.¹⁰

The Summary Case

6. The summary case addressed in this case study arose for consideration as part of Stage 4 in the methodology of counsel assisting, which is set out in the Legal Principles Submissions at [67]-[90] and the related Annexure A. As addressed in those sections of the submissions, the process of analysis at Stage 4 was broad and based on the application of limited criteria to identify instances where Ms Gobbo represented a person upon the disposition of their summary case, in circumstances where that person had previously been (or on the date of disposition was) the subject of communications between Ms Gobbo (in her capacity as a human source) and members of Victoria Police.
7. The summary case concerns Mr Pilarinos' conviction before the Melbourne Magistrates' Court on 29 August 2007 in relation to one charge of reckless conduct endangering serious injury.¹¹
8. Mr Pilarinos was sentenced to six months' imprisonment, and his driver's licence was cancelled and disqualified for a period of 12 months.¹²

Ms Gobbo's Legal Representation of Mr Pilarinos

9. Based on the material reviewed, it is clear that Ms Gobbo provided legal representation to Mr Pilarinos regarding various unrelated matters which predated the abovementioned case. The representation provided in relation to those matters included:
 - 9.1. visiting Mr Pilarinos in custody on 5 May 1997, 22 June 1997, 3 July 1997 and 12 September 2004¹³
 - 9.2. appearing on behalf of Mr Pilarinos at various court hearings between June 1999 and March 2007.¹⁴
10. In addition, Ms Gobbo submitted invoices for preparation, conferences and appearances between June 1999 and December 2004.¹⁵ However, it is possible that some of these invoices related to Mr Pilarinos' father (who shares the same name).

⁹ Un-tendered Reasons for Sentence, *R v Peter Adam Pilarinos* [2020] VCC 2033, 2 [1], COR.1026.0001.0011 @ .0002; Un-tendered Presentment no. W0190538.1, *R v Peter Adam Pilarinos*, OPP.0051.0001.0019 @ .0132.

¹⁰ Un-tendered Reasons for Sentence, *DPP v Peter Adam Pilarinos* [2020] VCC 2033, 11 [48], COR.1026.0001.0011 @ .0011; Un-tendered LEAP Criminal History Report, Peter Adam Pilarinos, 4, VPL.0098.0013.0129 @ .0132.

¹¹ Un-tendered LEAP Criminal History Report, Peter Adam Pilarinos, VPL.0098.0013.0129.

¹² Un-tendered LEAP Criminal History Report, Peter Adam Pilarinos, VPL.0098.0013.0129.

¹³ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 23 April 1998, 1, CNS.0001.0003.0037 @ .0053.

¹⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 73, OPP.0001.0004.0025 @ .0097; Exhibit RC1841 Persons represented by Ms Gobbo, 11 July 2002, 19, MCV.0001.0001.0001 @ .0017 -0018.

¹⁵ Exhibit RC1568 fee book 01, 28 September 2005, 8, 9, 11, 12, 14, 15, 16, 55, 83, MIN.5000.7000.0001 @ .0008, .0009, .0011, .0012, .0014, .0015, .0016, .0055, .0083.

11. It is submitted that, based on the following circumstances, it is open for the Commission to infer that Ms Gobbo provided legal representation to Mr Pilarinos in relation to the indictable case between his arrest on 19 July 2007 and his bail application on 30 July 2007:
12. On 19 July 2007, Ms Gobbo told her handler, Mr Fox, that Mr Pilarinos had been arrested and that she 'was trying to sort it out during the OPI break'.¹⁶
13. On 24 July 2007, Ms Gobbo told Mr Fox that she had seen Mr Pilarinos in the morning. She then provided information concerning Mr Pilarinos' court hearing, including the outcome of the hearing, the name of the presiding Magistrate and information concerning the informant. She stated that she 'did not talk to Pilarinos much', suggesting that she appeared in court on behalf of Mr Pilarinos on that date.¹⁷
14. On 30 July 2007, Ms Gobbo appeared on behalf of Mr Pilarinos at the Melbourne Magistrates' Court, for a bail application.¹⁸
15. In addition, on 29 August 2007, Ms Gobbo appeared on behalf of Mr Pilarinos at the Melbourne Magistrates' Court at his sentencing hearing for the summary case.¹⁹

The Conduct of Ms Gobbo as a Human Source in relation to Mr Pilarinos

16. Ms Gobbo provided information to Victoria Police concerning Mr Pilarinos during her representation of him in relation to the indictable case, between at least 19 July 2007 and 27 July 2007. The information provided during that period included:
 17. That Mr Pilarinos had been arrested and remanded in custody;²⁰
 - 17.1. information concerning his court hearings, including the dates of hearings²¹ and outcome of hearings²²
 - 17.2. information concerning the informant²³
 - 17.3. information concerning the circumstances of Mr Pilarinos' arrest, including the fact that a handgun was found in his car,²⁴ and the name of the person whose fingerprints would be on the gun (David Ilic)²⁵

¹⁶ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1030, VPL.2000.0003.2616.

¹⁷ Exhibit RC281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

¹⁸ Exhibit RC1841 Persons represented by Ms Gobbo, 11 July 2002, 20, MCV.0001.0001.0001 @ .0018; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 28 January 2002, 69, OPP.0001.0004.0025 @ .0093.

¹⁹ Exhibit RC1841 Persons represented by Ms Gobbo, 11 July 2002, 20, MCV.0001.0001.0001 @ .0018;

²⁰ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2616.

²¹ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2616.

²² Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

²³ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

²⁴ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2616.

²⁵ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

- 17.4. information concerning a large amount of cash apparently secreted in Mr Pilarinos' car which had not been located by police²⁶
- 17.5. information concerning evidence seized from the scene, the fact that it had been 'spot tested' but that there was no record of it being taken to the Victoria Forensic Science Centre for testing²⁷
- 17.6. the name of Mr Pilarinos' supplier (Mr Shannon)²⁸
- 17.7. that Mr Pilarinos dealt drugs for two known associates (David Ilic and Mr Shannon)²⁹
- 17.8. information concerning a nightclub purchased by Mr Pilarinos.³⁰
18. On 27 July 2007, Ms Gobbo said that a large amount of cash was in Mr Pilarinos' vehicle and apparently not seized by arresting officers. The relevant Informer Contact Report (ICR) entry records that DDI James (Jim) O'Brien was 'adv (by Fox) and will attend to next week'.³¹ The same day, Mr Fox, who was Ms Gobbo's handler, relayed to Mr Sandy White the information supplied by Ms Gobbo. According to Mr Sandy White's diary entries, they discussed the possibility of Ms Gobbo being compromised if her information was passed on, and it was agreed that Mr Fox would make enquiries as to the current location of the vehicle and that they would consider passing on the intelligence if the car was to remain in police custody over the weekend.³²
19. On 29 July 2007, Mr Sandy White discussed the matter with another of Ms Gobbo's handlers, Mr Peter Smith. They spoke about Mr O'Brien having advised Purana of the intelligence, but that rather than Purana be involved in passing on the intelligence, the best course would be for the Officer in Charge of Fitzroy Police to instruct his members to search the vehicle thoroughly on the basis that Mr Pilarinos was known to secrete illicit items in his vehicle.³³
20. On the morning of Mr Pilarinos' bail application on 30 July 2007, it is recorded in an ICR entry that Detective Sergeant Jason Kelly of Purana was to go to Fitzroy police station and speak to the Sergeant to arrange for a further search of Mr Pilarinos' vehicle 'without any connection to Purana'.³⁴ Later that day, an ICR entry indicates that Detective Sergeant Kelly arranged for the search to occur in the coming days.³⁵ It appears that this information was provided, and recorded, by Ms Gobbo's handler, Mr Peter Smith, and it is not suggested that Ms Gobbo had any knowledge of the interactions with Detective Sergeant Kelly.
21. Later that day, Ms Gobbo advised Mr Peter Smith as to the outcome of Mr Pilarinos' bail application and provided further information concerning the cash apparently secreted in Mr Pilarinos' vehicle and the gun seized from the

²⁶ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633; Exhibit RC0281 ICR3838 (093), 27 July 2007, 1073, VPL.2000.0003.2659. The ICR entry notes that DDI O'Brien was 'adv (by Mr Sandy White) and will attend to next week'.

²⁷ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

²⁸ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2616.

²⁹ Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2633.

³⁰ Exhibit RC0281 ICR3838 (092), 26 July 2007, 1069, VPL.2000.0003.2633.

³¹ Exhibit RC0281 ICR3838 (093), 27 July 2007, 1073, VPL.2000.0003.2659.

³² Exhibit RC0429 Diaries of Sandy White, 27 July 2007, VPL.2000.0001.0869 @ .0873.

³³ Exhibit RC0429 Diaries of Sandy White, 29 July 2007, VPL.2000.0001.0869 @ .0873.

■ [REDACTED]
■ [REDACTED]

vehicle.³⁶ She also provided information concerning a proposed plot by Mr Pilarinos' brother to retrieve money secreted in the car. The relevant ICR entry records that Mr Peter Smith immediately relayed this further information to Detective Sergeant Kelly, and that Detective Sergeant Kelly advised the vehicle was 'secured within the confines of Fitzroy police station, manned 24 hrs and not visible from street'.³⁷

22. Ms Gobbo continued to provided information to police concerning Mr Pilarinos (specifically concerning the apparently secreted cash in his vehicle), between 13 August 2007 and 29 August 2007.³⁸

Submissions under Terms of Reference 1 and 2 in relation to Mr Pilarinos

23. It is submitted that it is open to the Commissioner to find that the two cases of Mr Pilarinos may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
24. These submissions should be read in conjunction with the Narrative Submissions, Chapter 15 which contains an account of the conduct of Ms Gobbo and members of Victoria Police in relation to these cases.
25. The extent to which the two cases of Mr Pilarinos may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

26. First, Category 1A³⁹ applies in that, between July 2007 and August 2007,⁴⁰ Ms Gobbo acted for Mr Pilarinos while she was a human source,⁴¹ and did not disclose same to him.⁴²
27. Secondly, Category 1B⁴³ applies in relation to both cases in that, between July 2007 and August 2007, which was before and during the period that Ms Gobbo acted for Mr Pilarinos in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴⁴
28. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴⁵

³⁶ Exhibit RC0281 ICR3838 (093), 30 July 2007, 1074, VPL.2000.0003.2659.

³⁸ Exhibit RC0281 ICR3838 (094), 13 August 2007, 1084, VPL.2000.0003.2662; Exhibit RC0281 ICR3838 (095), 16 August 2007, 1104, VPL.2000.0003.2680; Exhibit RC0281 ICR3838 (097) 29 August 2007, 1169, VPL.2000.0003.2738.

³⁹ See Legal Principles Submissions at [249].

⁴⁰ See above analysis at [11] – [15].

⁴¹ See Legal Principles Submissions at [20].

⁴² See Legal Principles Submissions at [239].

⁴³ See Legal Principles Submissions at [249].

⁴⁴ See above analysis at [16], [18], [21], [22].

⁴⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Further, in certain instances identified above,⁴⁶ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.⁴⁷

29. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

30. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁸
- 30.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Pilarinos;
 - 30.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Pilarinos, appropriate disclosure was made; or alternatively
 - 30.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
31. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [30.1] were taken, and accordingly there was the potential for the right of Mr Pilarinos to a fair trial to have been interfered with.
32. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Pilarinos and/or his legal representatives.
33. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁹
34. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

⁴⁶ See above analysis at [16], [18], [21], [22].

⁴⁷ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁴⁸ See Legal Principles Submissions at [384] and [452]-[457].

⁴⁹ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.⁵⁰

35. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁵¹
36. Category 3A⁵² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
37. Category 3B⁵³ applies in that, before and during the period Ms Gobbo acted for Mr Pilarinos in relation to both cases, she provided information in relation to him to members of Victoria Police,⁵⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
38. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁰ See Legal Principles Submissions at [351], [362]-[373].

⁵¹ See Legal Principles Submissions at [351], [374].

⁵² See Legal Principles Submissions at [465].

⁵³ See Legal Principles Submissions at [465].

⁵⁴ See above analysis at [16], [18], [21], [22].

CASE STUDY: CHRISTOPHER ROSS

The Relevant Case of Mr Ross

1. The one relevant case of Mr Christopher Ross concerns his convictions before the County Court in 2009 for:
 - 1.1. one charge of trafficking in a drug of dependence, namely methylamphetamine; and
 - 1.2. one charge of possessing a drug of dependence, namely cannabis.¹
2. The offending occurred between February 2007 and April 2007.² On 3 April 2007, Mr Ross was arrested upon the execution of a search warrant at his home.³ He was subsequently charged with the offending and committal proceedings were commenced. On 1 December 2008, Mr Ross was committed before the Magistrates' Court by way of straight hand-up brief to stand trial.⁴
3. In short, the prosecution case was that Mr Ross was involved in the manufacture of methylamphetamine in connection with a broader drug syndicate.⁵ It was alleged that one of the clandestine laboratories, used by the syndicate, was operated by Mr Ross from his home in Kilsyth.⁶ Mr Ross was a co-accused to Mr Alan Woodhead, whose case is the subject of a separate part of these submissions.⁷
4. On 12 October 2009, Mr Ross pleaded guilty to the offending before the County Court, and a plea hearing was conducted.⁸ On 23 October 2009, he was sentenced to a total effective sentence of 21 months' imprisonment, 12 months of which was suspended for a period of 12 months.⁹

Ms Gobbo's Legal Representation of Mr Ross

5. Between September 2007 and December 2008, Ms Gobbo acted for Mr Ross in relation to the case during committal proceedings before the Magistrates' Court. Specifically, evidence before the Commission indicates that:

¹ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 51, RCMP1.0119.0001.0006 @.0051; Un-tendered Presentment No. W00855985, *R. v Michael Cabral & Christopher Ross*, 2009, RCMP1.0119.0001.0006 @.0007.

² Un-tendered Presentment No. W00855985, *R v Michael Cabral & Christopher Ross*, 2009, 4, RCMP1.0119.0001.0006 @.0007.

³ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 54 [14] and 56 [22], RCMP1.0119.0001.0006 @.0054, .0056.

⁴ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 56 [24], RCMP1.0119.0001.0006 @.0056.

⁵ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 52 [4], RCMP1.0119.0001.0006 @.0052.

⁶ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 52 [4], 54 [14], 55 [16] – [16] and 63 [58], RCMP1.0119.0001.0006 @.0052, .0054-.0055 and .0063.

⁷ See Case Study of Alan Woodhead, in Volume 3.

⁸ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, RCMP1.0119.0001.0006.

⁹ Un-tendered Reasons for Sentence, *R v Michael Cabral & Christopher Ross*, 23 October 2009, 70 [88], RCMP1.0119.0001.0006 @.0070.

- 5.1. On 29 September 2007, Ms Gobbo marked fees of \$1,000 in the matter of "Police v Christopher Ross" for a "[b]rief to advise & draft Form 8A".¹⁰
- 5.2. On 15 October 2007, Ms Gobbo marked fees of \$1,000 the matter of "Police v Chris Ross" for a "[b]rief to appear at committal mention".¹¹
- 5.3. On 13 June 2008, Ms Gobbo marked fees of \$1,100 in the matter of "Police v Christopher Ross" for a "[b]rief to appear at Melb. Mag Court incl conference".¹²
- 5.4. On 2 September 2008, Ms Gobbo marked fees of \$440 in the matter of "Police v Christopher Ross" for a "[b]rief to appear at special mention on 1. 9.08".¹³
- 5.5. Finally, on 10 December 2008, Ms Gobbo marked fees of \$2,000 in the matter of "Police v Christopher Ross" for a "[b]rief to peruse additional material, confer & draft letter to OPP [Office of Public Prosecutions] incl. preparation for committal".¹⁴

The Conduct of Ms Gobbo as a Human Source in Relation to Mr Ross

6. Mr Ross was the subject of communications between Ms Gobbo (in her capacity as a human source) and Victoria Police during the period that she represented him. The relevant communications and records may be summarised as follows:
 - 6.1. On 12 June 2008, Ms Gobbo reportedly informed her handler, Mr Fox, that the "clients she was dealing with today were; Alan Woodhead & Christopher Ross", and that she "believes that Woodhead, Ross, and Cridland are all Coffin Cheaters who have been cooking amphet for years";¹⁵
 - 6.2. On [REDACTED] 2008, the Informer Contact Reports (ICRs) record that Ms Gobbo conveyed the following information to Mr Peter Smith:¹⁶
[REDACTED]

¹⁰ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 29 September 2007, 9, MIN.5000.7000.0103 @.0111; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 29 September 2007, 41, GMH.0001.0001.0006 @.0041.

¹¹ Exhibit RC11568 Ms Nicola Gobbo fee book 01, 15 October 2007, 12, MIN.5000.7000.0103 @.0112; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 15 October 2007, 30, GMH.0001.0001.0006 @.0030.

¹² Exhibit RC1568 Ms Nicola Gobbo fee book 01, 13 June 2008, 19, MIN.5000.7000.0103 @.0121; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 13 June 2008, 9, GMH.0001.0001.0005 @.0009.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 2 September 2007, 21, MIN.5000.7000.0103 @.0123.

¹⁴ Exhibit RC1568 Ms Nicola Gobbo, fee book 01, 10 December 2008, 27, MIN.5000.7000.0103 @.0129; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 10 December 2008, 4, GMH.0001.0001.0002 @.0004; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 10 December 2008, 11, GMH.0001.0001.0004 @.0011.

¹⁵ Exhibit RC0281 ICR2958 (023), 12 June 2008, 423-424, VPL.2000.0003.2009. Note that the ICR entry states "Action: Not disseminated re ongoing management protocols of source".

- [REDACTED]
- [REDACTED]
- 6.3. Later that same day, Mr Peter Smith made the following further entry in the ICRs: ¹⁷

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
7. As is plain from the foregoing, during this time, she also communicated (in her capacity as a human source) with Victoria Police in relation to a co-accused of Mr Ross, namely Mr Alan Woodhead.¹⁸

Submissions under Terms of Reference 1 and 2 in relation to Mr Ross

8. It is submitted that it is open to the Commissioner to find that the case of Mr Ross may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
9. The extent to which the case of Mr Ross may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

10. First, Category 1A¹⁹ applies in that, between September 2007 and December 2008,²⁰ Ms Gobbo acted for Mr Ross in relation to the cases while she was a human source,²¹ and did not disclose same to him.²²
11. Secondly, Category 1B²³ applies in that, on 12 June 2008²⁴ and 28 November 2008,²⁵ which was during the period that Ms Gobbo acted for Mr Ross in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.
12. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁶

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹ See Legal Principles Submissions at [249].

²⁰ See above analysis at [5] above.

²¹ See Legal Principles Submissions at [20].

²² See Legal Principles Submissions at [239].

²³ See Legal Principles Submissions at [249].

²⁴ See above analysis at [6.1] above.

²⁵ See above analysis at [6.2] above.

²⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Further, on 28 November 2008,²⁷ Ms Gobbo's conduct may have constituted breaches of legal professional privilege and confidence.²⁸

13. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

14. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁹
 - 14.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Ross;
 - 14.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Ross, appropriate disclosure was made; or alternatively
 - 14.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
15. In the circumstances set out in this case study, it is submitted that not all of the necessary steps referred to in sub-paragraph [15.1] were taken, and accordingly there was the potential for the right of Mr Ross to a fair trial to have been interfered with.
16. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Ross and/or his legal representatives.
17. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³⁰
18. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

²⁷ See [6.2] above.

²⁸ See Legal Principles Submissions at [310]-[319] and [301]-[306].

²⁹ See Legal Principles Submissions at [384] and [452]-[457].

³⁰ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.³¹

19. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.³²
20. Category 3A³³ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
21. Category 3B³⁴ applies in that, during the period Ms Gobbo acted for Mr Ross, she provided information in relation to him to members of Victoria Police,³⁵ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
22. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³¹ See Legal Principles Submissions at [351], [362]-[373].

³² See Legal Principles Submissions at [351], [374].

³³ See Legal Principles Submissions at [465].

³⁴ See Legal Principles Submissions at [465].

³⁵ See above at [6].

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT PUBLISHED

CASE STUDY: PETER ROTH

The Relevant Case of Mr Roth

1. The one relevant case of Mr Peter Roth concerns his convictions before the County Court in May 2006.¹
2. On 2 March 2005, Mr Roth was arrested following the interception and search of his vehicle by police, during which various drugs and other items were located.²
3. On 5 May 2006, Mr Roth entered a plea of guilty to:
 - 3.1. six counts of trafficking in a drug of dependence (namely; pseudoephedrine, methylamphetamine, 3,4-Methylenedioxymethamphetamine [MDMA], ketamine, cocaine and lysergic acid diethylamide [LSD]);
 - 3.2. one count of possession of cannabis;
 - 3.3. one count of possession of an unregistered firearm;
 - 3.4. one count of making counterfeit money; and
 - 3.5. one count of possession of counterfeit money.³
4. On 9 May 2006, Mr Roth was sentenced to a total effective sentence of eight years and six months' imprisonment, with a non-parole period of four years' imprisonment.⁴

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Roth

5. Ms Gobbo provided legal representation to Mr Roth between at least January 2004 and May 2006. Based on the material reviewed by Counsel Assisting, it appears that this representation concerned both the abovementioned case and an unrelated matter.
6. The representation provided by Ms Gobbo in the unrelated matter included:

¹ Un-tendered Reasons for sentence, *The Queen v Peter Roth* [2006] VCC –, [16] – [17], RCMP.0127.0001.0009 @ 0073; Un-tendered LEAP criminal history report, Peter Roth, 22 January 2020, VPL.0098.0013.0146 @ .0159.

² Un-tendered Reasons for sentence, *The Queen v Peter Roth* [2006] VCC –, [3], RCMP.0127.0001.0009 @ .0068; Un-tendered Summary of evidence, *The Queen v Peter Roth* [2006] VCC –, 54, RCMP.0127.0001.0009 @ .0059.

³ Un-tendered Reasons for sentence, *The Queen v Peter Roth* [2006] VCC –, [2], RCMP.0127.0001.0009 @ 0068; Un-tendered Presentment no: C0504430.1, *The Queen v Peter Roth*, 2006, RCMP.0127.0001.0009 @0047.

⁴ Un-tendered Reasons for sentence, *The Queen v Peter Roth* [2006] VCC –, [16] – [17], RCMP.0127.0001.0009 @ 0073; Un-tendered Victoria Police Criminal History Report, Peter Roth, 22 January 2020, 14, VPL.0098.0013.0146 @ .0159.

- 6.1. visiting Mr Roth in custody on 28 January 2004 and 26 February 2004⁵
- 6.2. appearing in court on behalf of Mr Roth on the following occasions:
 - 6.2.1. on 22 March 2004, for a committal mention⁶
 - 6.2.2. on 21 April 2004, at the Melbourne Magistrates' Court for a bail application⁷
 - 6.2.3. on 5 October 2004, at the Melbourne Magistrates' Court for a committal hearing⁸
 - 6.2.4. on 11 May 2005, at the County Court for a plea hearing.⁹
7. Although an Informer Contact Report entry suggests that Ms Gobbo represented Mr Roth at a bail application in April 2003,¹⁰ other material before the Commission confirms that this representation in fact occurred in April 2004 and concerned the unrelated matter.¹¹
8. Ms Gobbo visited Mr Roth in custody on one further occasion, 23 March 2005.¹² However, there is insufficient information before the Commission to determine whether this visit concerned the unrelated matter or the abovementioned case.
9. In relation to the abovementioned case, Ms Gobbo appeared in court on behalf of Mr Roth on the following occasions:

⁵ Exhibit RC1360 Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 28 January 2004, 16, CNS.0001.0003.0037 at .0052.

⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 March 2004, 46, OPP.0001.0004.0025 at OPP.0001.0004.0070; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 27 April 2004, 75, MIN.5000.7000.0001 @ .0075; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 28 April 2004, 36, GMH.0001.0001.0013 @ .0036; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 81, GMH.0001.0001.0002 @ .0081.

⁷ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 March 2004, 47, OPP.0001.0004.0025 at OPP.0001.0004.0071; Exhibit RC1841 Magistrates Court of Victoria Records, 21 April 2004, 16, MCV.0001.0001.0001 at .0014; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 27 April 2004, 75, MIN.5000.7000.0001 @ .0075; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 28 April 2004, 36, GMH.0001.0001.0013 @ .0036; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 81, GMH.0001.0001.0002 @ .0081.

⁸ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 March 2004, 47, OPP.0001.0004.0025 at OPP.0001.0004.0071; Exhibit RC1841 Magistrates Court of Victoria Records, 5 October 2004, 17, MCV.0001.0001.0001 at .0015; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 11 October 2004, 82, MIN.5000.7000.0001 @ .0082; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 11 October 2004, 38, GMH.0001.0001.0012 @ .0038; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 70, GMH.0001.0001.0002 @ 0070.

⁹ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 March 2004, 47, OPP.0001.0004.0025 at OPP.0001.0004.0071; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 11 May 2005, 87, MIN.5000.7000.0001 @ .0087; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Tax Invoice, 30 May 2005, 26 GMH.0001.0001.0011 @ .0026.

¹⁰ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

¹¹ Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 264, VPL.0005.0087.0068 @ 0331; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 22 March 2004, 47, OPP.0001.0004.0025 at OPP.0001.0004.0071; Exhibit RC1841 Magistrates Court of Victoria Records, 21 April 2004, 16, MCV.0001.0001.0001 at .0014

¹² Exhibit RC1360 Correctional Services Commissioner Prisoners visited by Ms Nicola Gobbo, 28 January 2004, 16, CNS.0001.0003.0037 at .0052.

- 9.1. on 16 January 2006, for a mention¹³
- 9.2. on 5 May 2006, at the County Court for a plea hearing.¹⁴
10. Material before the Commission suggests that Ms Gobbo may have appeared on behalf of Mr Roth at his sentencing hearing on 9 May 2006, as her name was included in the reasons for sentence on that date.¹⁵
11. Ms Gobbo charged fees for her appearance at the plea hearing.¹⁶ In addition, between April 2004 and June 2006, Ms Gobbo charged fees for preparation, advice, conferences in custody, appearances at other various court hearings and drafting of a Supreme Court affidavit.¹⁷ It is clear that some of these fees concerned the unrelated matter.

The conduct of Ms Gobbo as a human source in relation to Mr Roth

12. Ms Gobbo provided information concerning Mr Roth to Victoria Police prior to her representation of him in the abovementioned case on at least the following two occasions:
 - 12.1. On 6 April 2005, according to an entry in the diary of Mr Mansell, Ms Gobbo contacted Mr Mansell and said that Mr Roth was at Port Phillip prison, that she last spoke to him on 25 March 2005 [REDACTED] [REDACTED]¹⁸ According to Ms Gobbo, this information was relayed at the behest of Mr Roth, as detailed below at [12.2].¹⁹ Mr Mansell's diary records that he attended at Port Phillip prison on 7 April 2005 and spoke to Mr Roth.
 - 12.2. On 1 October 2005, Ms Gobbo told her handlers that she appeared on behalf of Mr Roth in April 2004 for a bail application, and that he had been referred to her for representation by Adam Ahmed.²⁰ She advised

¹³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 January 2006, 57, OPP.0001.0004.0025 at OPP.0001.0004.0081.

¹⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 January 2006, 57, OPP.0001.0004.0025 at OPP.0001.0004.0081; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 May 2006, 95, MIN.5000.7000.0001 @ .0095; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 9 May 2006, 41, GMH.0001.0001.0009 @ .0041; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 48, GMH.0001.0001.0002 @ 0048.

¹⁵ Un-tendered Reasons for sentence, *The Queen v Peter Roth* [2006] VCC –, 67, RCMP.0127.0001.0009 @ .0067.

¹⁶ Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 61, GMH.0001.0001.0002 @ 0061.

¹⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 27 April 2004, 75, MIN.5000.7000.0001 @ .0075; Exhibit RC1568 fee book 01, 11 October 2004, 82, MIN.5000.7000.0001 @ .0082, Exhibit RC1568 Ms Nicola Gobbo fee book 01, 30 June 2006, 98, MIN.5000.7000.0001 @ .0098; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 11 October 2004, 38, GMH.0001.0001.0012 at .0038; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 28 April 2004, 36, GMH.0001.0001.0013 @ .0036; Exhibit RC1569 Meldrum & Hyland Barristers' Clerks Ms Gobbo Statement of Account, 7 March 2019, 44, 70, 81, GMH.0001.0001.0002 @ .0044, .0070, .0081; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Tax Invoice, 9 May 2006, 1, GMH.0001.0001.0009 @ .0001.

¹⁹ Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 265-6, VPL.0005.0087.0068 @ 0332-3.

²⁰ Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 264, VPL.0005.0087.0068 @ 0331; Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

that she had visited Mr Roth in custody and that they had discussed [REDACTED]²¹ She referred to subsequently receiving a text message from a female which she [REDACTED], and as a consequence she spoke to Mr Mansell of Major Drug Investigation Division and said that [REDACTED]²² In addition, Ms Gobbo advised her handlers as to the date of Mr Roth's committal hearing and stated that he owed Adam Ahmed 'hundreds of thousands of dollars'.²³

Submissions under Terms of Reference 1 and 2 in relation to Mr Roth

13. It is submitted that it is open to the Commissioner to find that the case of Mr Roth may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
14. The extent to which the case of Mr Roth may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

15. First, Category 1A²⁴ applies in that, between January 2006 and May 2006,²⁵ Ms Gobbo acted for Mr Roth while she was a human source,²⁶ and did not disclose same to him.²⁷
16. Secondly, Category 1B²⁸ applies in that, in October 2005, which was before the period that Ms Gobbo acted for Mr Roth in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁹ and did not disclose same to him.
17. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.³⁰
18. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo

²¹ Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 264, VPL.0005.0087.0068 @ 0332. Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

²² Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 265-6, VPL.0005.0087.0068 @ 0332-3.

²³ Exhibit RC0282 Transcript of meeting between Peter Smith, Sandy White and Nicola Gobbo, 1 October 2005, 268, VPL.0005.0087.0068 @ 0335; Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1609.

²⁴ See Legal Principles Submissions at [249]

²⁵ See above analysis at [9]-[11].

²⁶ See Legal Principles Submissions at [20]

²⁷ See Legal Principles Submissions at [239]

²⁸ See Legal Principles Submissions at [249].

²⁹ See above analysis at [12.2].

³⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:³¹
 - 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Roth;
 - 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Roth, appropriate disclosure was made; or alternatively
 - 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Roth to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Roth and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.³²
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³³
24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³⁴

³¹ See Legal Principles Submissions at [384] and [452]-[457].

³² See Legal Principles Submissions at [380]-[385].

³³ See Legal Principles Submissions at [351], [362]-[373].

³⁴ See Legal Principles Submissions at [351] and [374].

25. Category 3A³⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
26. Category 3B³⁶ applies in that, in October 2005, which was before the period that Ms Gobbo acted for Mr Roth in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,³⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁵ See Legal Principles Submissions at [465].

³⁶ See Legal Principles Submissions at [465].

³⁷ See above analysis at [12.2].

CASE STUDY: FADI SARKIS

The Relevant Case of Mr Sarkis

1. The one relevant case of Mr Fadi Sarkis concerns his convictions before the County Court in July 2006.¹
2. On 20 September 2003, Mr Sarkis was arrested following the execution of a search warrant at premises in Williamstown.² It was alleged that Mr Sarkis was in possession of items located at the premises, including boxes of stolen tobacco and large amounts of cash which was alleged to be the proceeds of sale.³ Two co-accused were also arrested and charged, namely; Nasser El Haouli and Nafeh El Cheikh.⁴
3. On 19 June 2006, Mr Sarkis was arraigned and entered a plea of not guilty to one count of dishonestly handling stolen goods and four counts of money laundering.⁵
4. A jury was empanelled on 20 June 2006, and returned a verdict on 26 June 2006, finding Mr Sarkis guilty of all counts.⁶
5. A plea hearing was conducted on 30 June 2006.⁷
6. On 5 July 2006, Mr Sarkis was sentenced to a total effective sentence of three years' imprisonment, with 12 months to be served cumulatively with another sentence for which Mr Sarkis was already serving a period of imprisonment, and with a new non-parole period of 18 months' imprisonment with respect of all remaining sentences to be served.⁸
7. The Crown made an application for leave to appeal against sentence, which was dismissed on 21 December 2006.⁹

¹ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [1]–[3], OPP.0095.0001.0036 @.0030; Un-tendered Presentment No. C0404094, *R v Nasser El Haouli & Fadi Sarkis*, 2005, 1, OPP.0095.0001.0036 @.0004.

² Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [5], OPP.0095.0001.0036 @.0030; *DPP v Fadi Sarkis* [2006] VSCA 303, [4].

³ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [6], OPP.0095.0001.0036 @.0030; *DPP v Fadi Sarkis* [2006] VSCA 303, [4].

⁴ The charges against Mr El Cheikh were withdrawn at committal. Following trial, Mr El Haouli was found not guilty of all counts. See Un-tendered Summary of Proceedings, *DPP v Fadi Sarkis*, 21 September 2006, 1-3, OPP.0095.0001.0036 @.0025-.0027.

⁵ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [1]–[3], OPP.0095.0001.0036 @.0030; Un-tendered Presentment No. C0404094, *R v Nasser El Haouli & Fadi Sarkis*, 2005, 1, OPP.0095.0001.0036 @.0004.

⁶ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [3], OPP.0095.0001.0036 @.0030; *DPP v Fadi Sarkis* [2006] VSCA 303, [11].

⁷ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 1 [4], OPP.0095.0001.0036 @.0030.

⁸ Un-tendered *R v Fadi Sarkis* [2006] VCC 850, 8 [53], [54], OPP.0095.0001.0036 @.0037; Un-tendered Victoria Police Criminal History Report, Fred Sarkis, 14 December 2019, VPL.0099.0193.4497; *DPP v Fadi Sarkis* [2006] VSCA 303, [13].

⁹ *DPP v Fadi Sarkis* [2006] VSCA 303, [26]; Un-tendered Victoria Police Criminal History Report, Fred Sarkis, 14 December 2019, VPL.0099.0193.4497.

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Sarkis

8. Based on the material reviewed by Counsel Assisting, it appears that Ms Gobbo commenced providing legal representation to Mr Sarkis regarding the abovementioned case at the time of his arrest on 20 September 2003. During a meeting with her handlers in September 2005, Ms Gobbo referred to the circumstances of Mr Sarkis' arrest and said that he had contacted her at the time of his arrest and advised her that he had been arrested.¹⁰ Over a year later, on 7 December 2004, Ms Gobbo submitted an invoice for fees including for advice provided in a conference with Mr Sarkis on 21 September 2003.¹¹
9. Ms Gobbo appeared in court on behalf of Mr Sarkis in relation to the abovementioned case on the following occasions:
 - 9.1. on 15 October 2004, at the Melbourne Magistrates' Court for a committal mention¹²
 - 9.2. on 2 December 2004, at the Melbourne Magistrates' Court for either a committal mention or a committal hearing¹³
 - 9.3. on 25 May 2005, at the Melbourne Magistrates' Court for a committal hearing.¹⁴
10. Ms Gobbo charged fees for her appearances at the committal mention and committal hearing.¹⁵ In addition, Ms Gobbo charged fees for conferences, perusal of Mr Sarkis' brief, preparation of a memorandum of advice, drafting a Form 8A and drafting a defence reply.¹⁶

¹⁰ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 104, VPL.0005.0076.0004 @.0104; Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602.

¹¹ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 23 December 2004, 2, GMH.0001.0001.0012 @.0002.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 October 2004, 51, OPP.0001.0004.0025 @.0075; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 15 October 2004, 17, MCV.0001.0001.0001 @.0015; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 9 December 2004, 12, GMH.0001.0001.0012 @.0012.

¹³ The OPP database lists this appearance as a committal hearing, however, according to the Summary of Proceedings filed in the Court of Appeal, a committal mention was conducted on this date. See: Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 2 December 2004, 51, OPP.0001.0004.0025 @.0075; Un-tendered Summary of Proceedings, *DPP v Fadi Sarkis*, 21 September 2006, 1 [4], OPP.0095.0001.0036 @.0025.

¹⁴ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 25 May 2005, 51, OPP.0001.0004.0025 @.0075; Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 25 May 2005, 18, MCV.0001.0001.0001 @.0016; Exhibit RC1568 Nicola Gobbo fee book 01, 25 June 2005, 88, MIN.5000.7000.0001 @.0088; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 1 July 2005, 81, GMH.0001.0001.0012 @.0081.

¹⁵ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 23 December 2004, 2, GMH.0001.0001.0012 @.0002; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 9 December 2004, 12, GMH.0001.0001.0012 @.0012.

¹⁶ Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 9 December 2004, 12, GMH.0001.0001.0012 @.0012; Exhibit RC1568 Nicola Gobbo fee book 01, 20 March 2006, 95, MIN.5000.7000.0001 @.0095; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 27 March 2006, 51, GMH.0001.0001.0009 @.0051; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 27 March 2006, 49, GMH.0001.0001.0002 @.0049.

11. Ms Gobbo appeared on behalf of Mr Sarkis at a plea hearing for an unrelated matter at the Melbourne Magistrates' Court on 22 December 2004.¹⁷
12. Ms Gobbo also visited Mr Sarkis in custody on 24 December 2004,¹⁸ however there is insufficient information before the Commission to determine whether that visit related to the abovementioned case or unrelated proceedings.
13. Based on the following circumstances, it is submitted that it is open to the Commissioner to infer that Ms Gobbo continued to provide representation to Mr Sarkis until at least September 2005:
 - 13.1. During a meeting with her handlers on 16 September 2005, Ms Gobbo stated that she was representing Mr Sarkis.¹⁹
 - 13.2. The relevant Informer Contact Report entry concerning a meeting between Ms Gobbo and her handlers on 26 September 2005 also records that Ms Gobbo advised she was representing Mr Sarkis.²⁰
 - 13.3. On 9 March 2006, during a meeting with her handlers, Mr Sandy White and Mr Green, Ms Gobbo stated that she intended to visit Mr Sarkis at the Melbourne Assessment Prison on the weekend, however she referred to him as her 'former client'.²¹ Based on the records provided to the Commission by Corrections Victoria, there is no extraneous record of Ms Gobbo visiting Mr Sarkis in custody around that date.
 - 13.4. On 20 March 2006, Ms Gobbo submitted an invoice for fees in relation to a 'brief to advise, draft defence reply and confer with client'.²² However, there is no information before the Commission as to when Ms Gobbo received the brief and when the work was completed, and it is possible that there was a delay in submission of an invoice by Ms Gobbo in relation to work completed.

¹⁷ Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Nicola Gobbo, 22 December 2004, 17, MCV.0001.0001.0001 @.0015; Exhibit RC1568 Nicola Gobbo Fee Book 01, 22 December 2004, 84, MIN.5000.7000.0001 @.0084; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 9 December 2004, 12, GMH.0001.0001.0012 @.0012.

¹⁸ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 December 2004, 20, CNS.0001.0003.0037 @.0055.

¹⁹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0298 Audio of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, 1:44:26, VPL.2000.0002.4207; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, 92, VPL.0005.0037.0014 @.0105. NB: the transcript of the meeting refers to 'a guy called Bickley, however the audio clearly demonstrates Ms Gobbo stating, 'a guy called Fadi Sarkis'.

²⁰ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602.

²¹ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Green, 9 March 2006, 84-5, VPL.0005.0051.1281 @.1364-.1364.

²² Exhibit RC1568 Nicola Gobbo fee book 01, 20 March 2006, 95, MIN.5000.7000.0001 @.0095; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Tax Invoices, 27 March 2006, 51, GMH.0001.0001.0009 @.0051; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 27 March 2006, 49, GMH.0001.0001.0002 @.0049; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo Statement of Account, 9 December 2004, 67, GMH.0001.0001.0002 @.0067.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Sarkis

14. Ms Gobbo provided information to Victoria Police concerning Mr Sarkis during her representation of him, on at least two occasions in September 2005.²³ The information provided during that period included:
 - 14.1. the fact that she was representing Mr Sarkis²⁴
 - 14.2. the nature of the charges against Mr Sarkis and circumstances of his offending²⁵
 - 14.3. her opinion as to the case against Mr Sarkis, including whether it could be proven that the tobacco was stolen²⁶
 - 14.4. the name of the informant in the matter²⁷
 - 14.5. allegations as to police misconduct involving the stealing of money after Mr Sarkis' arrest²⁸
 - 14.6. the nature and circumstances of other unrelated offending and charges against Mr Sarkis²⁹
 - 14.7. information concerning the payment of Mr Sarkis' legal fees³⁰

²³ Exhibit RC0281 ICR3838 (019), 20 February 2006, 160, VPL.2000.0003.1746; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Green, 9 March 2006, 84-5, VPL.0005.0051.1281 @.1364-.1364.

²⁴ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0298 Audio of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, 1:44:26, VPL.2000.0002.4207. NB: the transcript of the meeting refers to 'a guy called Bickley', however the audio clearly demonstrates Ms Gobbo stating 'a guy called Fadi Sarkis'; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602.

²⁵ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0298 Audio of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, 1:44:26, VPL.2000.0002.4207. NB: the transcript of the meeting refers to 'a guy called Bickley', however the audio clearly demonstrates Ms Gobbo stating 'a guy called Fadi Sarkis'; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0283 Information Report SID273, 30 September 2005, 1, VPL.2000.0003.8403; Exhibit RC0283 Information Report SID274, 30 September 2005, 1, VPL.2000.0003.8405; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, VPL.0005.0076.0004.

²⁶ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 175, VPL.0005.0076.0004 @.0178.

²⁷ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0298 Audio of meeting between Nicola Gobbo, Sandy White and Peter Smith, 16 September 2005, 1:44:26, VPL.2000.0002.4207. NB: the transcript of the meeting refers to 'a guy called Bickley', however the audio clearly demonstrates Ms Gobbo stating 'a guy called Fadi Sarkis'; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602.

²⁸ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0283 Information Report SID273, 30 September 2005, 1, VPL.2000.0003.8403; Exhibit RC0283 Information Report SID274, 30 September 2005, 1, VPL.2000.0003.8405; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 102-105, VPL.0005.0076.0004 @.0105-.0108.

²⁹ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 177, VPL.0005.0076.0004 @.0180.

³⁰ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0283 Information Report SID273, 30 September 2005, 1, VPL.2000.0003.8403; Exhibit RC0283 Information Report SID274, 30 September 2005, 1, VPL.2000.0003.8405; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 102, VPL.0005.0076.0004 @.0105.

- 14.8. information concerning Mr Sarkis' connection with other known associates;³¹
- 14.9. the fact that Mr Sarkis was a runner for Mr Tony Mokbel³²
- 14.10. her opinion that Mr Sarkis knows a lot about Mr Mokbel³³
- 14.11. information concerning a co-accused, Mr El Haouli, including the circumstances of his arrest and the fact that Milad Mokbel wanted Mr El Haouli to 'plea guilty and take the blame for everything, so Sarkis could then walk away'.³⁴
15. Ms Gobbo continued to provide information concerning Mr Sarkis to Victoria Police following her representation of him until at least 18 April 2007.³⁵ The information provided during that period included:
 - 15.1. allegations as to police misconduct involving the stealing of money after Mr Sarkis' arrest,³⁶ and later an indication that Mr Sarkis was 'finally prepared to say something...'³⁷
 - 15.2. information concerning co-accused, Mr El Haouli, including the fact that:
 - 15.2.1. Mr Mokbel 'wants El Haouli to take the blame so the other two can walk'³⁸
 - 15.2.2. Mr Sarkis advised Ms Gobbo that Mr El Haouli was blackmailing him, and that 'El Haouli wants money from Sarkis otherwise he will say that Sarkis put him under duress to plead guilty'³⁹
 - 15.3. the fact a co-accused had been discharged⁴⁰
 - 15.4. information concerning the payment of Mr Sarkis' legal fees⁴¹
 - 15.5. the name of Mr Sarkis' solicitor;⁴²

³¹ Exhibit RC0281 ICR3838 (001), 16 September 2005, 5, VPL.2000.0003.1591; Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602.

³² Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602.

³³ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 185, VPL.0005.0076.0004 @.0188.

³⁴ Exhibit RC0281 ICR3838 (003), 22 September 2005, 15-16, VPL.2000.0003.1601-VPL.2000.0003.1602; Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 26 September 2005, 110, VPL.0005.0076.0004 @.0113.

³⁵ Exhibit RC0281 ICR3838 (023), 21 March 2006, 201, VPL.2000.0003.1787; Exhibit RC0283 Information Report SID544, 27 April 2006, 1, VPL.2000.0003.8650; See, eg, Exhibit RC0281 Transcript of meeting between Nicola Gobbo, Sandy White and Green, 26 April 2006, 54, VPL.0005.0111.0001; Exhibit RC0281 ICR3838 (034), 6 June 2006, 320, VPL.2000.0003.1906; Exhibit RC0281 ICR3838 (036), 26 June 2006, 343, VPL.2000.0003.1929; Exhibit RC0281 ICR3838 (055), 3 December 2006, 571, VPL.2000.0003.2157; Exhibit RC0281 ICR3838 (075), 14 August 2007, 799, VPL.2000.0003.2385.

³⁶ Exhibit RC0281 ICR3838 (006), 19 October 2005, 35, VPL.2000.0003.1621.

³⁷ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Sandy White and Peter Smith, 28 October 2005, 138, VPL.0005.0051.0336 @.0473.

³⁸ Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

³⁹ Exhibit RC0281 ICR3838 (006), 19 October 2005, 35, VPL.2000.0003.1621.

⁴⁰ Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

⁴¹ Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

⁴² Exhibit RC0281 ICR3838 (004), 1 October 2005, 19, VPL.2000.0003.1605.

- 15.6. her opinion that Mr Sarkis 'has access to all the main people in the Mokbel group'⁴³
- 15.7. her opinion that Mr Sarkis 'would be very easy to target' in a covert operative scenario and that 'he would be very susceptible to women'⁴⁴
- 15.8. further misconduct allegedly committed by Mr Sarkis.⁴⁵

Submissions under Terms of Reference 1 and 2 in relation to Mr Sarkis

16. It is submitted that it is open to the Commissioner to find that the case of Mr Sarkis may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
17. The extent to which the case of Mr Sarkis may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

18. First, Category 1A⁴⁶ applies in that, between September 2003 and September 2005,⁴⁷ Ms Gobbo acted for Mr Sarkis while she was a human source,⁴⁸ and did not disclose same to him.⁴⁹
19. Secondly, Category 1B⁵⁰ applies in that, in September 2005, which was during the period that Ms Gobbo acted for Mr Sarkis in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁵¹
20. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵²
21. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁴³ Exhibit RC0281 ICR3838 (017), 7 February 2006, 145, VPL.2000.0003.1731.

⁴⁴ Exhibit RC0281 ICR3838 (017), 7 February 2006, 145, VPL.2000.0003.1731.

⁴⁵ Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766.

⁴⁶ See Legal Principles Submissions at [249].

⁴⁷ See above analysis at [8]-[10], [13].

⁴⁸ See Legal Principles Submissions at [20].

⁴⁹ See Legal Principles Submissions at [239].

⁵⁰ See Legal Principles Submissions at [249].

⁵¹ See above analysis at [14].

⁵² See Legal Principles Submissions at [320]-[329] and [307]-[309].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

22. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵³
 - 22.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sarkis;
 - 22.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sarkis, appropriate disclosure was made; or alternatively
 - 22.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Officer (VGSO) and then possibly a court.
23. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [22.1] were taken, and accordingly there was the potential for the right of Mr Sarkis to a fair trial to have been interfered with.
24. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sarkis and/or his legal representatives.
25. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁴
26. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁵
27. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁵⁶
28. Category 3A⁵⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁵³ See Legal Principles Submissions at [384] and [452]-[457].

⁵⁴ See Legal Principles Submissions at [380]-[385].

⁵⁵ See Legal Principles Submissions at [351], [362]-[373].

⁵⁶ See Legal Principles Submissions at [351], [374].

⁵⁷ See Legal Principles Submissions at [465].

29. Category 3B⁵⁸ applies in that, in September 2005, which was during the period that Ms Gobbo acted for Mr Sarkis in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
30. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁸ See Legal Principles Submissions at [465].

⁵⁹ See above analysis at [14].

CASE STUDY: MR SATURN (A PSEUDONYM)

The Relevant Case of Mr Saturn

1. The one relevant case concerning Mr Saturn arose from Operation █████ and comprised one charge of trafficking in a large commercial quantity of methylamphetamine, between █████ 2006 and █████ 2007 (the █████ Case).¹
2. The offending in the █████ Case represented Mr Saturn's part in an illicit drug trafficking enterprise, involving the sourcing of chemicals for use in the manufacture of methamphetamine.² Mr Saturn was said to have played the role █████
█████. Others involved in the enterprise included █████
█████.⁴
3. On █████ 2007, Mr Saturn was arrested and charged with a █████ offence relating to the █████ of pre-cursor chemicals.⁵ The investigation into that matter fell under a related operation █████, named Operation █████.⁶ Although that charge was later discontinued,⁷ it appears to have given impetus to Mr Saturn's subsequent decision to assist police.
4. On █████ 2007, Mr Saturn began to assist police by providing his account of events concerning the drug manufacturing enterprise.⁸ Ultimately, on █████ 2007, he participated in a record of interview and made a statement about the enterprise, in which he implicated █████ and others.⁹

¹ Un-tendered Particulars of Offence, *R v Mr Saturn*, 2008, 1, OPP.0047.0001.0002 @0003; Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 1 [2], OPP.0047.0001.0002 @0011; Un-tendered *R v █████*, County Court of Victoria, █████ 2008, OPP.0004.0002.3425 [Restricted].

² Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 1-2 [3], OPP.0047.0001.0002 @.0011-.0012.

³ Un-tendered *R v █████*, County Court of Victoria, █████ 2008, [6], OPP.0004.0002.3425 [Restricted].

⁴ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 1-2 [3], OPP.0047.0001.0002 @.0011-.0012.

⁵ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 8 [33], OPP.0047.0001.0002 @0018.

⁶ Un-tendered Summary of Prosecution Opening, *R v █████*, █████, undated, 64 [233], RCMP.0095.0001.0001 @.0124.

⁷ Un-tendered Victoria Police Criminal History Report, Mr Saturn,, █████ 2008, 2, VPL.0099.0193.4517 @4518.

⁸ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 9 [38], OPP.0047.0001.0002 @.0019; Transcript of Mr James (Jim) O'Brien, 10 September 2019, 5982-5983, RCMP.0159.0001.0015 [Restricted].

⁹ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, █████ 2008, 9 [38], OPP.0047.0001.0002 @.0019; Un-tendered Operation █████, Record of Interview, █████ 2007, VPL.0216.0004.0893.

5. On [REDACTED] 2007, Mr Saturn was charged with the offending in the [REDACTED] Case.¹⁰ He pleaded guilty at the earliest opportunity.¹¹ The prosecution case relied upon the evidence of Mr Cooper¹² [REDACTED] among others.¹³ In addition, notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Graham Evans, Mr Jason Kelly, Mr Craig Hayes, and Mr Dale Flynn.¹⁴
6. On [REDACTED]. Mr Saturn was sentenced in the County Court to [REDACTED] years' imprisonment, which was [REDACTED].¹⁵ As part of the sentencing process, Mr Saturn received a discount for undertaking to assist law enforcement authorities and give evidence in any relevant subsequent proceedings.¹⁶

Whether Ms Gobbo Acted as Mr Saturn's lawyer

7. There is no evidence before the Commission to suggest that Ms Gobbo acted as a legal representative for Mr Saturn during the relevant period.
8. It is noted, however, that in a submission to the Commission¹⁷ an assertion is made that Ms Gobbo advised Mr Saturn in relation to his decision to assist and co-operate with police. That submission asserts as follows:

[REDACTED]

9. However, it is submitted by Counsel Assisting that, given the hearsay character of that assertion together with the fact that it is not supported by any other evidence before the Commission, there is an insufficient basis to accept the assertion. Therefore, the analysis below proceeds on the basis that Ms Gobbo did *not* provide any legal representation to Mr Saturn in relation to the case.

¹⁰ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, [REDACTED] 2008, 8 [34], OPP.0047.0001.0002 @.0018.

¹¹ Un-tendered *R v [REDACTED]*, County Court of Victoria, [REDACTED] 2008, [13], OPP.0004.0002.3425 [Restricted].

¹² Un-tendered Presentment No. W01975178, *R v Mr Saturn*, 2008, 1, OPP.0047.0001.0002 @.0008. (the reference to "A person known to the Director of Public Prosecutions" is taken as a reference to Mr Cooper); Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 25 February 2020, OPP.0094.0001.0001 @.0002; Transcript of [REDACTED] Transcript of [REDACTED]

¹³ Un-tendered Presentment No. W01975178, *R v Mr Saturn*, 2008, 1, OPP.0047.0001.0002 @.0008.

¹⁴ The involvement of these members in the investigation and proceedings can be inferred from their presence as witnesses on the presentment [REDACTED]. Note also that Mr Flynn was present at Mr Saturn's record of interview on [REDACTED] 2007: Un-tendered Operation [REDACTED], Record of Interview, [REDACTED] 2007, VPL.0216.0004.0893.

¹⁵ Un-tendered *R v [REDACTED]*, County Court of Victoria, [REDACTED] 2008, [17], OPP.0004.0002.3425 [Restricted].

¹⁶ Un-tendered *R v [REDACTED]*, County Court of Victoria, [REDACTED] 2008, [17], OPP.0004.0002.3425 [Restricted]; Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, [REDACTED] 2008, 9 [38], OPP.0047.0001.0002 @0019.

¹⁷ [REDACTED]

The Conduct of Ms Gobbo as a Human Source in relation to Mr Saturn

10. Although Ms Gobbo did not have a professional relationship with Mr Saturn during her period as a human source, he did occasionally feature in her communications with Victoria Police.

Prior to first arrest (██████████ 2007)

11. Mr Saturn was first referenced in communications between Ms Gobbo and her handlers on 10 April 2006, when, according to the Informer Contact Reports (ICRs), she informed them that ██████████ had “mentioned a Mr Saturn”, who it was suggested “could possibly be a person minding ██████████ Lab.”¹⁸ At that time, Ms Gobbo told police that she had “never heard of Mr Saturn”.¹⁹ The ICRs note that the police were also “unable to ID” him at that time.²⁰
12. Thereafter, between April 2006 and March 2007, Mr Saturn continued to feature in discussions between Ms Gobbo and her handlers.²¹ The following communications during that period are of particular note:
 - 12.1. On ████████ April 2006, Ms Gobbo reported to her handlers that, according to ██████████, “a ‘Mr Saturn’ [had] turned up at his home and demanded ██████████”.²² The demand appears to have been made in relation to a debt allegedly owed by ██████████. The ICRs record that the relevance of ‘Mr Saturn’ was not known to Victoria Police at that time.²³
 - 12.2. On 1 May 2006, Ms Gobbo assisted police in identifying Mr Saturn.²⁴ The ICRs record: “HS [human source] has looked up an old brief and identified Mr Saturn as Mr SATURN ██████████, of ██████████.”²⁵ According to the ICR entry, this information was passed onto Mr James (Jim) O’Brien.²⁶
 - 12.3. On 30 May 2006, Ms Gobbo informed police of the details of telephone calls she had had with Mr Saturn in relation to his alleged debt with Mr

¹⁸ Exhibit RC0281, ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817.

¹⁹ Exhibit RC0281, ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817.

²⁰ Exhibit RC0281, ICR3838 (025), 10 April 2006, 231, VPL.2000.0003.1817.

²¹ Exhibit RC0281, ICR3838 (031), 5 May 2006, 287, VPL.2000.0003.1873; Exhibit RC0499 Transcript of meeting between Nicola Gobbo, Sandy White, Peter Smith and Green, 5 May 2006, 55 VPL.0005.0087.0397 @.0451; Exhibit RC0281, ICR3838 (031), 8 May 2006, 291, VPL.2000.0003.1877; Exhibit RC0281, ICR3838 (033) 30 May 06, 312, VPL.2000.0003.1898; Exhibit RC0281, ICR3838 (033) 31 May 06, 313, VPL.2000.0003.1899; Exhibit RC0281, ICR3838 (034) 9 June 2006, 323, VPL.2000.0003.1909; Exhibit RC0569 Transcript of conversation between Nicola Gobbo, Green and Peter Smith, 9 June 2006, 143-144, VPL.0005.0104.0260 @ .0402-.0403; Exhibit RC0281, ICR3838 (035), 12 June 2006, 328, VPL.2000.0003.1914; Exhibit RC0281, ICR3838 (042), 25 August 2006, 405; Exhibit RC0281, ICR3838 (044), 03 September 2006, 415, VPL.2000.0003.1991; Exhibit RC0281, ICR3838 (049), 15 October 2006, 487-488, VPL.2000.0003.2073-.2074; Exhibit RC0281, ICR3838 (051), 30 October 2006, 531-532, VPL.2000.0003.2117-.2118; Exhibit RC0281, ICR3838 (057), 12 December 2006, 583, VPL.2000.0003.2169; Exhibit RC0281, ICR3838 (069), 5 March 2007, 672-673, VPL.2000.0003.2258-.2259.

²² Exhibit RC0281, ICR3838 (030), 28 April 2006, 275, VPL.2000.0003.1861.

²³ Exhibit RC0281, ICR3838 (030), 28 April 2006, 275, VPL.2000.0003.1861.

²⁴ Exhibit RC0281, ICR3838 (030), 1 May 2006, 278, VPL.2000.0003.1864.

²⁵ Exhibit RC0281, ICR3838 (030), 1 May 2006, 278, VPL.2000.0003.1864.

²⁶ Exhibit RC0281, ICR3838 (030), 1 May 2006, 278, VPL.2000.0003.1864.

██████████.²⁷ She also provided police with Mr Saturn's phone number.²⁸ That information was then published in an Information Report, with a note that Mr O'Brien of Purana Taskforce had been "advised verbally".²⁹

- 12.4. On 12 June 2006, Ms Gobbo advised police that ██████████ was "keen to set up Mr Saturn".³⁰
- 12.5. On 15 October 2006, she told police that Mr Saturn had "previously ██████████ to ██████████".³¹
- 12.6. On 30 October 2006, Ms Gobbo met with her handlers for the purpose of allowing her to peruse briefs of evidence against a number of persons, in relation to Operation Posse.³² During the meeting, having perused the briefs, Ms Gobbo advised police on the state of the brief of evidence against ██████████, and commented that "Mr Saturn", among others, was "still to be charged".³³ She advised police that he was "clearly identified ... will be able to argue re bail that they knew and did not flee jurisdiction".³⁴

Between First Arrest (██████████ 2007) and Charge in the ██████████ Case (██████████ 2007)

13. Ms Gobbo and her handlers continued to discuss Mr Saturn following his first arrest on ██████████ 2007.³⁵ In particular, on ██████████ 2007, the ICRs record: "3838 nominated MR SATURN as a possible target ██████████".³⁶ It is unclear whether the ██████████ related to ██████████ ██████████, or ██████████ to assist investigators and become a witness for the prosecution. In any event, as noted above, on ██████████ 2007, Mr Saturn commenced assisting police.³⁷

Between Charge for the ██████████ Case (██████████ 2007) and Sentence ██████████ 2008)

14. The communications in relation to Mr Saturn continued in the period between his charge and sentence.³⁸ Ms Gobbo and the Source Development Unit

²⁷ Exhibit RC0281, ICR3838 (033) 30 May 06, 312, VPL.2000.0003.1898; Exhibit RC0281, ICR3838 (033) 31 May 06, 313, VPL.2000.0003.1899; Transcript of Inspector Dale Flynn, 2 October 2019, 7013, TRN.2019.10.02.01; Transcript of Inspector Dale Flynn, 3 October 2019, 7190-7193, TRN.2019.10.03.01.

²⁸ Exhibit RC0281, ICR3838 (033). 30 May 06, 312, VPL.2000.0003.1898.

²⁹ Exhibit RC0283, Victoria Police Information Report IRSID734, 30 May 2006, 1, VPL.2000.0003.8714 @.8714.

³⁰ Exhibit RC0281, ICR3838 (035), 12 June 2006, 328, VPL.2000.0003.1914.

³¹ Exhibit RC0281, ICR3838 (049), 15 October 2006, 487-488, VPL.2000.0003.2073-.2074.

³² Exhibit RC0281, ICR3838 (051), 30 October 2006, 528, VPL.2000.0003.2114; Transcript of Inspector Dale Flynn, 2 October 2019, 7089-7090, TRN.2019.10.02.01.

³³ Exhibit RC0281, ICR3838 (051), 30 October 2006, 531-532, VPL.2000.0003.2117-.2118; Transcript of Inspector Dale Flynn, 2 October 2019, 7091, TRN.2019.10.02.01.

³⁴ Exhibit RC0281, ICR3838 (051), 30 October 2006, 533, VPL.2000.0003.2119.

³⁵ Exhibit RC0281, ICR3838 (073), 7 April 2007, 771, VPL.2000.0003.2357; Exhibit RC0281, ICR3838 (073), 7 April 2007, 772, VPL.2000.0003.2358; Exhibit RC0281, ICR3838 (074), 10 April 2007, 776, VPL.2000.0003.2362; Exhibit RC0281, ICR3838 (074), 10 April 2007, 778-779, VPL.2000.0003.2364-2365; Exhibit RC0281, ICR3838 (075), 15 April 2007, 789-790, VPL.2000.0003.2375-.2376; Exhibit RC0281, ICR3838 (076), 22 April 2007, 806, VPL.2000.0003.2392; Exhibit RC0281, ICR3838 (077), 29 April 2007, 817, VPL.2000.0003.2403.

³⁶ Exhibit RC0281, ICR3838 (074), 14 April 2007, 788, VPL.2000.0003.2374.

³⁷ Un-tendered Summary of the Crown Opening, *R v Mr Saturn*, ██████████ 2008, 9 [38], OPP.0047.0001.0002 @.0019.

³⁸ Exhibit RC0281, ICR3838 (097), 29 August 2007, 1166, VPL.2000.0003.2752; Exhibit RC0281, ICR3838 (099), 9 September 2007, 1204, VPL.2000.0003.2790; Exhibit RC0281, ICR3838 (101), 19

continued to discuss Mr Saturn following his first arrest.³⁹ In particular, on 29 August 2007, Ms Gobbo informed police that other alleged criminals were aware that Mr Saturn had “rolled”, and that Mr Saturn’s solicitor had also told Ms Gobbo that he had assisted police.⁴⁰ Ms Gobbo’s handler, Mr Fox, said he would pass this information on to Mr Gavan Ryan of Purana Taskforce.⁴¹ Mr Ryan’s diary contains an entry the next morning of a conversation with Mr Fox, however the entry provided to the Commission is redacted for public interest immunity.

Upon and after Sentence (██████████ 2008)

15. Following Mr Saturn’s sentence, he continued to be the subject of communications between Ms Gobbo and her handlers up to 2 December 2008.⁴²

Relevant Conduct in relation to Mr Cooper

16. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Saturn’s matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
 - 16.1. the discovery of the offending the subject of Operation Posse;
 - 16.2. Mr Cooper being arrested in Operation Posse;
 - 16.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 16.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Saturn (among others).
17. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Saturn, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Saturn may have been deprived of any opportunity to object to the admissibility of this evidence.

September 2007, 1234-1235, VPL.2000.0003.2820-.2821; Exhibit RC0281 ICR2958 (006), 26 February 2008, 65-66, VPL.2000.0003.0805-.0806.

³⁹ Exhibit RC0281, ICR3838 (073), 7 April 2007, 771, VPL.2000.0003.2357; Exhibit RC0281, ICR3838 (073), 7 April 2007, 772, VPL.2000.0003.2358; Exhibit RC0281, ICR3838 (074), 10 April 2007, 776, VPL.2000.0003.2362; Exhibit RC0281, ICR3838 (075), 15 April 2007, 789-790, VPL.2000.0003.2375-.2376; Exhibit RC0281, ICR3838 (076), 22 April 2007, 806, VPL.2000.0003.2392; Exhibit RC0281, ICR3838 (077), 29 April 2007, 817, VPL.2000.0003.2403.

⁴⁰ Exhibit RC0281, ICR3838 (097), 29 August 2007, 1166, VPL.2000.0003.2752.

⁴¹ Exhibit RC0281, ICR3838 (097), 29 August 2007, 1166, VPL.2000.0003.2752.

⁴² Exhibit RC0281, ICR 2958 (027), 08 July 2008, 483, VPL.2000.0003.1223; Exhibit RC0281, ICR 2958 (030), 31 July 2008, 523, VPL.2000.0003.1263; Exhibit RC0281, ICR 2958 (047), 28 November 2008, 719, VPL.2000.0003.1459; Exhibit RC0281, ICR 2958 (047), 2 December 2008, 748, VPL.2000.0003.1488.

Submissions under Terms of Reference 1 and 2 in relation to Mr Saturn

18. It is submitted that it is open to the Commissioner to find that the case of Mr Saturn may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
19. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
20. The extent to which the case of Mr Saturn may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

21. Category 2A⁴³ applies in that evidence relied upon by the prosecution in the case against Mr Saturn, namely the evidence of Mr Cooper,⁴⁴ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴⁵
22. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic) is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁴⁶ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁴⁷
23. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

24. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁸
 - 24.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Saturn;

⁴³ See Legal Principles Submissions at [249].

⁴⁴ See [5] and [1664.5]-[17] above.

⁴⁵ See Legal Principles Submissions at [196]-[222].

⁴⁶ See Legal Principles Submissions at [210].

⁴⁷ See Legal Principles Submissions at [212]-[213].

⁴⁸ See Legal Principles Submissions at [384] and [452]-[457].

- 24.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Saturn, appropriate disclosure was made; or alternatively
- 24.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
25. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [24.1] were taken, and accordingly there was the potential for the right of Mr Saturn to a fair trial to have been interfered with.
26. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Saturn and/or his legal representatives.
27. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁹
28. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁰
29. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁵¹
30. Category 4A⁵² applies in that, as noted above at [21], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
31. Category 4B⁵³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
32. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁹ See Legal Principles Submissions at [380]-[385].

⁵⁰ See Legal Principles Submissions at [351], [362]-[373].

⁵¹ See Legal Principles Submissions at [351], [374].

⁵² See Legal Principles Submissions at [465].

⁵³ See Legal Principles Submissions at [465].

CASE STUDY: MR SNYDER (A PSEUDONYM)

The Relevant Case of Mr Snyder

1. The one relevant case concerning Mr Snyder arose from Operation ██████ and comprised one charge of trafficking in a large commercial quantity of methylamphetamine between ██████ 2006 and ██████ 2007 (the ██████ Case).¹
2. The ██████ Case was heard and determined before the County Court, in ██████ 2008, alongside an additional and related matter in which Mr Snyder was convicted arising from Operation ██████.² That matter involved one count of ██████ a commercial quantity of ██████, on ██████ 2007, believing that another person intended to use it to manufacture a controlled drug.³
3. The two cases shared a related factual background,⁴ which may be summarised as follows:⁵
 - 3.1. During the relevant period, Mr Snyder was the ██████.
 - 3.2. Between ██████ 2006 and ██████ 2007, Mr Snyder provided chemicals to ██████ respectively, at different times, to enable them to manufacture drugs of dependence. Mr Snyder knew that the chemicals he supplied to ██████ were destined for that purpose. This aspect of Mr Snyder's conduct was the subject of the ██████ Case.
 - 3.3. As part of, and to facilitate, this enterprise, on or about ██████ 2007, Mr Snyder ██████ a large commercial quantity of ██████ from ██████. This aspect of Mr Snyder's conduct was the subject of the Operation ██████ matter.

¹ Un-tendered Particulars of Offence, *R v Mr Snyder*, 2008, 1, OPP.0047.0001.0003 @.0003; Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 2 [1]-[2], OPP.0047.0001.0003 @.0028; *Mr Snyder v The Queen* ██████] VSCA 287; 206 A Crim R 1, [1].

² Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 2 [1]-[2], OPP.0047.0001.0003 @.0028.

³ Un-tendered ██████ Indictment, *R v Mr Snyder*, undated, 1, OPP.0047.0001.0003 at .0007; Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 2 [5]-[6], OPP.0047.0001.0003 @.0028; *Mr Snyder v The Queen* ██████] VSCA 287; 206 A Crim R 1, [1].

⁴ Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, Judge ██████ 2008)*, 3 [13]- 11[43], OPP.0047.0001.0003 @.0029-.0037; *Mr Snyder v The Queen* ██████] VSCA 287; 206 A Crim R 1, [4]-[14].

⁵ *Mr Snyder v The Queen* ██████] VSCA 287; 206 A Crim R 1, [4]-[10].

4. On ██████ 2007, Mr Snyder was arrested and charged for the offending in relation to Operation ██████.⁶ He participated in an interview with the ██████ and made admissions to the offending.⁷
5. On ██████ 2007, Mr Snyder was interviewed by Victoria Police in relation to the Tool Case and made admissions to the offending.⁸ On that day, he assisted police by making a sworn statement.⁹ He also indicated his intention to plead guilty and his willingness to give evidence against his co-offenders.¹⁰
6. The prosecution case in the Tool Case included reliance upon the evidence of Mr Cooper¹¹ and ██████.¹² In addition, notable members of police involved in the prosecution as police witnesses included Mr Paul Rowe, Mr Graham Evans, Mr Jason Kelly, Mr Craig Hayes, and Mr Dale Flynn.¹³
7. Notably, Mr Cooper was not named as a witness on the indictment in the Operation ██████ matter.¹⁴ As will become clear below, that is significant as it is the presence of Mr Cooper on the indictment in the ██████ Case which founds the submission that that case may have been affected.
8. On ██████ 2008, Mr Snyder was sentenced in the County Court for both cases together.¹⁵ As part of the plea hearing, Mr Snyder undertook to co-operate with the authorities and give evidence in subsequent proceedings.¹⁶ For the offending in the ██████ Case, Mr Snyder was sentenced to ██████ years' imprisonment, with a non-parole period of ██████ years. For the offending in relation to the Operation ██████ Case, he was sentenced to ██████ years' imprisonment, with a non-parole period of ██████ years. The total effective sentence was ██████ years' imprisonment, with a minimum term of ██████ years' imprisonment.¹⁷

⁶ *Mr Snyder v The Queen* ██████ VSCA 287; 206 A Crim R 1, [9]; Un-tendered Outline of Crown Case, *R v Mr Snyder*, undated, 3 [14], OPP.0047.0001.0003 @.0014.

⁷ Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 10 - 11[42], OPP.0047.0001.0003 @.0036-.0037; Un-tendered Summary of Facts, *R v Mr Snyder*, undated, 4 [21], OPP.0047.0001.0003 @.0025.

⁸ Un-tendered Outline of Crown Case, *R v Mr Snyder*, undated, 3 [15], OPP.0047.0001.0003 at .0014; Un-tendered

Plea Opening, *R v Mr Snyder*, undated, 4 [16], OPP.0047.0001.0003 @.0019).

⁹ Un-tendered Plea Opening, *R v Mr Snyder*, undated, 5 [20], OPP.0047.0001.0003 @.0020; Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 7 - 8 [35], 12[48], OPP.0047.0001.0003 @.0033-.0034, .0038.

¹⁰ Un-tendered Plea Opening, *R v Mr Snyder*, undated, 5 [20], OPP.0047.0001.0003 @.0020; Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 7 - 8 [35], 12[48], OPP.0047.0001.0003 @.0033-.0034, .0038.

¹¹ Un-tendered Presentment No. W01375462, *R v Mr Snyder*, 2008, 1, OPP.0047.0001.0003 @.0006; Un-tendered Office of Public Prosecutions Victoria, Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, OPP.0056.0001.0001 @.0002.

¹² Un-tendered Presentment No. W01375462, *R v Mr Snyder*, 2008, 1, OPP.0047.0001.0003 @.0006.

¹³ ██████

¹⁴ Un-tendered Particulars of Offence, 2008, 1-3, OPP.0047.0001.0003 @.0003-0005.

¹⁵ Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, OPP.0047.0001.0003 @.0027-.0059.

¹⁶ Un-tendered Reasons for sentence, *R v Mr Snyder (County Court of Victoria, ██████ 2008)*, 17 [62] -22 [79], OPP.0047.0001.0003 @.0043-.0048; *Mr Snyder v The Queen* ██████ VSCA 287 [26]-[37].

¹⁷ *Mr Snyder v The Queen* ██████ VSCA 287, [2].

9. In [REDACTED], Mr Snyder brought a successful appeal against the sentence in the Court of Appeal.¹⁸ The grounds of appeal did not concern Ms Gobbo.¹⁹ On [REDACTED] [REDACTED], in allowing the appeal, the Court of Appeal re-sentenced Mr Snyder to a term of [REDACTED] years with a minimum term of [REDACTED] years in the [REDACTED] Case, and [REDACTED] years with a minimum term of [REDACTED] years in the [REDACTED] Case.²⁰ The total effective sentence was [REDACTED] years' imprisonment, with a non-parole period of [REDACTED] years.²¹

Whether Ms Gobbo Acted as Mr Snyder's Lawyer

10. There is no evidence before the Commission to suggest that Ms Gobbo acted as a legal representative for Mr Snyder during the relevant period.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Snyder

11. While Mr Snyder did not feature in any significant communications between Ms Gobbo and Victoria Police,²² the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Cooper is also relevant to an assessment of Mr Snyder's matter. As set out in the Narrative Submissions at Chapter 11, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Cooper may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led to, inter alia:
- 11.1. the discovery of the offending the subject of Operation Posse;
 - 11.2. Mr Cooper being arrested in Operation Posse;
 - 11.3. Mr Cooper deciding to agree to co-operate with and assist the authorities, including by making statements implicating others and undertaking to give evidence in subsequent prosecutions; and (it follows)
 - 11.4. the evidence of Mr Cooper being relied upon in the prosecution of Mr Snyder (among others).
12. As noted below, on this basis, it may be argued that the evidence of Mr Cooper, relied upon in the prosecution of Mr Snyder, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Snyder may have been deprived of any opportunity to object to the admissibility of this evidence.

Submissions under Terms of Reference 1 and 2 in relation to Mr Snyder

13. It is submitted that it is open to the Commissioner to find that the case of Mr Snyder may have been affected by the conduct of Ms Gobbo as a human

¹⁸ See *Mr Snyder v The Queen* [REDACTED] VSCA 287; 206 A Crim R 1.

¹⁹ Cf. *Mr Snyder v The Queen* [REDACTED] VSCA 287; 206 A Crim R 1, [15], [19], [26], [38].

²⁰ *Mr Snyder v The Queen* [REDACTED] VSCA 287; 206 A Crim R 1, [56].

²¹ *Mr Snyder v The Queen* [REDACTED] VSCA 287; 206 A Crim R 1, [56].

[REDACTED]
[REDACTED]
[REDACTED]

source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

14. This case is linked to the cases of Mr Cooper and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 11.
15. The extent to which the case of Mr Snyder may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

16. Category 2A²³ applies in that evidence relied upon by the prosecution in the case against Mr Snyder, namely the evidence of Mr Cooper,²⁴ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.²⁵
17. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic) is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,²⁶ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.²⁷
18. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

19. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁸
 - 19.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Snyder;
 - 19.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Snyder, appropriate disclosure was made; or alternatively
 - 19.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of

²³ See Legal Principles Submissions at [249].

²⁴ See [6] and [11]-[1265.3.3] above.

²⁵ See Legal Principles Submissions at [196]-[222].

²⁶ See Legal Principles Submissions at [210].

²⁷ See Legal Principles Submissions at [212]-[213].

²⁸ See Legal Principles Submissions at [384] and [452]-[457].

Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.

20. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [19.1] were taken, and accordingly there was the potential for the right of Mr Snyder to a fair trial to have been interfered with.
21. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Snyder and/or his legal representatives.
22. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁹
23. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁰
24. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³¹
25. Category 4A³² applies in that, as noted above at [16], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
26. Category 4B³³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
27. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁹ See Legal Principles Submissions at [380]-[385].

³⁰ See Legal Principles Submissions at [351], [362]-[373].

³¹ See Legal Principles Submissions at [351], [374].

³² See Legal Principles Submissions at [465].

³³ See Legal Principles Submissions at [465].

CASE STUDY: MR SHANNON (A PSEUDONYM)

The Relevant Case of Mr Shannon

1. The one relevant case of Mr Shannon concerns his convictions before the County Court in November 2008.¹
2. On 27 February 2007, pursuant to police surveillance, Mr Shannon was arrested and searched.² As a result of the search, police seized a sum of cash as money suspected of being the proceeds of drug trafficking.³ Search warrants were subsequently executed at two rooms linked to Mr Shannon, locating a traffickable quantity of methylamphetamine, digital scales and other accoutrements of drug trafficking.⁴
3. On 28 February 2007, Mr Shannon was interviewed and charged with drug trafficking related offences.⁵
4. On 23 August 2007, Mr Shannon was committed to stand trial and indicated an intention to plead guilty.⁶
5. On 7 April 2008, Mr Shannon was arraigned and entered a plea of guilty to:
 - 5.1. one count of trafficking in methylamphetamine;
 - 5.2. two counts of possession of methylamphetamine; and
 - 5.3. five summary charges of dealing with property suspected of being the proceeds of crime.⁷
6. A plea hearing was adjourned due to funding issues, and eventually conducted on 28 October 2008.⁸

¹ Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 5, OPP.0048.0001.0013 @.0081; Un-tendered Victoria Police Criminal History Report, Mr Shannon, 16, VPL.0099.0193.4727 @.4742.

² Un-tendered Crown Opening, *R v Mr Shannon*, 27 October 2009, 3 [8], OPP.0048.0001.0013@.0070.

³ Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 2 [4], OPP.0048.0001.0013 @.0078.

⁴ Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 2 [5] – 3 [8], OPP.0048.0001.0013 @.0078-.0079; *R v Mr Shannon*, [2009] VSCA 185, [4].

⁵ Un-tendered Summary of proceedings for the Court of Appeal, *R v Mr Shannon*, 17 June 2009, 1 [3], OPP.0048.0001.0013 @.0088; Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 3 [10], OPP.0048.0001.0013 @.0079.

⁶ Un-tendered Summary of proceedings for the Court of Appeal, *R v Mr Shannon*, 17 June 2009, 2 [5] OPP.0048.0001.0013 @.0089.

⁷ Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 2 [1], OPP.0048.0001.0013 @.0078; Un-tendered Particulars of Offence with Handwritten Notes, *R v Mr Shannon*, 3 April 2008, 1, OPP.0048.0001.0013 @.0047.

⁸ Un-tendered Summary of proceedings for the Court of Appeal, *R v Mr Shannon*, 17 June 2009, 3 [8], 4 [11] OPP.0048.0001.0013 @.0090, .0091; Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 1, OPP.0048.0001.0013 @.0077

7. On 7 November 2008, Mr Shannon was sentenced to a total effective sentence of 20 months' imprisonment, with a non-parole period of 12 months' imprisonment.⁹
8. Mr Shannon filed an application for leave to appeal against sentence,¹⁰ which was dismissed on 28 July 2009.¹¹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Shannon

9. Ms Gobbo provided legal representation to Mr Shannon in relation to the abovementioned case between around August 2007 and November 2007.
10. Ms Gobbo appeared in court on behalf of Mr Shannon on the following two occasions:
 - 10.1. on 23 August 2007, at the Melbourne Magistrates' Court for a committal hearing¹²
 - 10.2. on 1 November 2007, at the County Court for a case conference.¹³
11. In addition, Ms Gobbo charged fees for her appearance at the committal hearing and for conducting a conference.¹⁴
12. Ms Gobbo also provided legal representation to Mr Shannon in two unrelated matters, in September 2004¹⁵ and February 2008.¹⁶

⁹ Un-tendered Reasons for Sentence, *R v Mr Shannon* (County Court of Victoria, Judge Taft, 7 November 2008), 5, OPP.0048.0001.0013 @.0081; Un-tendered Victoria Police Criminal History Report, Mr Shannon, 16, VPL.0099.0193.4727 @.4742.

¹⁰ Un-tendered Notice of Application for Leave to Appeal Against Sentence, *R v Mr Shannon*, 21 November 2008, OPP.0048.0001.0013 @.0083.

¹¹ *R v Mr Shannon*, [2009] VSCA 185, [14]; Un-tendered Notification of Result of Appeal or Application, *R v Mr Shannon*, 8 September 2009, OPP.0048.0001.0013 @.0086.

¹² Exhibit RC1841 Magistrates Court of Victoria Record of Persons Represented by Ms Nicola Gobbo, 12 April 2019, 20, MCV.0001.0001.0001 @.0018; Exhibit RC1568 Ms Nicola Gobbo fee book 02, 27 August 2007, 8, MIN.5000.7000.0103 @ .0110; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 26, GMH.0001.0001.0002 @.0026; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 27 August 2007, 56, GMH.0001.0001.0006 @.0056; Un-tendered Summary of proceedings for the Court of Appeal, *R v Mr Shannon*, 17 June 2009, 2 [5], OPP.0048.0001.0013 @.0089.

¹³ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 1 November 2007, 67, OPP.0001.0004.0025 @ .0091; Un-tendered Summary of proceedings for the Court of Appeal, *R v Mr Shannon*, 17 June 2009, 3 [6], OPP.0048.0001.0013 @.0090.

¹⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 27 August 2007, 8, MIN.5000.7000.0103 @ .0110; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 26, GMH.0001.0001.0002 @.0026; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 27 August 2007, 56, GMH.0001.0001.0006 @.0056.

¹⁵ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 12 September 2004, 17, CNS.0001.0003.0037 @.0053; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 14 October 2004, 82, MIN.5000.7000.0001 @.0082; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Statement of Accounts, 7 March 2019, 69, GMH.0001.0001.0002 @.0069; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Ms Nicola Gobbo Tax Invoice, 18 October 2004, 34, GMH.0001.0001.0012 @.0034; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 14 October 2004, 52, OPP.0001.0004.0025 @.0076.

¹⁶ Exhibit RC1841 Magistrates Court of Victoria Record of Persons Represented by Ms Nicola Gobbo, 12 April 2019, 20, MCV.0001.0001.0001 @.0018

The Conduct of Ms Gobbo as a Human Source in relation to Mr Shannon

13. Ms Gobbo provided information concerning Mr Shannon prior to and during her representation of him in the abovementioned matter between 1 October 2005 and 31 October 2007.¹⁷ The information provided during this period included:
 - 13.1. Mr Shannon's phone number¹⁸
 - 13.2. identification of Mr Shannon from a photograph¹⁹
 - 13.3. information concerning Mr Shannon's ex-girlfriend²⁰
 - 13.4. details of a clothing business owned by Mr Shannon, including the name and address of the shop²¹
 - 13.5. information concerning Mr Shannon's relationship with known associates²²
 - 13.6. that Ms Gobbo had met with or spoken to Mr Shannon, or intended to do so²³
 - 13.7. that Mr Shannon was 'not charged'²⁴
 - 13.8. that Mr Shannon had been arrested²⁵
 - 13.9. information concerning the alleged nature of Mr Shannon's offending²⁶
 - 13.10. the name of Mr Shannon's solicitor²⁷

¹⁷ Exhibit RC0281 ICR3838 (004), 1 October 2005, 23, VPL.2000.0003.1600; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1342, VPL.2000.0003.2928.

¹⁸ Exhibit RC0281 ICR3838 (021), 6 March 2006, 179, VPL.2000.0003.1765; Exhibit RC0283 Information Report IR587551, 14 March 2006, 3, VPL.2000.0003.7283 @.7285; Exhibit RC0281 ICR3838 (098), 31 August 2007, 1180, VPL.2000.0003.2766. 'Action: verbally disseminated above information to Green – DTF'; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1342, VPL.2000.0003.2928. 'Action: Not disseminated as risk of compromise too great'.

¹⁹ Exhibit RC0281 ICR3838 (025), 5 April 2006, 226, VPL.2000.0003.1812.

²⁰ Exhibit RC0281 ICR3838 (050), 22 October 2006, 515, VPL.2000.0003.2101; Exhibit RC0283 Information Report SID966, 22 October 2006, VPL.2000.0003.8923.

²¹ Exhibit RC0281 ICR3838 (095), 15 August 2007, 1097, VPL.2000.0003.2683.

²² Exhibit RC0281 ICR3838 (050), 22 October 2006, 515, VPL.2000.0003.2101; Exhibit RC0281 ICR3838 (073), 3 April 2007, 763, VPL.2000.0003.2349.

²³ Exhibit RC0281 ICR3838 (095), 21 August 2007, 1121, 1123-1124, VPL.2000.0003.2707, .2709-.2710; Exhibit RC0281 ICR3838 (098), 31 August 2007, 1179, VPL.2000.0003.2765; Exhibit RC0281 ICR3838 (098), 1 September 2007, VPL.2000.0003.2771.– 'Action: verbally disseminated above information to Green – DTF'.

²⁴ Exhibit RC0281 ICR3838 (033), 30 May 2006, 312, VPL.2000.0003.1898.

²⁵ Exhibit RC0281 ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248.

²⁶ Exhibit RC0281 ICR3838 (068), 28 February 2007, 662, VPL.2000.0003.2248.

²⁷ Exhibit RC0281 ICR3838 (068), 2 March 2007, 668, VPL.2000.0003.2254.

- 13.11. information concerning court hearings, including the nature of upcoming hearings,²⁸ the outcome of hearings²⁹ and the fact she received a call from the informant³⁰
- 13.12. information concerning particular charges against Mr Shannon, including that:
 - 13.12.1. there was 'no evidence for the firearms charges against him and prosecution will likely drop the charge'³¹
 - 13.12.2. that there was 'no forensic evidence'³²
 - 13.12.3. that Mr Shannon would plead guilty to all other charges³³
- 13.13. information concerning the name of a co-accused, the date of a court hearing concerning a co-accused, the fact a co-offender had not been charged and [REDACTED]³⁴
- 13.14. the name of a person who supplied drugs to Mr Shannon (Albert El Moustafa)³⁵
- 13.15. the name of a 'runner' for Mr Shannon, details of that person's arrest³⁶ and the fact that Mr Shannon would pay the person's legal fees³⁷
- 13.16. the name of a person (Peter Pilarinos) to whom Mr Shannon supplied drugs, and who 'deals for' Mr Shannon and another³⁸
- 13.17. the fact that a 'runner' (John Gorka) had been arrested, that Mr Shannon was 'scared it might have something to do with him', that Mr Shannon wanted Ms Gobbo to do his bail application and was keen for him to get bail 'at whatever cost'³⁹
- 13.18. the fact that [REDACTED] wanted Ms Gobbo to convey that he [REDACTED]⁴⁰

²⁸ Exhibit RC0281 ICR3838 (094), 14 August 2007, 1091, VPL.2000.0003.2677; Exhibit RC0281 ICR3838 (095), 21 August 2007, 1124, VPL.2000.0003.2710; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1130, VPL.2000.0003.2716. – 'Action: not disseminated re legal privilege issues'; Exhibit RC0281 ICR3838 (107), 31 October 2007, 1342, VPL.2000.0003.2928 'Action: Not disseminated as risk of compromise too great'.

²⁹ Exhibit RC0281 ICR3838 (068), 2 March 2007, 668, VPL.2000.0003.2254.

³⁰ NB: it is not clear whether the informant referred to was the informant for the abovementioned case or for unrelated proceedings. Exhibit RC0281 ICR3838 (095), 15 August 2007, 1097, VPL.2000.0003.2683.

³¹ Exhibit RC0281 ICR3838 (096), 22 August 2007, 1130, VPL.2000.0003.2716. 'Action: not disseminated re legal privilege issues'.

³² Exhibit RC0281 ICR3838 (096), 22 August 2007, 1130, VPL.2000.0003.2716. 'Action: not disseminated re legal privilege issues'.

³³ Exhibit RC0281 ICR3838 (096), 22 August 2007, 1130, VPL.2000.0003.2716. 'Action: not disseminated re legal privilege issues'.

³⁴ Exhibit RC0281 ICR3838 (068), 2 March 2007, 668, VPL.2000.0003.2254.

³⁵ Exhibit RC0281 ICR3838 (035), 15 June 2006, 331, VPL.0099.0193.1917; Exhibit RC0283 Information Report SID765, 15 June 2006, 3, VPL.2000.0003.7649 @.7651; Exhibit RC0281 ICR3838 (039), 28 July 2006, 374, VPL.0099.0193.1960; Exhibit RC0281 ICR3838 (041), 13 August 2006, 392, VPL.0099.0193.1978.

³⁶ Exhibit RC0281 ICR3838 (065), 11 February 2007, 632, VPL.2000.0003.2218.

³⁷ Exhibit RC0281 ICR3838 (065), 12 February 2007, 634, VPL.2000.0003.2220.

³⁸ Exhibit RC0281 ICR3838 (091), 19 July 2007, 1038, VPL.2000.0003.2624; Exhibit RC0281 ICR3838 (092), 24 July 2007, 1053, VPL.2000.0003.2639.

³⁹ Exhibit RC0281 ICR3838 (098), 31 August 2007, 1180, VPL.2000.0003.2766; Exhibit RC0281 ICR3838 (098), 1 September 2007, 1185, VPL.2000.0003.2771.

⁴⁰ [REDACTED] Information Report SID775, 12 August 2006, 2, VPL.2000.0003.7702 @.7704.

- 13.19. the fact that others intended to assault Mr Shannon⁴¹
- 13.20. information concerning further misconduct allegedly being committed by Mr Shannon.⁴²
14. Based on the material reviewed, it appears that Ms Gobbo continued to provide information concerning Mr Shannon on approximately ten occasions between 24 November 2007 and 20 August 2008.⁴³

Submissions under Terms of Reference 1 and 2 in relation to Mr Shannon

15. It is submitted that it is open to the Commissioner to find that the case of Mr Shannon may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
16. The extent to which the case of Mr Shannon may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

17. First, Category 1A⁴⁴ applies in that, between August 2007 and November 2007,⁴⁵ Ms Gobbo acted for Mr Shannon while she was a human source,⁴⁶ and did not disclose same to him.⁴⁷
18. Secondly, Category 1B⁴⁸ applies in that, between October 2005 and October 2007, which was before and during the period that Ms Gobbo acted for Mr Shannon in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.⁴⁹
19. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁰
20. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at

⁴¹ Exhibit RC0281 ICR3838 (065), 12 February 2007, 633, VPL.2000.0003.2219.

⁴² Exhibit RC0281 ICR3838 (065), 11 February 2007, 632, VPL.2000.0003.2218.

⁴³ Exhibit RC0281 ICR3838 (112), 24 November 2007, 1452, VPL.2000.0003.3038; Exhibit RC0281 ICR3838 (114), 5 December 2007, 1504, VPL.2000.0003.3090; Exhibit RC0281 ICR2958 (004), 18 February 2008, 47, VPL.2000.0003.0787; Exhibit RC0281 ICR2958 (013), 9 April 2008, 148, VPL.2000.0003.0888; Exhibit RC0281 ICR2958 (013), 10 April 2008, 150, VPL.2000.0003.0890; Exhibit RC0281 ICR2958 (013), 10 April 2008, 151, VPL.2000.0003.0891; Exhibit RC0281 ICR2958 (013), 12 April 2008, 155, VPL.2000.0003.0895; Exhibit RC0281 ICR2958(014), 14 April 2009, 161, VPL.2000.0003.0901; Exhibit RC0281 ICR2958 (017), 29 April 2008, 242, VPL.2000.0003.0982; Exhibit RC0281 ICR2958 (033), 14 August 2008, 556, VPL.2000.0003.1296; Exhibit RC0281 ICR2958 (034), 20 August 2008, 561, VPL.2000.0003.1301.

⁴⁴ See Legal Principles Submissions at [249].

⁴⁵ See above analysis at [10]-[11].

⁴⁶ See Legal Principles Submissions at [20].

⁴⁷ See Legal Principles Submissions at [239].

⁴⁸ See Legal Principles Submissions at [249].

⁴⁹ See above analysis at [13].

⁵⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

21. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵¹
 - 21.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Shannon;
 - 21.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Shannon, appropriate disclosure was made; or alternatively
 - 21.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
22. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [21.1] were taken, and accordingly there was the potential for the right of Mr Shannon to a fair trial to have been interfered with.
23. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Shannon and/or his legal representatives.
24. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵²
25. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵³

⁵¹ See Legal Principles Submissions at [384] and [452]-[457].

⁵² See Legal Principles Submissions at [380]-[385].

⁵³ See Legal Principles Submissions at [351], [362]-[373].

26. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁵⁴
27. Category 3A⁵⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
28. Category 3B⁵⁶ applies in that, between October 2005 and October 2007, which was before and during the period that Ms Gobbo acted for Mr Shannon in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
29. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵⁴ See Legal Principles Submissions at [351], [374].

⁵⁵ See Legal Principles Submissions at [465].

⁵⁶ See Legal Principles Submissions at [465].

⁵⁷ See above analysis at [13].

This submission has been redacted due to a range of non-publication claims. These claims are yet to be resolved.

CASE STUDY NOT PUBLISHED

CASE STUDY: JOHN WATERS

The Relevant Case of Mr Waters

1. The one relevant case of John Waters concerns his convictions before the County Court in 2012 for two charges of trafficking in a quantity not less than a large commercial quantity of a drug of dependence being 3,4-Methylenedioxyamphetamine (MDMA).¹
2. The offending occurred between August 2005 and January 2006.²
3. On 18 January 2006, Mr Waters was initially arrested.³ He was released on bail on 15 February 2006,⁴ and re-arrested after offending while on bail, on 18 September 2006.⁵
4. The procedural history of his case is complex and involved an initial trial with co-accused Boris Trajkovski,⁶ multiple appeals,⁷ numerous presentments⁸ and indictments,⁹ and a retrial on his own,¹⁰ which was also appealed, albeit unsuccessfully.¹¹ On the basis of the material reviewed, it appears that it is unnecessary to deal with that complexity for the purposes of the present inquiry, and that it is only necessary to consider the conviction obtained in the retrial.
5. Ultimately, in the retrial, Mr Waters was sentenced on 11 October 2012 with respect to the two convictions to a total effective sentence of 11 years and six

¹ Un-tendered Indictment No U00140401, *Director of Public Prosecutions v Waters*, 2012, 289, OPP.0095.0001.0037, Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Waters* [2012] VCC, 308 [5], OPP.0095.0001.0037.

² Un-tendered Indictment No U00140401, *Director of Public Prosecutions v Waters*, 2012, 290, OPP.0095.0001.0037; Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Waters* [2012] VCC, 307 [2], OPP.0095.0001.0037.

³ See Un-tendered Reasons for sentence, *R v Trajkovski, Boris; Waters, John* [2009] VCC 1748, 142 [173], OPP.0095.0001.0037.

⁴ See Un-tendered Reasons for sentence, *R v Trajkovski, Boris; Waters, John* [2009] VCC 1748, 142 [173], OPP.0095.0001.0037.

⁵ See Un-tendered Reasons for sentence, *R v Trajkovski, Boris; Waters, John* [2009] VCC 1748, 142 [173], OPP.0095.0001.0037.

⁶ Un-tendered Reasons for sentence, *R v Trajkovski, Boris; Waters, John* [2009] VCC 1748, 101, OPP.0095.0001.0037.

⁷ *Waters v The Queen* [2011] VSCA 415; *Waters v The Queen* [2013] VSCA 86.

⁸ See various iterations of Un-tendered Presentment C0604944, *Director of Public Prosecutions v Waters*, 2009, 3, OPP.0095.0001.0037; Un-tendered Presentment C0604944.5, *Director of Public Prosecutions v Waters*, 2009, 7, OPP.0095.0001.0037; Un-tendered Presentment C0604944.6, *Director of Public Prosecutions v Waters*, 2009, 12, OPP.0095.0001.0037; Un-tendered Presentment C0604944.7, *Director of Public Prosecutions v Waters*, 2009, 21, OPP.0095.0001.0037; Un-tendered Presentment C0604944.17, *Director of Public Prosecutions v Waters*, 2009, 32, OPP.0095.0001.0037.

⁹ See various iterations of Un-tendered Indictment No U00140401, *Director of Public Prosecutions v Waters*, 2012, 283, OPP.0095.0001.0037; Un-tendered Indictment No U00140401, *Director of Public Prosecutions v Waters*, 2012, 289, OPP.0095.0001.0037.

¹⁰ Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Waters* [2012] VCC, 306, OPP.0095.0001.0037.

¹¹ *Waters v The Queen* [2013] VSCA 86, [42].

months' imprisonment, most of which had already been served at the time of sentencing.¹²

Ms Gobbo's Legal Representation of Mr Waters

6. Between April and December 2007, Ms Gobbo acted for Mr Waters in relation to the case. Specifically, evidence before the Commission demonstrates that:
 - 6.1. On 16 April 2007, Ms Gobbo marked fees for a brief from Haines & Polites to peruse materials, preparation, draft a Form 8A (Notice of Defence) and to appear for Mr Waters in the matter of *John Waters v Police*.¹³ Ms Gobbo's attendance at Melbourne Magistrates' Court is corroborated by other material before the Commission.¹⁴
 - 6.2. On 10 December 2007, Ms Gobbo marked fees for a brief from Haines & Polites to appear at the Supreme Court of Victoria for Mr Waters in the matter of *John Waters v OPP*.¹⁵ Ms Gobbo's appearance for Mr Waters' bail application at the Supreme Court was recorded by the Office of Public Prosecutions.¹⁶

The Conduct of Ms Gobbo as a Human Source in relation to Mr Waters

7. The conduct of Ms Gobbo as a human source in relation to Mr Waters is discussed in the following paragraphs.
8. Mr Waters was the subject of communications between Ms Gobbo (in her capacity as a human source) and Victoria Police during the period that she represented him. In particular:
 - 8.1. On 2 April 2007, Ms Gobbo is recorded as informing Mr Anderson that Mr Waters "is making a complaint about his treatment in police custody".¹⁷
 - 8.2. On 2 May 2007, Ms Gobbo is recorded as informing her handlers, Mr Green and Mr Anderson, that Mr Waters is one of her "lost causes that can't get bail...because the idiot was out on bail for multiple large quantities of...and then started chasing up drug deals, went around a few businesses...and started trafficking...".¹⁸

¹² See Un-tendered Reasons for Sentence, *Director of Public Prosecutions v Waters* [2012] VCC, 331 [80], OPP.0095.0001.0037.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 16 April 2007, 3, MIN.5000.7000.0103 @ .0105; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 16 April 2007, 33, GMH.0001.0001.0002 @ .0033; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo invoices, 17 April 2007, 30, GMH.0001.0001.0007 @ .0030.

¹⁴ Exhibit RC1841 Magistrates' Court of Victoria, 'Persons represented by Ms Gobbo', 16 April 2007, 20, MCV.0001.0001.0001 @ .0018; Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 16 April 2007, 62, OPP.0001.0004.0025 @ .0086.

¹⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 10 December 2007, 12, MIN.5000.7000.0103 @ .0114. Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 10 December 2007, 21, GMH.0001.0001.0002 @ .0021; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo invoices, 10 December 2007, 6, GMH.0001.0001.0006 @ .0006.

¹⁶ Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 10 December 2007, 62, OPP.0001.0004.0025 @ .0086.

¹⁷ Exhibit RC0281 ICR3838 (073), 2 April 2007, 760, VPL.2000.0003.2346.

¹⁸ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Green and Anderson, 2 May 2007, 71-72, VPL.0005.0145.0001 @ .0071-2.

- 8.3. On 29 October 2007, Ms Gobbo is recorded as informing her handler, Mr Fox, that “Brian [sic] Waters has committed offences whilst on bail therefore he has no hope of getting bail.”¹⁹

Submissions under the Terms of Reference in relation to Mr Waters

9. It is submitted that it is open to the Commissioner to find that the case of Mr Waters may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
10. The extent to which the case of Mr Waters may have been affected can be measured by virtue of the following matters:

Conduct of Ms Gobbo

11. First, Category 1A²⁰ applies in that, between April and December 2007,²¹ Ms Gobbo acted for Mr Waters while she was a human source,²² and did not disclose same to him.²³
12. Secondly, Category 1B²⁴ applies in that, during the period that Ms Gobbo acted for Mr Waters in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police.²⁵
13. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁶
14. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁹ Exhibit RC0281 ICR3838 (107), 29 October 2007, 1327, VPL.2000.0003.2913.

²⁰ See Legal Principles Submissions at [249].

²¹ See above analysis at [6].

²² See Legal Principles Submissions at [20].

²³ See Legal Principles Submissions at [239].

²⁴ See Legal Principles Submissions at [249].

²⁵ See above analysis at [8].

²⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

Conduct of Victoria Police

15. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁷
 - 15.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Waters;
 - 15.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Waters, appropriate disclosure was made; or alternatively
 - 15.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
16. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [15.1] were taken, and accordingly there was the potential for the right of Mr Waters to a fair trial to have been interfered with.
17. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Waters and/or his legal representatives.
18. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁸
19. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁹
20. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.³⁰
21. Category 3A³¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
22. Category 3B³² applies in that, during the period that Ms Gobbo acted for Mr Waters in relation to the case, Ms Gobbo provided information in relation to him

²⁷ See Legal Principles Submissions at [384] and [452]-[457].

²⁸ See Legal Principles Submissions at [380]-[385].

²⁹ See Legal Principles Submissions at [351], [362]-[373].

³⁰ See Legal Principles Submissions at [380]-[385].

³¹ See Legal Principles Submissions at [465].

³² See Legal Principles Submissions at [465].

to members of Victoria Police,³³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

23. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³³ See above analysis at [8].

CASE STUDY: CARL WILLIAMS

1. The submissions in this case study should be read in conjunction with relevant parts of the Narrative Submissions in Chapters 5, 6, 7 and 9 which contain accounts of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Carl Williams:

The Relevant Cases of Mr Carl Williams

2. The two relevant cases of Mr Carl Williams comprise:
 - 2.1. first, his conviction (after trial) and sentence on 19 July 2006 before the Supreme Court for the murder of Michael Marshall on 23 October 2003 (the 2006 Case)¹
 - 2.2. secondly, his pleas of guilty and sentence on 7 May 2007 before the Supreme Court (the 2007 Case) for:
 - 2.2.1. the murder of Mr Jason Moran on 21 June 2003 (J Moran murder charge);
 - 2.2.2. the murder of Mr Mark Mallia on 18 August 2003;
 - 2.2.3. the murder of Mr Lewis Moran on 31 March 2004 (L Moran murder charge); and
 - 2.2.4. the [REDACTED], between [REDACTED] May and [REDACTED] June 2004.²
3. As set out below, it is submitted that the 2007 Case may have been affected by the conduct of Ms Gobbo as a human source. While such a submission is not made in relation to the 2006 Case, it is necessary to consider that case by way of context.

The 2006 Case – Murder of Michael Marshall

4. The murder of Michael Marshall took place on 23 October 2003.³ The background and circumstances surrounding the murder are covered in other parts of these submissions.⁴ On 16 August 2004, Mr Carl Williams, then in custody, was charged with the murder of Mr Marshall by way of notice of trial.⁵ On 30 August 2004, a direct presentment in respect of the charge (and other charges, including one of those the subject of the 2007 Case) was filed in the Supreme Court.⁶ As detailed elsewhere in these submissions,⁷ as a result of an order made by Gillard J on 14 December 2004, committal proceedings were

¹ See *R v Williams* [2006] VSC 367; Un-tendered Presentment No. C0404098.2., *R v Carl Anthony Williams & Andrews*, 2005, 2, RCMP1.0127.0001.0012 @.0691.

² See *R v Williams* [2007] VSC 131, [1]-[3]; Un-tendered Presentment No. C0404361.1, *R v Carl Anthony Williams*, 2007, 1, RCMP1.0127.0001.0012 @.0286.

³ See *R v Williams* [2006] VSC 367, [1]; Un-tendered Presentment No. C0404098.2, *R v Carl Anthony Williams & Andrews*, 2005, 1, RCMP1.0127.0001.0012 @.0690.

⁴ See Chapter 7; See also *R v Williams* [2006] VSC 367, [1]-[17].

⁵ See *R v Williams* [2005] VSC 274, [6]; *Williams, Andrews and Thomas v DPP* [2004] VSC 516, [5].

⁶ See *R v Williams* [2005] VSC 274, [6].

⁷ See Chapter 7.

held in relation to the Marshall murder charge (as well as the J Moran murder charge the subject of the 2007 Case) between 1 and 10 March 2005.⁸

5. Following a trial before the Supreme Court between September and November 2005,⁹ Mr Carl Williams was found guilty on the basis that he acted as a counsellor and procurer of the murder.¹⁰ On 19 July 2006, Mr Carl Williams was sentenced in the Supreme Court to a term of imprisonment of 26 years, with a non-parole period of 21 years.¹¹
6. The prosecution case included reliance upon the evidence of Mr McGrath.¹² In addition, it appears that following Mr Carl Williams' conviction at trial, but prior to his sentencing hearing, the prosecution also placed reliance upon the evidence of Mr Thomas¹³ and Mr Andrews.¹⁴

The 2007 Case – Multiple Murders

7. The background and circumstances surrounding the offending in the 2007 Case are addressed in other parts of these submissions.¹⁵ On 28 February 2007, Mr Carl Williams was arraigned in respect of all charges on the presentment and entered pleas of guilty on all counts.¹⁶ The prosecution case included reliance upon the evidence of Mr McGrath, Mr Thomas and Mr Andrews.¹⁷ On 7 May 2007, Mr Carl Williams was sentenced in the Supreme Court to a total effective sentence of life imprisonment, with a non-parole period of 35 years.¹⁸

Ms Gobbo's Legal Representation of Mr Carl Williams

8. Evidence before the Commission indicates that, between 2003 and September 2005 (when she became registered as a human source), Ms Gobbo acted for or advised Mr Carl Williams on a regular basis.¹⁹

⁸ See *R v Williams* [2005] VSC 274, [8].

⁹ See Chapter 7; See also Exhibit RC0269 Statement of Commander Stuart Bateson, 7 May 2019, 12 [73], VPL.0014.0027.0001 @.0012; Un-tendered Transcript of Proceedings, *R v Williams* (Supreme Court of Victoria, King J, 26 September 2005), RCMP1.0101.0001.0001; Un-tendered Transcript of Proceedings, *R v Williams* (Supreme Court of Victoria, King J, 14 November 2005), RCMP1.0101.0001.0032.

¹⁰ *R v Williams* [2006] VSC 367, [6].

¹¹ *R v Williams* [2006] VSC 367, [53].

¹² See Un-tendered Presentment No. C0404098.2., *R v Carl Anthony Williams & Andrews*, 2005, 2, RCMP1.0127.0001.0012 @.0691.

¹³ See *R v Williams* [2006] VSC 367, [4].

¹⁴ See *R v Williams* [2006] VSC 367, [7].

¹⁵ See [1] above, esp Chapter 7. See also *R v Williams* [2007] VSC 131, [1]-[93]. It is noted that Mr Carl Williams was charged with the Jason Moran murder by way of notice of trial on 16 August 2004, and direct presentment on 30 August 2004: see *R v Williams* [2005] VSC 274, [6].

¹⁶ Un-tendered Presentment No. C0404361.1, *R v Carl Anthony Williams*, 2007, 1-4, RCMP1.0127.0001.0012 @.0286-.0289

¹⁷ Un-tendered Office of Public Prosecutions Victoria Annexure A - Witnesses and Related Accused Matter Outcomes, 29 May 2020, 5-7, OPP.0056.0001.0001; Un-tendered Presentment No. C0404361.1, *R v Carl Anthony Williams*, 2007, 1, RCMP1.0127.0001.0012 @.0286

¹⁸ See *R v Williams* [2007] VSC 131, [130]-[132].

¹⁹ See, eg: Exhibit RC1568 Ms Nicola Gobbo fee book 01, 22 December 2003, 69, MIN.5000.7000.0001 @.0069; Exhibit RC1841 Magistrates' Court of Victoria record of Persons represented by Ms Nicola Gobbo, 10 February 2004, 15, MCV.0001.0001.0001 @.0013; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 5 March 2004, 72, MIN.5000.7000.0001 @.0072; Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 30 November 2004, 18, CNS.0001.0003.0037 @.0054; Exhibit RC1568

9. Further, the evidence suggests that, from approximately January 2006 through until at least March 2007, Ms Gobbo continued to act for or advise Mr Carl Williams (albeit on an informal basis),²⁰ as evident from the following instances:
 - 9.1. On 3 January 2006, Ms Gobbo visited Mr Carl Williams in custody, in an ostensibly professional capacity.²¹
 - 9.2. On 10 January 2006, Ms Gobbo spoke to Mr Carl Williams in custody by telephone.²²
 - 9.3. On 24 February 2006, Ms Gobbo spoke to Mr Carl Williams in custody by telephone, and he expressed a desire that she be added to his “phone list”.²³
 - 9.4. On 8 March 2006, Mr Carl Williams contacted Ms Gobbo from custody by telephone, reportedly “fishing re [REDACTED]...”, which appears to have been a reference to Mr Andrews.²⁴
 - 9.5. On 10 March 2006, the Informer Contact Reports (ICRs) record that Ms Gobbo was “still getting Carl Williams ... wanting to see her for advice”, and that he had requested she see him in custody.²⁵
 - 9.6. On 14 March 2006, Mr Carl Williams contacted Ms Gobbo by telephone from custody, and reportedly expressed to her his “outrage ... at Andrews and what he has done” and his desire for her to visit him.²⁶
 - 9.7. On 21 April 2006, Ms Gobbo informed handlers that she had “just spoke to [a solicitor] of [the] OPP [Office of Public Prosecutions] re WILLIAMS/THOMAS matters” about the proposed prison meeting between Ms Gobbo, Solicitor 2, Mr Carl Williams and Mr Thomas.²⁷
 - 9.8. On 22 April 2006, Ms Gobbo visited Mr Carl Williams in custody, in an ostensibly professional capacity,²⁸ and discussed various legal issues with him.²⁹
 - 9.9. On 4 May 2006, Ms Gobbo visited Mr Carl Williams in custody, in an ostensibly professional capacity.³⁰ During the visit, he gave Ms Gobbo documents to pass onto Solicitor 2 (who appeared to be his then

Ms Nicola Gobbo fee book 01, 4 March 2005, 86, MIN.5000.7000.0001 @.0086; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 28 April 2005, 87, MIN.5000.7000.0001 @.0087; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 26 May 2005, 87, MIN.5000.7000.0001 @.00687.

²⁰ Mr Carl Williams appears to have been formally represented by a number of other legal practitioners during the period: see Narrative Submissions referred to at [1] above.

²¹ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 3 January 2006, 23, CNS.0001.0003.0037 @.0059. See also Exhibit RC0281 ICR3838 (014), 2 January 2006, 108, VPL.2000.0003.1694.

²² Exhibit RC0281 ICR3838 (015), 10 January 2006, 115, VPL.2000.0003.1701.

²³ Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751.

²⁴ Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766.

²⁵ Exhibit RC0281 ICR3838 (022), 10 March 2006, 183, VPL.2000.0003.1769.

²⁶ Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773. See also Exhibit RC0283 Information Report SID530, 15 March 2006, VPL.2000.0003.8635.

²⁷ Exhibit RC0281 ICR3838 (028), 21 April 2006, 257, VPL.2000.0003.1843.

²⁸ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 22 April 2006, 23, CNS.0001.0003.0037 @.0059. See also Exhibit RC0281 ICR3838 (028), 20 April 2006, 253, VPL.2000.0003.1839.

²⁹ See Exhibit RC1165 Ms Nicola Gobbo court book, 22 April 2006, 1, MIN.0001.0014.0784 @.0799.

³⁰ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 4 May 2006, 24, CNS.0001.0003.0037 @.0060.

solicitor) which apparently contained notes “about what they want Gatto to say to discredit Andrews”;³¹

- 9.10. On 27 June 2006, Ms Gobbo reported to her handlers that Mr Carl Williams telephoned her and said that “he does not have a solicitor because no funding, [and] is thinking about pleading guilty to current charges”.³²
- 9.11. On 13 July 2006, Ms Gobbo conducted a telephone conversation with Mr Carl Williams in custody, after which she reported to her handlers that she planned to see him in person in order to, inter alia, “tell him [she] can’t act b/c of conflict”.³³
- 9.12. On 18 July 2006, she complained of feeling “very stressed” to her handlers, including because Mr Carl Williams, among others, was “[c]onstantly contacting” her.³⁴
- 9.13. On 24 July 2006, Ms Gobbo visited Mr Carl Williams in custody, in an ostensibly professional capacity.³⁵ During this meeting, Ms Gobbo reportedly told Mr Carl Williams “not to ring [her] because of conflict”.³⁶ This appears to have been her final in-person visit to Mr Carl Williams in custody.³⁷
- 9.14. Despite the above, a few further telephone calls appear to have taken place between Mr Carl Williams and Ms Gobbo through until 25 August 2006, when her number was removed from his prison telephone list.³⁸ As detailed below, at about that time and thereafter, their relationship significantly deteriorated.
- 9.15. Notwithstanding the apparent deterioration in their relationship, on 7 March 2007, as detailed below, Mr Carl Williams contacted Ms Gobbo “to discuss the details of plea”.³⁹
10. [REDACTED]
[REDACTED]
[REDACTED].⁴⁰
11. It is submitted that, on the evidence and material before the Commission, it is open to find that Ms Gobbo acted for Mr Carl Williams at different times between approximately January 2006 and March 2007. The analysis below proceeds on that basis.

³¹ Exhibit RC0281 ICR3838 (031), 5 May 2006, 288, VPL.2000.0003.1874.

³² Exhibit RC0281 ICR3838 (036), 27 June 2006, 344, VPL.2000.0003.1930.

³³ Exhibit RC0281 ICR3838 (038), 13 July 2006, 358, VPL.2000.0003.1944.

³⁴ Exhibit RC0281 ICR3838 (038), 18 July 2006, 360, VPL.2000.0003.1946.

³⁵ Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 24 July 2005, 25, CNS.0001.0003.0037 @.0061. See also Exhibit RC0281 ICR3838 (039), 24 July 2006, 366-367, VPL.2000.0003.1952-VPL.2000.0003.1953.

³⁶ Exhibit RC0281 ICR3838 (039), 24 July 2006, 367, VPL.2000.0003.1953.

³⁷ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 1 January 1997 – 13 March 2019, CNS.0001.0003.0037.

³⁸ See Exhibit RC0281 ICR3838 (040), 2 August 2006, 379, VPL.2000.0003.1965; Exhibit RC0281 ICR3838 (042), 19 August 2006, 400, VPL.2000.0003.1986; Exhibit RC0281 ICR3838 (042), 25 August 2006, 406, VPL.2000.0003.1992.

³⁹ See Exhibit RC0281 ICR3838 (069), 7 March 2007, 679, VPL.2000.0003.2265.

The Conduct of Ms Gobbo as a Human Source in Relation to Mr Carl Williams

12. As noted above at [1], various parts of the Narrative Submission contain a detailed account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Carl Williams. Against that background, it is sufficient in this case study to focus upon some aspects of Ms Gobbo's conduct as a human source in direct relation to Mr Carl Williams.

Between September 2005 and May 2007

13. Mr Carl Williams was the subject of communications between Ms Gobbo (in her capacity as a human source) and members Victoria Police in their initial meetings upon her registration in September 2005.⁴¹ Thereafter, he continued to feature regularly in their communications through to his sentence in the 2007 Case in May 2007.⁴² The content of such communications related to a range of topics, including:
 - 13.1. commentary concerning his legal matters, including the 2006 case⁴³ and the 2007 case⁴⁴
 - 13.2. commentary on the circumstances of his legal expenses⁴⁵
 - 13.3. commentary in relation to Solicitor 2, in connection with her then acting as a solicitor for Mr Carl Williams⁴⁶
 - 13.4. commentary about members of Mr Carl Williams' family⁴⁷
 - 13.5. commentary about his associations or relationships with other alleged criminals.⁴⁸

⁴¹ See Exhibit RC0267 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 16 September 2005, 20-21, 75-76, VPL.0005.0037.0014 @.0033-.0034, .0088-.0089; Exhibit RC0281 ICR3838 (002), 21 September 2005, 11, VPL.2000.0003.1597.

⁴² See generally: Un-tendered Summary of ICR Extracts, Carl Williams, undated, VPL.4233.0001.0001.

⁴³ Exhibit RC0281 ICR3838 (002), 21 September 2005, 11, VPL.2000.0003.1597; Exhibit RC0281 ICR3838 (008), 2 November 2005, 50, VPL.2000.0003.1636; Exhibit RC0281 ICR3838 (008), 12 November 2005, 57, VPL.2000.0003.1643.

⁴⁴ See Exhibit RC0281 ICR3838 (069), 7 March 2007, 679, VPL.2000.0003.2265.

⁴⁵ See Exhibit RC0281 ICR3838 (003), 26 September 2005, 16, VPL.2000.0003.1602; Exhibit RC0281 ICR3838 (033), 28 May 2006, 312, VPL.2000.0003.1989; Exhibit RC0281 ICR3838 (035), 16 June 2006, 331, VPL.2000.0003.1917.

⁴⁶ See Exhibit RC0281 ICR3838 (003), 26 September 2005, 17, VPL.2000.0003.1603; Exhibit RC0281 ICR3838 (013), 23 December 2005, 97, VPL.2000.0003.1683; Exhibit RC0281 ICR3838 (014), 28 December 2005, 101, VPL.2000.0003.1687; Exhibit RC0281 ICR3838 (016), 23 January 2006, 130-131, VPL.2000.0003.1716- VPL.2000.0003.1717; Exhibit RC0281 ICR3838 (020), 26 February 2006, 169, VPL.2000.0003.1755; Exhibit RC0281 ICR3838 (020), 27 February 2006, 171, VPL.2000.0003.1757; Exhibit RC0281 ICR3838 (021), 3 March 2006, 175, VPL.2000.0003.1761; Exhibit RC0281 ICR3838 (021), 6 March 2006, 178, VPL.2000.0003.1764; Exhibit RC0281 ICR3838 (023), 17 March 2006, 193, VPL.2000.0003.1779; Exhibit RC0281 ICR3838 (023), 23 March 2006, 204, VPL.2000.0003.1790; Exhibit RC0281 ICR3838 (024), 24 March 2006, 208-209, VPL.2000.0003.1794-VPL.2000.0003.1795; Exhibit RC0281 ICR3838 (025), 12 April 2006, 234, VPL.2000.0003.1820; Exhibit RC0281 ICR3838 (028), 24 April 2006, 264, VPL.2000.0003.1850; Exhibit RC0281 ICR3838 (031), 5 May 2006, 288, VPL.2000.0003.1874; Exhibit RC0281 ICR3838 (031), 10 May 2006, 294, VPL.2000.0003.1880; Exhibit RC0281 ICR3838 (038), 18 July 2006, 360, VPL.2000.0003.1946.

⁴⁷ See Exhibit RC0281 ICR3838 (015), 10 January 2006, 115, VPL.2000.0003.1701; Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773.

⁴⁸ See Exhibit RC0281 ICR3838 (018), 16 February 2006, 155, VPL.2000.0003.1741; Exhibit RC0281 ICR3838 (019), 18 February 2006, 158, VPL.2000.0003.1744; Exhibit RC0281 ICR3838 (025), 5 April 2006, 226, VPL.2000.0003.1812; Exhibit RC0281 ICR3838 (037), 5 April 2006, 351, VPL.2000.0003.1937.

14. Throughout this period, Ms Gobbo regularly kept her handlers apprised of the fact and content of her telephone calls from and visits to Mr Carl Williams in custody (which are listed above).⁴⁹ It is submitted that, at times, such communications may have constituted breaches of privilege or confidence, for example:
 - 14.1. On 27 June 2006, after speaking to Mr Carl Williams on the telephone, Ms Gobbo is recorded as having told Mr Peter Smith, one of her handlers, that “he does not have a solicitor because no funding, [and] is thinking about pleading guilty to current charges.”⁵⁰
 - 14.2. On 7 March 2007, Ms Gobbo reported to Mr Anderson, another handler, that Mr Carl Williams had telephoned her “to discuss details of his plea”, and noted, inter alia, that he had “stated that he is prepared to give evidence” and that she had “explained the pros and cons” of him doing so.⁵¹
15. Further, the provision of information about Mr Carl Williams was not merely one way, from Ms Gobbo to Victoria Police. Rather, during this period, Victoria Police actively and covertly disseminated intelligence and information to Ms Gobbo which concerned Mr Carl Williams. The carriage of such intelligence often flowed from investigators, to handlers, and on to Ms Gobbo. For example, according to the ICR records:
 - 15.1. On 5 April 2006, Mr O’Brien reportedly advised Mr Peter Smith that “T/I [telephone intercept] indicates Carl Williams has rung Roberta Williams and told her to go and see HS to ascertain HS [human source] involvement with Thomas”. This was promptly conveyed to Ms Gobbo.⁵²
 - 15.2. On 7 July 2006, Mr Bateson provided Mr Peter Smith with intelligence about Mr Carl Williams that was obtained by way of ██████████ where he was being held.⁵³ A few days later, on 11 July 2006, Mr Peter Smith passed on that intelligence to Ms Gobbo.⁵⁴
 - 15.3. On 19 July 2006, Mr Flynn had a meeting with Mr Peter Smith during which they discussed matters relating to Mr Carl Williams, among

⁴⁹ See, eg, Exhibit RC0281 ICR3838 (014), 1 January 2006, 108, VPL.2000.0003.1694; Exhibit RC0281 ICR3838 (015), 10 January 2006, 115, VPL.2000.0003.1701; Exhibit RC0281 ICR3838 (020), 24 February 2006, 165, VPL.2000.0003.1751; Exhibit RC0281 ICR3838 (021), 6 March 2006, 179, VPL.2000.0003.1765; Exhibit RC0281 ICR3838 (021), 8 March 2006, 180, VPL.2000.0003.1766; Exhibit RC0281 ICR3838 (022), 10 March 2006, 183, VPL.2000.0003.1769; Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773; Exhibit RC0281 ICR3838 (023), 16 March 2006, 191, VPL.2000.0003.1777; Exhibit RC0281 ICR3838 (023), 20 March 2006, 200, VPL.2000.0003.1786; Exhibit RC0281 ICR3838 (028), 20 April 2006, 253, VPL.2000.0003.1839; Exhibit RC0281 ICR3838 (030), 4 May 2006, 283, VPL.2000.0003.1869; Exhibit RC0281 ICR3838 (031), 5 May 2006, 288, VPL.2000.0003.1874; Exhibit RC0281 ICR3838 (036), 27 June 2006, 344, VPL.2000.0003.1930; Exhibit RC0281 ICR3838 (038), 13 July 2006, 358, VPL.2000.0003.1944; Exhibit RC0281 ICR3838 (038), 18 July 2006, 360, VPL.2000.0003.1946; Exhibit RC0281 ICR3838 (039), 24 July 2006, 366-368, VPL.2000.0003.1952-VPL.2000.0003.1954; Exhibit RC0281 ICR3838 (040), 2 August 2006, 379, VPL.2000.0003.1965; Exhibit RC0281 ICR3838 (042), 19 August 2006, 400, VPL.2000.0003.1986.

⁵⁰ See Exhibit RC0281 ICR3838 (036), 27 June 2006, 344, VPL.2000.0003.1930.

⁵¹ See Exhibit RC0281 ICR3838 (069), 7 March 2007, 679, VPL.2000.0003.2265.

⁵² Exhibit RC0281 ICR3838 (025), 5 April 2006, 223, VPL.2000.0003.1809. See also another example where Mr O'Brien was the source of intelligence: Exhibit RC0281 ICR3838 (040), 2 August 2006, 379, VPL.2000.0003.1965.

⁵³ Exhibit RC0281 ICR3838 (037), 7 July 2006, 352, VPL.2000.0003.1938. See also Exhibit RC0269 Statement of Commander Stuart Bateson, 7 May 2019, 16 [95], VPL.0014.0027.0001 @.0016.

⁵⁴ Exhibit RC0281 ICR3838 (037), 11 July 2006, 353, VPL.2000.0003.1939.

others. According to the ICRs, Mr Flynn consented to certain information he had provided handlers about Mr Carl Williams being passed on to Ms Gobbo.⁵⁵

- 15.4. On 22 July 2006, Mr Bateson provided Mr Peter Smith with intelligence, namely that “Carl Williams thinks [Ms Gobbo] is responsible for witnesses McGrath, [Mr Cooper] and Thomas and is not happy”.⁵⁶ This information and suggestions about how Ms Gobbo should deal with the predicament were immediately conveyed to her by Mr Peter Smith.⁵⁷
16. In July 2006, it appears that the relationship between Ms Gobbo and Mr Carl Williams began to sour.⁵⁸ The deterioration appears to have resulted from Mr Carl Williams becoming increasingly suspicious that Ms Gobbo was affected by conflicts of interest pertaining to her past conduct in relation to Messrs McGrath, [Cooper], and Thomas.⁵⁹ This led to Mr Carl Williams, in August 2006, writing various letters of complaint about the ethics of Ms Gobbo’s conduct, including to various legal authorities.⁶⁰ It also led to threats or warnings being directed at Ms Gobbo, apparently originating from Mr Carl Williams.⁶¹ As noted above, on 25 August 2006, the ongoing decline in their relationship was reflected in Ms Gobbo’s telephone number being removed from Mr Carl Williams’ prison telephone list.⁶²
17. Notwithstanding the above, as noted above, on 7 March 2007, Mr Carl Williams telephoned Ms Gobbo to “discuss details of his plea”.⁶³ The relevant ICR entry records as follows:⁶⁴
- *Carl WILLIAMS rang whilst 3838 was on the phone with OBRIEN.*
 - ...
 - *Rang 3838 to discuss details of his plea*
 - *WILLIAMS stated that he is prepared to give evidence – WILLIAMS did not detail what evidence he will give.*
 - *WILLIAMS said that he did not want to help police*

⁵⁵ Exhibit RC0281 ICR3838 (038), 19 July 2006, 361, VPL.2000.0003.1947.

⁵⁶ Exhibit RC0281 ICR3838 (039), 22 July 2006, 365, VPL.2000.0003.1951.

⁵⁷ Exhibit RC0281 ICR3838 (039), 22 July 2006, 365, VPL.2000.0003.1951.

⁵⁸ See, eg: Exhibit RC0281 ICR3838 (039), 22 July 2006, 365, VPL.2000.0003.1951; Exhibit RC0281 ICR3838 (040), 2 August 2006, 379, VPL.2000.0003.1955; Exhibit RC0281 ICR3838 (040), 3 August 2006, 381, VPL.2000.0003.1967; Exhibit RC0281 ICR3838 (040), 11 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (042), 25 August 2006, 405, VPL.2000.0003.1991.

⁵⁹ Exhibit RC0281 ICR3838 (039), 22 July 2006, 365, VPL.2000.0003.1951; Exhibit RC0281 ICR3838 (039), 24 July 2006, 367, VPL.2000.0003.1953; Exhibit RC0281 ICR3838 (040), 3 August 2006, 381, VPL.2000.0003.1967; Exhibit RC0281 ICR3838 (040), 11 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (042), 25 August 2006, 405, VPL.2000.0003.1991.

⁶⁰ See, eg Exhibit RC0281 ICR3838 (040), 3 August 2006, 381, VPL.2000.0003.1967; Exhibit RC0281 ICR3838 (040), 11 August 2006, 389, VPL.2000.0003.1975; Exhibit RC0281 ICR3838 (041), 13 August 2006, 392, VPL.2000.0003.1978; Exhibit RC0281 ICR3838 (042), 25 August 2006, 405, VPL.2000.0003.1991; Exhibit RC0281 ICR3838 (045), 8 September 2006, 418, VPL.2000.0003.2004.

⁶¹ See, eg, Exhibit RC0281 ICR3838 (040), 4 August 2006, 382, VPL.2000.0003.1968; Exhibit RC0281 ICR3838 (041), 11 August 2006, 391, VPL.2000.0003.1977; Cf Exhibit RC0281 ICR3838 (042), 19 August 2006, 400, VPL.2000.0003.1986.

⁶² See Exhibit RC0281 ICR3838 (042), 25 August 2006, 406, VPL.2000.0003.1992.

⁶³ See Exhibit RC0281 ICR3838 (069), 7 March 2007, 679, VPL.2000.0003.2265.

⁶⁴ See Exhibit RC0281 ICR3838 (069), 7 March 2007, 679, VPL.2000.0003.2265.

- *3838 explained the pros and cons of WILLIAMS giving evidence*
- *3838 raised concerns that WILLIAMS giving evidence will 'fuck up' other prosecutions as WILLIAMS evidence will be different to other witnesses.*

18. While, thereafter, their relationship remained distant, it is noted that Mr Carl Williams continued – through to January 2009 – to feature in communications between Ms Gobbo (in her capacity as a human source) and Victoria Police.⁶⁵

Relevant Conduct in relation to Mr Thomas

19. In addition to the above, the conduct of Ms Gobbo and various members of Victoria Police in relation to Mr Thomas is also relevant to an assessment of Mr Carl Williams' matters. As set out in the Narrative Submissions at Chapter 7, it is submitted that the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Thomas may have been improper or unlawful. In particular, for the reasons set out in that section of the submissions, it is submitted that such conduct led Mr Thomas to his decision to assist and co-operate with authorities. Such co-operation from Mr Thomas included making statements implicating others and undertaking to give evidence in subsequent prosecutions. Arguably, therefore, the evidence of Mr Thomas, relied upon in the prosecution of Mr Carl Williams in the 2007 Case, may have been obtained in consequence of improper or illegal conduct, and such evidence may therefore have been liable to exclusion. It is submitted that the absence of any disclosure meant that Mr Carl Williams may have been deprived of any opportunity to object to the admissibility of this evidence.
20. Although the evidence of Mr Thomas was relied upon by the prosecution in the 2006 Case, such evidence was only obtained and adduced after Mr Carl Williams had been convicted at trial in November 2005, and prior to the sentencing hearing in July 2006. In those circumstances, it is not open to submit that Mr Carl Williams' conviction in the 2006 Case may have been affected by virtue of reliance on the evidence of Mr Thomas.

Relevant Submissions before the Commission

[REDACTED]

21| [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Submissions under Terms of Reference 1 and 2 in relation to Mr Carl Williams

22. It is submitted that it is open to the Commissioner to find that the 2007 Case of Mr Carl Williams may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their

⁶⁵ See generally: Un-tendered Summary of ICR Extracts, Carl Williams, undated, VPL.4233.0001.0001.

[REDACTED]
[REDACTED]

disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.

23. This case is linked to the case of Mr Thomas and accordingly this case study adopts the detailed analysis of Ms Gobbo's conduct and police conduct contained in the Narrative Submissions, Chapter 7. In addition, these submissions should be read in conjunction with various other relevant parts of the Narrative Submission, as set out at [1] above.
24. The extent to which the 2007 Case of Mr Carl Williams may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

25. First, Category 1A⁶⁸ applies in that, between approximately January 2006 and March 2007,⁶⁹ Ms Gobbo acted for Mr Carl Williams while she was a human source,⁷⁰ and did not disclose same to him.⁷¹
26. Secondly, Category 1B⁷² applies in that, between September 2005 and March 2007, which was before and during the period that Ms Gobbo acted for Mr Carl Williams in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police⁷³ and otherwise assisted (or attempted to assist) in his prosecution,⁷⁴ and did not disclose same to him.
27. Thirdly, Category 2A⁷⁵ applies in that evidence relied upon by the prosecution in the 2007 Case, namely the evidence of Mr Thomas,⁷⁶ may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.⁷⁷
28. Fourthly, Category 2B⁷⁸ applies in that Ms Gobbo had knowledge of the circumstances founding the above [27] and failed to disclose same to her client, Mr Carl Williams, thereby depriving him of the ability to object to its admission.
29. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁷⁹ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁸⁰

⁶⁸ See Legal Principles Submissions at [249].

⁶⁹ See above analysis at [9].

⁷⁰ See Legal Principles Submissions at [20].

⁷¹ See Legal Principles Submissions at [239].

⁷² See Legal Principles Submissions at [249].

⁷³ See above analysis at [13]-[17].

⁷⁴ It is submitted that Ms Gobbo assisted in his prosecution in the 2007 Case by virtue of her conduct in relation to Mr Thomas. See above analysis at [19]; see also Narrative Submissions at Chapter 7.

⁷⁵ See Legal Principles Submissions at [249].

⁷⁶ See above analysis at [7] and [19].

⁷⁷ See Legal Principles Submissions at [196]-[222].

⁷⁸ See Legal Principles Submissions at [249].

⁷⁹ See Legal Principles Submissions at [210].

⁸⁰ See Legal Principles Submissions at [212]-[213].

30. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁸¹ Further, in certain instances identified above,⁸² Ms Gobbo's conduct may constitute a breach of legal professional privilege and confidence.⁸³
31. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

32. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸⁴
 - 32.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Carl Williams;
 - 32.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Carl Williams, appropriate disclosure was made; or alternatively
 - 32.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
33. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [32.1] were taken, and accordingly there was the potential for the right of Mr Carl Williams to a fair trial to have been interfered with.
34. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Carl Williams and/or his legal representatives.
35. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest

⁸¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁸² See above analysis at [14.1]-[14.2].

⁸³ See Legal Principles Submissions at [310]-[319] and [301]-[306].

⁸⁴ See Legal Principles Submissions at [384] and [452]-[457].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸⁵

36. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸⁶
37. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁸⁷
38. Category 3A⁸⁸ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
39. Category 3B⁸⁹ applies in that, before and during the period Ms Gobbo acted for Mr Carl Williams, she provided information in relation to him to members of Victoria Police⁹⁰ and otherwise assisted (or attempted to assist) in his prosecution,⁹¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
40. Category 4A⁹² applies in that, as noted above at [27], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
41. Category 4B⁹³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
42. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁸⁵ See Legal Principles Submissions at [380]-[385].

⁸⁶ See Legal Principles Submissions at [351], [362]-[373].

⁸⁷ See Legal Principles Submissions at [351], [374].

⁸⁸ See Legal Principles Submissions at [465].

⁸⁹ See Legal Principles Submissions at [465].

⁹⁰ See above analysis at [13]-[17].

⁹¹ It is submitted that Ms Gobbo assisted in his prosecution in the 2007 Case by virtue of her conduct in relation to Mr Thomas. See above analysis at [19]; see also Narrative Submissions at Chapter 7.

⁹² See Legal Principles Submissions at [465].

⁹³ See Legal Principles Submissions at [465].

CASE STUDY: MR WINCHESTER (A PSEUDONYM)

The Relevant Case of Mr Winchester

1. The one relevant case of Mr Winchester concerns his convictions before the County Court in May 2007.²
2. On 31 July 2006, Mr Winchester was arrested and interviewed by investigators from Purana Taskforce.³
3. The prosecution alleged that Mr Winchester delivered drugs and other items, including a firearm, to prisoners at Port Phillip Prison in exchange for money.⁴ At the time of his arrest he was employed as a private contractor and working as a [REDACTED] at the prison.⁵
4. The prosecution relied upon detailed admissions made by Mr Winchester, including two confessional statements.⁶
5. On 23 February 2007, Mr Winchester was arraigned and entered a plea of guilty to:
 - 5.1. one count of trafficking in methylamphetamine, ecstasy and cannabis (between 1 January 2000 and 30 July 2006);
 - 5.2. one count of possession of an unregistered handgun (on 1 January 2003); and
 - 5.3. one count of possession of cannabis (on 31 July 2006).⁷

¹ Footnote not used.

² Un-tendered Reasons for sentence, *R v XYZ* [2007] VCC 560, 10 [66], COR.1032.0001.0038; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', 'Mr Winchester', 16 March 2020, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0098.0054.0048.

³ Un-tendered Summary of offence, *The Queen v Mr Winchester* (2006) VCC, 9, OPP.0048.0001.0016 @ .0009; Un-tendered Crown summary for case conference, *The Queen v Mr Winchester* (2006) VCC, 16 [1] – [4], OPP.0048.0001.0016 @ .0016.

⁴ Un-tendered Crown summary for case conference, *The Queen v Mr Winchester* (2006) VCC, 16 [3], OPP.0048.0001.0016 @ 0016.

⁵ Un-tendered Reasons for sentence, *R v XYZ* [2007] VCC 560, 2 [2], COR.1032.0001.0038; Un-tendered Summary of offence, *The Queen v Mr Winchester* (2006) VCC, 3, OPP.0048.0001.0016 @ 0003; Un-tendered Crown summary for case conference, *The Queen v Mr Winchester* (2006) VCC, 16 [1], OPP.0048.0001.0016 @ 0016.

⁶ Un-tendered Reasons for sentence *R v XYZ* [2007] VCC 560, [53], COR.1032.0001.0038; Un-tendered Summary of offence, *The Queen v Mr Winchester* (2006) VCC, 9, OPP.0048.0001.0016 @ 0009.

⁷ Un-tendered Reasons for sentence *R v XYZ* [2007] VCC 560, 2 [1], COR.1032.0001.0038; Un-tendered Presentment no U01826090, *The Queen v Mr Winchester* (2006) VCC, 13, OPP.0048.0001.0016 @ 0013.

6. On 25 May 2007, Mr Winchester was sentenced to a total effective sentence of four years' imprisonment, with a non-parole period of two years.⁸ In addition, he was convicted and fined in relation to the count of possession of cannabis.⁹

Summary of Relevant Conduct of Ms Gobbo

Ms Gobbo's Legal Representation of Mr Winchester

7. Based on the material reviewed by Counsel Assisting, it is not entirely clear as to when Ms Gobbo commenced providing legal representation to Mr Winchester. On 20 February 2007, Ms Gobbo told her handlers that she was representing Mr Winchester.¹⁰ Shortly after, on 22 February 2007, she charged fees concerning a 'brief to advise & settle plea' in his matter.¹¹
8. Whilst there is nothing to suggest that Ms Gobbo appeared in court on behalf of Mr Winchester or provided any ongoing representation to him, it appears that she continued, at least for a short period of time, to provide advice to Mr Winchester following the submission of her invoice. On 30 March 2007, during a meeting with her handlers, Ms Gobbo received a phone call from an unidentified person and discussed Mr Winchester's case. She provided advice to that person to be passed onto Mr Winchester, including advice as to the likelihood of him receiving a term of imprisonment.¹² Whilst it is not clear as to who the caller was, it is nevertheless submitted that, given the nature of the discussion, it can be inferred that Ms Gobbo was providing legal representation to Mr Winchester at that time, with the knowledge that the advice was to be passed onto him.

The Conduct of Ms Gobbo as a Human Source in relation to Mr Winchester

9. Ms Gobbo provided information concerning Mr Winchester to Victoria Police prior to or during her representation of him, on at least the following four occasions:
 - 9.1. On 1 August 2006, she told her handler that Purana investigators had arrested Mr Winchester the day prior and advised as to the name of the informant. She also provided information concerning the nature of the alleged offending and advised that Mr Winchester had made 'some admissions re firearms trafficking'.¹³ The relevant Informer Contact Report entry records that 'HS [human source] adv. better to tell him HS is conflicted'.¹⁴

⁸ Un-tendered Reasons for sentence, *R v XYZ* [2007] VCC 560, 10 [66], COR.1032.0001.0038; Un-tendered Victoria Police, 'Victoria Police Criminal History Report', 'Mr Winchester', 16 March 2020, produced by Victoria Police in response to a Commission Notice to Produce, 1, VPL.0098.0054.0048.

⁹ Un-tendered Reasons for sentence, *R v XYZ* [2007] VCC 560, 11 [67], COR.1032.0001.0038.

¹⁰ Exhibit RC0281 ICR3838 (067), 20 February 2007, 646, VPL.2000.0003.2227 @ .2232.

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 22 February 2007, 2, MIN.5000.7000.0103 @ .0104; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Nicola Gobbo Statement of Accounts, 22 February 2007, 35, GMH.0001.0001.0002 @ .0035; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Nicola Gobbo invoices, 22 February 2007, 49, GMH.0001.0001.0007 @ .0049.

¹² Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 30 March 2007, 133-134, VPL.0005.0127.0720 @ .0852 - 0853.

¹³ Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964 @ .1964.

¹⁴ Exhibit RC0281 ICR3838 (040), 1 August 2006, 378, VPL.2000.0003.1964 @ .1964.

- 9.2. On 20 February 2007, Ms Gobbo told her handler that she was representing Mr Winchester. She provided information concerning his employment, the nature of the charges against him, [REDACTED].¹⁵
- 9.3. On 21 February 2007, Ms Gobbo told her handlers that she had 'resolved all issues with OPP [Office of Public Prosecutions]', that [REDACTED], and that there was 'no need for SDU [Source Development Unit] involvement.'¹⁶
- 9.4. On 30 March 2007, as referred to above at [8], during a meeting with handlers Ms Gobbo took a phone call in relation to Mr Winchester's case, during which she advised that, in her view, 'the longer the delay the better' and that he would be likely to receive a term of imprisonment [REDACTED].¹⁷ Upon finishing the call, she told her handlers that the call concerned Mr Winchester, and advised that he was 'a cook from Port Phillip Prison'. She provided information concerning [REDACTED], stated that she 'didn't do the role [sic] in that case' and advised that Mr Winchester's case would be adjourned and that he was likely to receive a term of imprisonment.¹⁸

Submissions under Terms of Reference 1 and 2 in relation to Mr Winchester

10. It is submitted that it is open to the Commissioner to find that the case of Mr Winchester may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
11. The extent to which the case of Mr Winchester may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

12. First, Category 1A¹⁹ applies in that, between February 2007 and March 2007,²⁰ Ms Gobbo acted for Mr Winchester while she was a human source,²¹ and did not disclose same to him.²²
13. Secondly, Category 1B²³ applies in that, between August 2006 and March 2007, which was before and during the period that Ms Gobbo acted for Mr Winchester in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.²⁴

¹⁵ Exhibit RC0281 ICR3838 (067), 20 February 2007, 646, VPL.2000.0003.2227 @.2232.

¹⁶ Exhibit RC0281 ICR3838 (067), 21 February 2007, 648, VPL.2000.0003.2227 @.2234.

¹⁷ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 30 March 2007, 133-134, VPL.0005.0127.0720 @ .0852 - .0853.

¹⁸ Exhibit RC0282 Transcript of meeting between Nicola Gobbo, Peter Smith and Sandy White, 30 March 2007, 133-134, VPL.0005.0127.0720 @ .0852 - .0853.

¹⁹ See Legal Principles Submissions at [249].

²⁰ See above analysis at [7]–[8].

²¹ See Legal Principles Submissions at [20].

²² See Legal Principles Submissions at [239].

²³ See Legal Principles Submissions at [249].

²⁴ See above analysis at [9].

14. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁵ Further, in certain instances identified above,²⁶ Ms Gobbo's conduct may constitute a breach of legal professional privilege and/or confidence.²⁷
15. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

16. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁸
 - 16.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Winchester;
 - 16.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Winchester, appropriate disclosure was made; or alternatively
 - 16.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
17. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [16.1] were taken, and accordingly there was the potential for the right of Mr Winchester to a fair trial to have been interfered with.
18. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Winchester and/or his legal representatives.
19. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest

²⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

²⁶ See above analysis at [9].

²⁷ See Legal Principles Submissions at [310]-[319] and [301]-[306].

²⁸ See Legal Principles Submissions at [384] and [452]-[457].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁹

20. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.³⁰
21. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.³¹
22. Category 3A³² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
23. Category 3B³³ applies in that, before and during the period Ms Gobbo acted for Mr Winchester, she provided information in relation to him to members of Victoria Police,³⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
24. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁹ See Legal Principles Submissions at [380]-[385].

³⁰ See Legal Principles Submissions at [351], [362]-[373].

³¹ See Legal Principles Submissions at [351], [374].

³² See Legal Principles Submissions at [465].

³³ See Legal Principles Submissions at [465].

³⁴ See above analysis at [9].

CASE STUDY: ALAN WOODHEAD

The Relevant Cases of Mr Woodhead

1. The relevant matters of Mr Alan Woodhead concern the following two cases in which he was convicted before the County Court in 2011:
 - 1.1. Presentment No. C0705669, in respect of which he was convicted of:
 - 1.1.1. one charge of trafficking in a drug of dependence, namely methamphetamine;
 - 1.1.2. one charge of trafficking in a drug of dependence, namely amphetamine;
 - 1.1.3. one charge of possession of equipment relating to the manufacture of a drug of dependence (Drugs Case);¹ and
 - 1.2. Presentment No. W00855817, in respect of which he was convicted of one charge in relation to possession of a handgun (Handgun Case).²
2. The offending in both cases occurred between January 2007 and April 2007.³ On 3 April 2007, Mr Woodhead was arrested following the execution of search warrants at his home and other locations.⁴ He was subsequently charged with the offending and committal proceedings were commenced. On 1 December 2008, a committal hearing took place before the Magistrates' Court.⁵
3. In short, the prosecution case was that Mr Woodhead was involved in a large drug manufacturing syndicate involving clandestine amphetamine laboratories located around Melbourne.⁶ The case relied on, inter alia, drugs and handguns found at Mr Woodhead's residence upon the execution of a search warrant.⁷ Mr Woodhead was a co-accused to Mr Christopher Ross, whose case is the subject of a separate part of these submissions.⁸
4. In the Drugs Case, Mr Woodhead pleaded not guilty and was tried before the County Court in 2011, at the end of which he was found guilty of the charges described above. In the Handgun Case, Mr Woodhead pleaded guilty.

¹ Un-tendered Reasons for Sentence, *DPP v Abou-Eid & Anor*, 27 September 2011, 67 [1]-[3], RCMP1.0119.0001.0010 @.0066-0078; Un-tendered Presentment No. C0705669, *R v Abou-Eid & Anor*, 2009, 11, RCMP1.0119.0001.0010 @.0004-0011.

² Un-tendered Reasons for Sentence, *DPP v Abou-Eid & Anor*, 27 September 2011, 67 [4], RCMP1.0119.0001.0010 @.0067. Cf. Un-tendered Presentment No. W00855817, *R v Woodhead*, 2011, 15, RCMP1.0119.0001.0010 @.0012-0015.

³ Un-tendered Reasons for Sentence, *DPP v Abou-Eid & Anor*, 27 September 2011, 67 [1]-[6], 68 [7]-[10], 69 [11]-[12], RCMP1.0119.0001.0010 @.0067-.0069; Un-tendered Presentment No. C0705669, *R v Abou-Eid & Anor*, 2009, 11, RCMP1.0119.0001.0010 @.0004-0011; Un-tendered Presentment No. W00855817, *R v Woodhead*, 2011, 15, RCMP1.0119.0001.0010 @.0012-0015.

⁴ Un-tendered Summary of Prosecution Opening for Plea, *R v Woodhead & Omar*, 31 August 2011, 57 [2], 58 [5], 61 [9], 62 [10], RCMP1.0119.0001.0010 @.0057-.0064.

⁵ Exhibit RC0281, ICR2958 (045), 11 November 2008, 701, VPL.2000.0003.2287.

⁶ Un-tendered Reasons for Sentence, *R v Cabral, Michael; Ross, Christopher*, 23 October 2009, 52 [4], RCMP1.0119.0001.0006 @.0052.

⁷ Un-tendered Reasons for Sentence, *R v Cabral, Michael; Ross, Christopher*, 23 October 2009, 52 [5], 54 [14], 55 [15]-[16], and 63 [58], RCMP1.0119.0001.0006 @.0052-0055, 0063.

⁸ See Case Study of Christopher Ross, in Volume 3.

5. On 27 September 2011, he was sentenced in the County Court for the two cases together.⁹ The total effective sentence was 80 months' imprisonment, with a non-parole period of 60 months.¹⁰

Ms Gobbo's Legal Representation of Mr Woodhead

6. Between September 2007 and November 2008, Ms Gobbo acted for Mr Woodhead in relation to the cases during committal proceedings before the Magistrates' Court. Specifically, evidence before the Commission demonstrates that:
 - 6.1. On 29 September 2007, Ms Gobbo marked fees of \$1,000 in the matter of "Police v Alan Woodhead" for a "[b]rief to advise & draft Form 8A".¹¹
 - 6.2. On 15 October 2007, Ms Gobbo marked fees of \$1,000 the matter of "Police v Alan Woodhead" for a "[b]rief to appear at committal mention".¹²
 - 6.3. On 13 June 2008, Ms Gobbo marked fees of \$1,100 in the matter of "Police v Alan Woodhead" for a "[b]rief to appear at Melb. Mag Court incl conference".¹³
 - 6.4. On 1 September 2008, Ms Gobbo appeared on behalf of Mr Woodhead before the Magistrates' Court at Melbourne for special mention, and the next day marked fees of \$440 for the appearance.¹⁴
 - 6.5. As of 11 November 2008, it appears, based on the Informer Contact Report (ICR) records, that Ms Gobbo was still acting for Mr Woodhead in relation to his pending committal hearing.¹⁵

⁹ Un-tendered Reasons for Sentence, *DPP v Abou-Eid & Anor*, 27 September 2011, RCMP1.0119.0001.0010 @.0066-.0078.

¹⁰ Un-tendered Reasons for Sentence, *DPP v Abou-Eid & Anor*, 27 September 2011, 75 [38], 76 [38]-[43], RCMP1.0119.0001.0010 @.0075-.0076.

¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 29 September 2007, 9, MIN.5000.7000.00103 @0111; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account for Ms Gobbo, 29 September 2007, 25, GMH.0001.0001.0002 @.0025; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 29 September 2007, 40, GMH.0001.0001.0006 @.0040.

¹² Exhibit RC1898 Office of Public Prosecutions Victoria, PRISM database list of appearances by Ms Nicola Gobbo, 15 October 2007, 68, OPP.0001.0004.0025 @.0092; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 15 October 2007, 10, MIN.5000.7000.0103 @.0112; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Statement of Account Ms Gobbo, 15 October 2007, 23, GMH.0001.0001.0002 @.0023; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Nicola Gobbo, 15 October 2007, 29, GMH.0001.0001.0006 @.0029.

¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 13 June 2008, 19, MIN.5000.7000.0103 @.0121; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Ms Gobbo Statement of Account, 13 June 2008, 13, GMH.0001.0001.0002 @.0013; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 10, GMH.0001.0001.0005 @.0010.

¹⁴ Exhibit RC1841 Magistrates' Court of Victoria Record of persons represented by Ms Gobbo, 1 September 2008, 21, MCV.0001.0001.0001 @.00019; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk Invoice for fees due to Ms Gobbo, 1 September 2008, 62, GMH.0001.0001.0004 @.0062; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 2 September 2008, 21, MIN.5000.7000.00103 @.0123; Exhibit RC1569 Meldrum & Hyland Barristers' Clerk, Statement of Account for Ms Gobbo, 1 September 2008, 9, GMH.0001.0001.0002 @.0009.

¹⁵ See Exhibit RC0281, ICR2958 (045), 11 November 2008, 701, VPL.2000.0003.2287.

The Conduct of Ms Gobbo as a Human Source in Relation to Mr Woodhead

7. Mr Woodhead was the subject of communications between Ms Gobbo (in her capacity as a human source) and Victoria Police during and after the period that she represented him. The relevant communications and records may be summarised as follows:

7.1. On [REDACTED] June 2008, Ms Gobbo reportedly informed her handler, Mr Fox, that the “clients she was dealing with today were; Alan Woodhead & Christopher Ross”, and that she “believes that Woodhead, Ross, and Cridland are all Coffin Cheaters who have been cooking amphet for years”;¹⁶

7.2. On 11 November 2008, Mr Peter Smith, another handler, made an entry in the ICRs as follows:

Investigation Management

From Controller S WHITE

*[Ms Gobbo] is representing Deft. Alan WHITEHAD or WOODHEAD charged with manufacture amphetamine, committal on [REDACTED]. Witness in this case is [REDACTED], he has 2 x statements on the brief re minor evidence re knowing Deft or similar. [REDACTED] @ [REDACTED] defence counsel want to cross examine [REDACTED], if this was *intense* likely that [REDACTED]. Consideration to alerting [Ms Gobbo] to this fact. Informant [REDACTED] making enquiries with OPP [Office of Public Prosecutions] first as to withdrawing [REDACTED] evidence totally.*

7.3. On 21 November 2008, Mr Peter Smith made a further related entry in the ICRs as follows:

Investigation Management

From [REDACTED] D.T.F., re his Defendant [REDACTED] has spoken to OPP Prosecutor Andy MOORE and declared witness [REDACTED] but prosecutor still wants to use as a witness. EVANS concerned re [REDACTED] and likelihood of [REDACTED] if cross examined. Suggests S/T HS 2958 re non-cross examining.

To S/T Controller SANDY WHITE first

7.4. On [REDACTED] November 2008, the ICRs record that Ms Gobbo conveyed the following information to Mr Peter Smith:¹⁷

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

- 7.5. Later that same day, Mr Peter Smith made the following further entry in the ICRs:¹⁸

Investigation Management

[REDACTED]

8. As is plain from the foregoing, during this time, Ms Gobbo also communicated (in her capacity as a human source) with Victoria Police in relation to Mr Woodhead's co-accused, Mr Ross.¹⁹

Submissions under Terms of Reference 1 and 2 in relation to Mr Woodhead

9. It is submitted that it is open to the Commissioner to find that the two cases of Mr Woodhead may have been affected by the conduct of Ms Gobbo as a human source, as well as the conduct of members of Victoria Police in their disclosures about and recruitment, management, and handling of Ms Gobbo as a human source.
10. The extent to which the two cases of Mr Woodhead may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

11. First, Category 1A²⁰ applies in that, between September 2007 and November 2008,²¹ Ms Gobbo acted for Mr Woodhead in relation to the cases while she was a human source,²² and did not disclose same to him.²³
12. Secondly, Category 1B²⁴ applies in that, on 12 June 2008,²⁵ which was during the period that Ms Gobbo acted for Mr Woodhead relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.
13. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁶
14. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail

[REDACTED]

²⁰ See Legal Principles Submissions at [249].

²¹ See analysis at [6] above.

²² See Legal Principles Submissions at [20].

²³ See Legal Principles Submissions at [239].

²⁴ See Legal Principles Submissions at [249].

²⁵ See analysis at [7.1] above.

²⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by counsel assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

15. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁷
 - 15.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Woodhead;
 - 15.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Woodhead, appropriate disclosure was made; or alternatively
 - 15.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
16. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [15.1] were taken, and accordingly there was the potential for the right of Mr Woodhead to a fair trial to have been interfered with.
17. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Woodhead and/or his legal representatives.
18. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁸
19. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁹

²⁷ See Legal Principles Submissions at [384] and [452]-[457].

²⁸ See Legal Principles Submissions at [380]-[385].

²⁹ See Legal Principles Submissions at [351], [362]-[373].

20. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.³⁰
21. Category 3A³¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
22. Category 3B³² applies in that, during the period Ms Gobbo acted for Mr Woodhead, she provided information in relation to him to members of Victoria Police,³³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
23. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

³⁰ See Legal Principles Submissions at [351], [374].

³¹ See Legal Principles Submissions at [465].

³² See Legal Principles Submissions at [465].

³³ See above analysis at [7.1] above.

THE 'TOMATO TINS' AND RELATED PROCEEDINGS CASE STUDIES

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OVERVIEW

1. Between August 2008 and April 2009,¹ approximately 33 individuals were arrested and charged with various offences related to three drug-related operations. Material before the Commission indicates that the prosecution of 32 of those individuals² resulted in 38 cases³ which may have been affected by the conduct of Ms Gobbo as a human source.

The Relevant Operations

2. The three drug-related operations were known as Operations 'Bootham Moko', 'Inca', and 'Cardinia',⁴ (together, the Operations). Each is briefly outlined below.

Operation Bootham Moko

3. Operation Bootham Moko was an Australian Federal Police (AFP) operation⁵ which concerned the conspired importation in 2007 of 3,4-Methylenedioxymethamphetamine (MDMA), colloquially known as 'ecstasy,' contained in tablets concealed within tomato tins and shipped from Naples, Italy, to Melbourne.⁶ Eight accused were charged and convicted as co-conspirators in three separate proceedings, and all eight received lengthy imprisonment sentences.⁷

¹ With the exception of Mr Jan Visser who was arrested later, and Mr Maddox who was arrested earlier. See the individual case analyses of those persons.

² Of the 33 individuals arrested, only 32 are considered in this analysis, in accordance with the methodology outlined at [67]-[89] of the Legal Principles Submissions. In particular, material before the Commission indicates that Mr Graham Potter absconded before trial: Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 1 [3[k], RCMPI.0009.0001.0030 @.0006

³ Within the meaning of the term given at [21] of the Legal Principles Submissions.

⁴ *CDPP v P. Barbaro & Ors (Criminal)* [2009] VMC 26 [2]; Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 1, RCMPI.0009.0002.0109 @.0005 See, eg, Exhibit RC1906 Letter from Australian Government Solicitor on behalf of the CDPP to Solicitors Assisting the Royal Commission dated 5 June 2019, Attachment B, Summary of Operations Bootham/Moko, Inca and Cardinia, 1, CORRO.0001.0004.0002.

⁵ Operation Bootham Moko was the combination of initially separate AFP Operations 'Bootham' and 'Moko' which commenced in March and June 2007 respectively: see, eg, Exhibit RC1908 Letter from Clayton Utz on behalf of the AFP to Solicitors Assisting the Royal Commission, 29 July 2019, 2 [8(b)], RCMPI.0184.0001.0001.

⁶ See, eg, Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 1, RCMPI.0009.0002.0109 @.0005; See, eg, Exhibit RC1906 Letter from Australian Government Solicitor on behalf of the CDPP to Solicitors Assisting the Royal Commission dated 5 June 2019, Attachment B, Summary of Operations Bootham/Moko, Inca and Cardinia, 1, RCMPI.0184.0001.0001.

⁷ Pasquale Barbaro and Saverio Zirilli pleaded guilty and were sentenced together in February 2012; *DPP v Barbaro & Anor* [2012] VSC 47; Rob Karam, John Higgs, Salvatore Agresta and Pasquale Sergi were tried together in 2012 and sentenced in April 2013; *DPP v Karam & Ors* [2013] VSC 133; Jan Visser and Carmelo Falanga were tried together and sentenced on 4 July 2014; *R v Falanga and Visser* [2014] VSC 306.

Operation Inca

4. Operation Inca commenced as a joint AFP, Victoria Police, Australian Crime Commission and Australian Taxation Office operation⁸ and concerned four episodes of offending,⁹ namely:
 - 4.1. MDMA trafficking in February and May 2008 (Inca A), in relation to which 20 individuals were charged;¹⁰
 - 4.2. money laundering of the proceeds of the MDMA trafficking (Inca B), in relation to which 10 individuals were charged;¹¹
 - 4.3. the conspired importation of cocaine concealed in a shipment of Colombian coffee beans in July 2008 (Inca C), in relation to which four individuals were charged;¹² and
 - 4.4. the conspired importation of pseudoephedrine, a border-controlled precursor used in the manufacture of narcotics, in a shipment of furniture from India between May and August 2008 (Inca D), in relation to which five individuals were charged.¹³

Operation Cardinia

5. Operation Cardinia was an AFP operation which relevantly concerned the trafficking of MDMA.¹⁴ Messrs Rob Karam and Fadl Maroun, were charged and convicted in respect of that offending,¹⁵ and Mr Danny Moussa of a related charge.¹⁶

The Interrelationship of the Operations

6. The Operations were related, and appear to have evolved from one another, as investigators, using sources of evidence common to all Operations, discovered

⁸ See, eg, Exhibit RC1908 Letter from Clayton Utz on behalf of the AFP to Solicitors Assisting the Royal Commission, 29 July 2019, 2-3 [8(c)], RCMP1.0184.0001.0001.

⁹ See, eg, Exhibit RC1906 Letter from Australian Government Solicitor on behalf of the CDPP to Solicitors Assisting the Royal Commission dated 5 June 2019, Attachment B, Summary of Operations Bootham/Moko, Inca and Cardinia, 1-3, CORRO.0001.0004.0002.

¹⁰ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Gratian Bran, Mr Eddington, Antonino Di Pietro, Mr Maddox, Rob Karam, Francesco Madafferi, Frank Molluso, Paul Psaila, Sharon Ropa, Alan Saric, Mr Khan, Antonio Sergi, Pasquale John Sergi, Pasquale Rocco Sergi, Pino Varallo, Saverio Zirilli. Note that the Commission understands that Graham Potter, although charged, has absconded and was not tried. Accordingly, their individual cases do not meet the criteria for 'candidates for review', in accordance with the methodology outlined at [67]-[89] of the Legal Principles Submissions.

¹¹ See the individual case analyses for Anvardeen Abdul Jabbar, Pasquale Barbaro, Gratian Bran, Mr Emerson, Seyed Moulana, Mohammed Nasfan Abdul Nazzar, Sharon Ropa, Mr Khan and Mr Huntley. Note that, as described below in the footnote [61] in Table A Mr Maddox was charged with a similar state offence, but given its apparent source in Operation Inca, it is included in this list for the purposes of the Term of Reference 1 analysis.

¹² See the individual case analyses for Pasquale Barbaro, Rob Karam, Giovanni Polimeni and Saverio Zirilli.

¹³ See the individual case analyses for Pasquale Barbaro, Phillip Batticciotto, Rob Karam, Mr Khan, and Anil Suri.

¹⁴ Operation Cardinia also involved the conspired importation of a border-controlled precursor, in respect of which Karam and Maroun were charged and tried, however the jury in that trial was discharged after indicating that it was unable to reach a unanimous verdict, following which the importation conspiracy charges were discontinued by the Commonwealth Director of Public Prosecutions (CDPP): See Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 3. RCMP1.0009.0002.0109 @.0007.

¹⁵ See, eg, *R v Rob Karam* [2015] VCC 855; *DPP v Fadl Maroun* [2015] VCC 871.

¹⁶ See the individual case analysis for Danny Moussa.

the causal connection between the different episodes of offending, and the individuals common to them. Each of these elements of relatedness is detailed in turn below.

Evidentiary Connection

7. Sources of evidence common to all Operations (such as listening devices, telephone intercepts, surveillance, and materials seized upon arrest) appear to have played a central role in the evolution, and the success, of the Operations.
8. In the joint prosecution of Messrs Pasquale Barbaro and Saverio Zirilli, it was noted that “[t]he history of these matters initially involved a number of different law enforcement agencies apparently working separately upon different major targets. As each agency focused upon one or two persons, others came into view.”¹⁷ Some of those others were revealed in communications “heard on phones and within a hotel room, and read in messages”.¹⁸ Others came into view “both physically and on-line”¹⁹ as customers following the first supply of ecstasy tablets in 2008 (ie Operation Inca).
9. Two listening devices appear to have been of particular importance. The first was installed in a room at the Pacific International Apartments in Melbourne at which incriminating discussions concerning the subject of Operation Bootham Moko were had,²⁰ and the second was installed (together with video surveillance devices) in the Carlton North townhouse of Ms Sharon Ropa, Mr Barbaro’s mistress, from where much of the offending the subject of Operation Inca was organised.²¹
10. In addition, telephone intercepts of the personally subscribed mobile phones of the growing number of people of interest also revealed new associated individuals whose phones in turn were intercepted.²² Accordingly, the eventual use by the co-accused of SIM cards registered in false names was an ineffective attempt at evading police surveillance.²³ Further, even in circumstances where a co-accused’s personal phone was not the subject of a telephone interception warrant, their communications with co-accused were incidentally intercepted and used in evidence.²⁴

¹⁷ Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013.

¹⁸ Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013.

¹⁹ Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013.

²⁰ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, 24, RCMP.0009.0001.0030 @.0018, .0024.

²¹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 65-66, RCMP.0009.0001.0030 @.0065-.0066.

²² See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 107, RCMP.0009.0002.0069 @.0107.

²³ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 14-15, RCMP.0009.0001.0030 @.0014-.0015; Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri and Phillip Batticiotto*, undated, 45, 48-49, RCMP.0033.0002.0048 @.0045, @.0048-.0049.

²⁴ See, eg, Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri and Phillip Batticiotto*, undated, 48-49, RCMP.0033.0002.0048 @.0048-.0049.

11. The surveillance appears to have begun with Messrs Karam²⁵ and John Higgs²⁶ being early targets of various joint or independent operations, and that Messrs Barbaro and Zirilli came onto the AFP's "radar" shortly thereafter.²⁷
12. The investigative evolution appears to have been greatly assisted by the early targeting of key individuals, such as Messrs Karam,²⁸ Higgs,²⁹ and Barbaro.³⁰ In the prosecution of Mr Karam it was alleged that Mr Barbaro, being "at the centre" of the cocaine and precursor conspiracies (ie Operation Inca) "talks to every other named conspirator".³¹ Similarly, the prosecution's case was that Mr Karam spoke with all but one named cocaine co-conspirator.³² The centrality of their roles meant that when they were subjected to surveillance, including covert physical surveillance, relevant associates (who ultimately become related accused) were also observed, and sometimes photographed or recorded,³³ or independently targeted.
13. From the earliest committal stages of the many proceedings following the initial arrests in August 2008, the prosecution contended that its case in respect of all accused and offending "relies to a large extent on evidence obtained by way of telephone intercepts/listening devices and the inferences to be drawn from that evidence."³⁴ It noted that the evidence against the defendants was "based on 80 to 85% of the 'spoken word/text transmissions' with the balance of the evidence consisting of search and seizure and physical surveillance."³⁵ This contention was maintained throughout the relevant proceedings,³⁶ and is evident in the prosecution of each co-accused.³⁷
14. For example, in Ms Ropa's case, the prosecution submitted that:
 - 14.1. [t]he only evidentiary "trail" potentially arose from any interception of telephone services, responsive physical surveillance or ultimate relevant seizures from searches of targeted premises. All of these investigative strategies took place in connection with the broad-based on-going targeting of the Barbaro syndicate from February 2008

²⁵ See Un-tendered Legal Conflict Report, Registered Human Source #21803838 – The Matter of Rabie Karam (Example Three), 2 October 2014, 2 [3(j)]-[3(k)], VGSO.2000.1501.0263 @.0266.

²⁶ Exhibit RC0281 ICR3838 (081), 30 May 2007, 868, VPL.2000.0003.2454.

²⁷ See, eg, Un-tendered Transcript of Proceedings, *R v Pasquale Barbaro & Saverio Zirilli* (Supreme Court of Victoria, King J, 19 January 2012) 40-41, RCMP.0009.0001.0035 @.0041-.0042; Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013; cf Un-tendered Letter from Victoria Police to the CDPP, 16 January 2017, 2, annexed to Anonymous Submission 034. See also below at [38]-[39].

²⁸ Un-tendered Legal Conflict Report, Registered Human Source #21803838 – The Matter of Rabie Karam (Example Three), 2 October 2014, 2 [3(j)]-[3(k)], VGSO.2000.1501.0263 @.0266.

²⁹ Exhibit RC0281 ICR3838 (081), 30 May 2007, 868, VPL.2000.0003.2454.

³⁰ Un-tendered Transcript of Proceedings, *R v Pasquale Barbaro & Saverio Zirilli* (Supreme Court of Victoria, King J, 19 January 2012) 40-41, RCMP.0009.0001.0035 @.0041-.0042; Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013; cf Letter from Victoria Police to the CDPP, 16 January 2017, 2, annexed to Anonymous Submission 034.

³¹ Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 433, RCMP.0009.0002.0065 @.0034..

³² Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 435, RCMP.0009.0002.0065 @.0036.

³³ See, eg, Un-tendered Detailed Statement of Facts, *R v Antonio Sergi*, 24 April 2014, 9, RCMP.0009.0001.0103 @.0009.

³⁴ See *CDPP v P. Barbaro & Ors (Criminal)* [2009] VMC 26, [22].

³⁵ See *CDPP v P. Barbaro & Ors (Criminal)* [2009] VMC 26, [8].

³⁶ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 8-9, RCMP.0009.0002.0069 @.0008-.0009.

³⁷ See the individual case analyses for each co-accused.

onwards, culminating in the arrest of Ms. Ropa and numerous other syndicate members and also the arrest of five locally retained cash dealers commencing on 8th August 2008.³⁸

15. The above strongly indicates that the prosecution of charges which emerged from the Operations, and the evidence upon which those charges were based, was referable to the surveillance of Messrs Barbaro and Karam, or evidence obtained in relation to their offending.

Causal Connection

16. Evidence obtained through surveillance in relation to Operation Botham Moko appears to have led investigators to commence Operations Inca and Cardinia as the offending evolved. The causal connection of the Operations may be illustrated through the following brief outline of the offending.
17. In 2007, eight individuals, led by Mr Barbaro,³⁹ conspired to import MDMA concealed within tomato tins shipped from Italy to Australia (ie the subject of *Operation Bootham Moko*). The shipment was intercepted and seized by Australian Customs on 28 June 2007.⁴⁰
18. The interception of the tomato tins shipment was understood to have created the pressure of a “massive Euro debt” for Mr Barbaro,⁴¹ which amount he sought to recover in 2008 through the trafficking of new MDMA tablets at inflated prices,⁴² cocaine trafficking, and the importation of a precursor for the production of methamphetamine (ie the subjects of *Operation Inca*).⁴³ The cocaine and precursor were both intercepted and seized by Australian Customs (ie *Operation Inca C and D*),⁴⁴ on the basis of information provided by the AFP,⁴⁵ but the MDMA was successfully trafficked and the proceeds of that enterprise was laundered (ie *Operation Inca A and B*).⁴⁶
19. The MDMA tablets were supplied to Mr Barbaro⁴⁷ by (and sold under direction from⁴⁸) the same European suppliers of the seized ‘tomato tins’ MDMA (ie

³⁸ Un-tendered Prosecution Plea Opening, *CDPP v Sharon Ropa*, undated, 15, RCMP.0009.0002.0097 @.0015.

³⁹ See, eg, *DPP v Barbaro and Zirilli* [2012] VSC 47, [22], [31], [39].

⁴⁰ See, eg, *DPP v Barbaro and Zirilli* [2012] VSC 47, [9], [12].

⁴¹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 3, 82, RCMP.0009.0001.0030 @.0003, .0082.

⁴² See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 55, 83, RCMP.0009.0001.0030 @.0055, .0083; *DPP v Barbaro & Anor* [2012] VSC 47, [34].

⁴³ Un-tendered Transcript of Proceedings, *R v Pasquale Barbaro & Saverio Zirilli* (Supreme Court of Victoria, King J, 20 January 2012) 119, RCMP.0009.0001.0034 @.0022; Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 433, RCMP.0009.0002.0065 @.0034; See generally Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 7-8, RCMP.0009.0001.0103 @.0007-.0008.

⁴⁴ The cocaine on 28 July (see, eg, *R v Rob Karam* [2015] VCC 855, [8]); the pseudoephedrine after arrest on 4 September 2008 (see, eg, *DPP v Barbaro and Zirilli* [2012] VSC 47, [49]).

⁴⁵ See, eg, Un-tendered Transcript of Proceedings, *R v Pasquale Barbaro & Saverio Zirilli* (Supreme Court of Victoria, King J, 19 January 2012) 40, RCMP.0009.0001.0035 @.0041.

⁴⁶ See the relevant individual case analyses below.

⁴⁷ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 12, RCMP.0009.0002.0069 @.0012.

⁴⁸ See, eg, Un-tendered Prosecution Plea Summary, *R v Rob Karam*, 10 January 2015, 16-17, RCMP.0009.0002.0051 @.0016-.0017.

Operation Inca A).⁴⁹ The proceeds of that trafficking were then delivered to money launderers to process and repay the European suppliers (ie *Operation Inca B*).⁵⁰ Mr Barbaro's wholesale customers included many of the related accused and most notably Mr Karam,⁵¹ whose extended delay in paying Mr Barbaro risked impeding the European supply,⁵² frustrating Mr Barbaro and causing him to exert considerable pressure on Mr Karam.⁵³ Mr Karam, being "Barbaro's major wholesale customer" of the MDMA and "leader of a group",⁵⁴ trafficked some of that MDMA to an undercover police officer,⁵⁵ likely in response to Mr Barbaro's pressure and apparently in an attempt to fund his debt to Mr Barbaro (ie the subject of *Operation Cardinia*).⁵⁶

20. Given the casual connection of the episodes of offending, the common sources of evidence used in the Operations, and their resultant evolution, it appears that key evidence obtained in relation to the first operation (ie *Operation Bootham Moko*) may have played a role in the success of subsequent Operations.

Common Individuals

21. Table A below illustrates the common involvement of individuals accused in the various episodes of offending. It is apparent that Messrs Barbaro and Karam were two central figures who together traversed all episodes of offending, with the other accused in relation to specific offences, in less central or "support" roles, as required. For example:
 - 21.1. Mr Barbaro, was found to be at the "apex" of the syndicate,⁵⁷ and said to be "at the centre" of all offending the subject of the various Operations⁵⁸ other than *Operation Cardinia*; and
 - 21.2. Mr Karam was found to be involved in all offending other than the money laundering aspect of *Operation Inca* (ie *Inca B*).⁵⁹
22. Given their collective central involvement in all offending the subject of the Operations, and the above described investigative evolution of the Operations, it is unsurprising that the sources of evidence used (and indeed some of the

⁴⁹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 4-5, RCMPI.0009.0001.0030 @.0004-.0005; See, eg, Un-tendered Prosecution Plea Summary, *R v Rob Karam*, 10 January 2015, 9, RCMPI.0009.0002.0051 @.0009.

⁵⁰ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 6, RCMPI.0009.0001.0030 @.0006.

⁵¹ *R v Rob Karam* [2015] VCC 855, [6].

⁵² See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonio Sergi*, 7 [32], RCMPI.0009.0001.0105 @.0007.

⁵³ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 79, RCMPI.0009.0001.0030 @.0079; *DPP v Barbaro & Anor* [2012] VSC 47, [35].

⁵⁴ *R v Rob Karam* [2015] VCC 855, [7].

⁵⁵ Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 10 [27], RCMPI.0009.0002.0074 @.0010. "The tablets supplied to "Rosie" were sourced from Pasquale Barbaro."

⁵⁶ Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 14 [47], RCMPI.0009.0002.0074 @.0014.

⁵⁷ *DPP v Barbaro & Anor* [2012] VSC 47, [22], [31], [39].

⁵⁸ See, eg, Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 433, RCMPI.0009.0002.0065 @.0034.

⁵⁹ See the individual case analysis for Rob Karam.

evidence obtained) in relation to Messrs Barbaro and Karam’s prosecutions was used in the prosecution of related accused.⁶⁰

23. **Table A — Co-Accused Charged in relation to Each Operation and Episode of Offending**

Name of co-accused	Operations					
	Bootham Moko	Inca A	Inca B	Inca C	Inca D	Cardinia
	Tomato Tins MDMA importation conspiracy	MDMA trafficking	MDMA money laundering	Cocaine importation conspiracy	Precursor importation conspiracy	MDMA trafficking
ABDUL-JABBAR, Anvardeen						
AGRESTA, Salvatore						
Mr Winters						
BARBARO, Pasquale						
BATTICCIOTTO, Phillip						
BRAN, Gratian						
Mr Eddington						
DI PIETRO, Antonio						
Mr Emerson						
FALANGA, Carmelo						
HIGGS, John						

⁶⁰ See the individual case analyses for each co-accused.

Name of co-accused	Operations					
	Bootham Moko	Inca A	Inca B	Inca C	Inca D	Cardinia
	Tomato Tins MDMA importation conspiracy	MDMA trafficking	MDMA money laundering	Cocaine importation conspiracy	Precursor importation conspiracy	MDMA trafficking
Mr Maddox			Note ⁶¹			
KARAM, Rob						
MADAFFERI, Francesco						
MAROUN, Fadl						
MOLLUSO, Frank						
MOULANA, Seyed						
MOUSSA, Danny						Note ⁶²
NAZEER, Mohammed Nasfan Abdul						
POLIMENI, Giovanni						

⁶¹ Mr Maddox was charged with a state offence in relation to MDMA trafficking, however it appears that he was arrested and charged on the basis of information provided by the AFP to Victoria Police which arose from intelligence obtained in Operation Inca: see the case analysis in relation to Mr Maddox.

⁶² The CDPP has asserted that Mr Moussa's charge was not specifically related to Operation Cardinia: [Confidential] Exhibit RC1906 Letter from Australian Government Solicitor on behalf of the CDPP to Solicitors Assisting the Royal Commission dated 5 June 2019, Attachment B, Summary of Operations Bootham/Moko, Inca and Cardinia, 3, CORRO.0001.0004.0002. However an assessment of that assertion is difficult, and other material before the Commission indicates that the charge may have arisen from intelligence obtained in Operation Cardinia: see the case analysis for Mr Moussa at [718].

Name of co-accused	Operations					
	Bootham Moko	Inca A	Inca B	Inca C	Inca D	Cardinia
	Tomato Tins MDMA importation conspiracy	MDMA trafficking	MDMA money laundering	Cocaine importation conspiracy	Precursor importation conspiracy	MDMA trafficking
POTTER, Graham						
PSAILA, Paul						
ROPA, Sharon						
SARIC, Alan						
Mr Khan						
SERGI, Pasquale Rocco						
SERGI, Pasquale John						
SERGI, Antonio "Tony"						
SURI, Anil						
Mr Huntley						
VARALLO, Pino						
VISSER, Jan						
ZIRILLI, Saverio						

24. The above demonstrates the importance of evidence obtained in relation to Operation Bootham Moko, and in relation to Messrs Barbaro and Karam, to the prosecution of related accused in all Operations.

Ms Gobbo's Conduct in relation to the Operations

Representation

25. In the proceedings which emerged from the Operations (the 'tomato-tins' and related proceedings), Ms Gobbo appears to have acted for up to 10 related accused,⁶³ on at least one occasion following their arrests.

Informing or Assisting police – Prior to Arrest

26. Material before the Commission indicates that Ms Gobbo provided information or assistance to Victoria Police, which ultimately assisted in the surveillance and obtaining of incriminating evidence in relation to all Operations and all accused.⁶⁴
27. While her informing and assistance appears to have been prolific, some instances may be highlighted for the purpose of providing an overview of Ms Gobbo's conduct in relation to the Operations. Given the investigative evolution outlined above, and the evidence ultimately relied upon by the prosecution,⁶⁵ her conduct in relation to four pivotal aspects of the Operations is of particular significance. Those aspects are the knowledge by police of:
- 27.1. the details of the tomato tins shipment details for the purpose of its interception;
 - 27.2. the presence of certain accused at the Pacific International Apartments for the purposes of installing listening devices;
 - 27.3. the personally subscribed telephone numbers of the accused for the purposes of telephone intercepts; and
 - 27.4. their tasking of Ms Gobbo to actively and passively source intelligence, including from her clients, in aid of the relevant investigations.
28. Each is explored in turn below.

Details of the Tomato Tins Shipment

29. Police materials record that on 5 June 2007, Ms Gobbo photocopied documents provided to her for safekeeping by her client, Mr Karam, returned the originals and supplied the copies to the police.⁶⁶ She informed police that they "relate to shipping containers being imported by [an associate of Mr Karam]".⁶⁷ Later, she assisted the police in translating one of the documents, a bill of lading, from Italian into English.⁶⁸ She described the bill of lading as referring to the importation of containers of tomatoes from Italy, and noted that

⁶³ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadl Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

⁶⁴ See the analyses of individual cases of the related accused.

⁶⁵ See the analyses of individual cases of the related accused.

⁶⁶ Exhibit RC0281 ICR3838 (082), 5 June 2007, 876-877, VPL.2000.0003.2462-VPL.2000.0003.2463; Exhibit RC0281 ICR3838 (082), 5 June 2007, 877, VPL.2000.0003.2463; Un-tendered Audio Summary of Meeting 38, 5 June 2007, 2 [13]-[14], VPL.2000.0003.0233 @.0002.

⁶⁷ Exhibit RC0281 ICR3838 (082), 5 June 2007, 876, VPL.2000.0003.2462.

⁶⁸ Exhibit RC0281 ICR3838 (082), 5 June 2007, 876-877, VPL.2000.0003.2462-VPL.2000.0003.2463; Un-tendered Audio Summary of Meeting 38, 5 June 2007, 2 [13]-[14], VPL.2000.0003.0233 @.0001.

it contained shipment details such as the ship name, container number, port of origin and departure date.⁶⁹

30. This information was apparently understood by Victoria Police to be critical to Operation Bootham Moko. However, material before the Commission reveals that Victoria Police were concerned that the bill of lading information not be disseminated in a way that would alert the AFP to Ms Gobbo's involvement and identity as a human source.⁷⁰
31. Material before the Commission records that on 15 June 2007, one of Ms Gobbo's handlers, Mr Anderson, explained to Mr Gobbo that Mr Sandy White told him that the SDU may "have worked out a way to deal with this container without compromise to [Ms Gobbo]".⁷¹ The material further records that Mr Sandy White and Mr Green subsequently met with Steve from Customs to discuss the import paperwork including the bill of lading,⁷² and devised a "strategy" to conceal Ms Gobbo's involvement from the AFP,⁷³ by causing the AFP to "believe" that Customs officials had identified the container "by [their] own means".⁷⁴ This plan appears to have been followed.⁷⁵
32. In addition, throughout this period, on 15,⁷⁶ 17⁷⁷ and 18 June,⁷⁸ police appear to have tasked Ms Gobbo to obtain additional information in relation to the shipment. Such tasking continued after the shipment was seized as outlined at [49] below.
33. The above strongly indicates that the provision of the bill of lading and associated information and assistance by Ms Gobbo was likely instrumental in the seizure of the container on 28 June 2007.
34. This view appears to be shared by members of police and Ms Gobbo herself. In a conversation involving Messrs Peter Smith and Sandy White and Ms

⁶⁹ Exhibit RC0281 ICR3838 (082), 5 June 2007, 877, VPL.2000.0003.2463; Un-tendered Audio Summary of Meeting 38, 5 June 2007, 2 [13]-[14], VPL.2000.0003.0233 @.0001.

⁷⁰ See, eg, Exhibit RC0431 Mr Sandy White diary, 20 June 2007, 126, 128, VPL.2000.0001.1151 @.1210, 1212. The imperative to conceal Ms Gobbo's identity and involvement appears to have arisen due to concerns of a "leak in [the AFP] Melbourne office" (see Exhibit RC0431 Mr Sandy White diary, 20 June 2007, 126; VPL.2000.0001.1151 @.1210) which had earlier been identified in an internal memo dated 16 July 2007 from Detective Inspector James (Jim) O'Brien to Assistant Commissioner Luke Cornelius in which he raised concern that information disseminated to the AFP was being leaked to Mr Karam, see Exhibit RC1913 Memorandum from Detective Inspector James (Jim) O'Brien to Assistant Commissioner Cornelius, Response to Complaint by AFP Agent Paul Osborne, 16 July 2007, 2 [7], VPL.0100.0001.5982 @.5893; see also, Un-tendered Legal Conflict Report, Registered Human Source #21803838 – The Matter of Rabie Karam (Example Three), 2 October 2014, [13]-[14], 5, VGSO.2000.1501.0263 @.0269.

⁷¹ Exhibit RC0281 ICR3838 (083), 15 June 2007, 897, VPL.2000.0003.2483.

⁷² Exhibit RC0431 Mr Sandy White diary, 19 June 2007, 120-122, VPL.2000.0001.1151 @.1244–.1206.

⁷³ Exhibit RC0431 Mr Sandy White diary, 20 June 2007, 126, VPL.2000.0001.1151 @.1210; Exhibit RC0281 ICR3838 (086), 30 June 2007, 959, VPL.2000.0003.2545.

⁷⁴ Exhibit RC0431 Mr Sandy White diary, 20 June 2007, 126, 128; VPL.2000.0001.1151 @.1210, @.1212; Exhibit RC0281 ICR3838 (086), 30 June 2007, 959, VPL.2000.0003.2545.

⁷⁵ Exhibit RC0281 ICR3838 (086), 30 June 2007, 959, VPL.2000.0003.2545; Exhibit RC0281 ICR3838 (087), 3 July 2007, 973, VPL.2000.0003.2559. Note that it appears that no Information Reports were produced in relation to this intelligence: see Exhibit RC0284 SML3838, 14 June 2007, 113, VPL.2000.0001.9447 @.9559.

⁷⁶ Exhibit RC0281 ICR3838 (083), 15 June 2007, 898, VPL.2000.0003.2484.

⁷⁷ Exhibit RC0281 ICR3838 (084), 17 June 2007, 909, VPL.2000.0003.2495.

⁷⁸ Exhibit RC0281 ICR3838 (084), 18 June 2007, 912, VPL.2000.0003.2498.

Gobbo in December 2008, Mr Sandy White suggested that if not for Ms Gobbo the container would not have come under suspicion.⁷⁹

35. Ms Gobbo suggests as much in a letter she wrote to Assistant Commissioner Stephen Fontana dated 30 June 2015, which reads (in part) as follows:⁸⁰

To enable you to try to comprehend the level of actual stress and anxiety I have to manage, I learned only this week that the Calabrian crime family (Pat Barbaro, Sam Zirilli and co.) have been informed that police were provided with a copy of the Bill of Lading pertaining to the importation of what remains the world's largest ever single seizure of MDMA in 2007; they have been told by a journalist that their Bill of Lading was given to Police by an informer and that IBAC was provided with the same document which was the subject of specific comment by His Honour Justice Kellam in his final report. It is an understatement to say that over twelve months after the public revelation of me being an informer/human source for Victoria Police, the confirmation that an extremely dangerous Italian organised crime family has learned this type of detail is nothing short of horrifying.

36. This apparent admission is confirmed later in Ms Gobbo's letter when she lists the first of her "most significant crimes and/or arrests" as "Karam, Higgs, Barbaro and 33 co-accused for the largest ever seizure of ecstasy in the world."⁸¹ In addition, on 8 August 2008, the day on which most of the arrests in relation to the Operations were made, Ms Gobbo is recorded as having asked her handler, Mr Wolf, why she had not been given any credit for the arrests.⁸² Later, she lamented to her handlers, Messrs Peter Smith, Wolf and Sandy White, that she could not be given credit for the seizure of "the biggest importation ever".⁸³ Ms Gobbo is also recorded by police as having acknowledged that she would be "morally, ethically and legally conflicted" in representing Messrs Karam, Higgs and "everyone" arrested on 8 August 2008 in relation to all Operations.⁸⁴
37. Further, as noted above, the seizure of the tomato tins shipment created the impetus for the offending which became the subject of subsequent Operations. This apparent causal connection makes the provision of the bill of lading and associated information which she obtained from her client, Mr Karam, particularly significant for all Operations.

Details of Meeting Locations

38. On 28 June 2007, the date on which the tomato tins shipment was seized, police records state that Ms Gobbo informed her handler, Mr Fox, that her client, Mr Karam, had told her that he and Mr Higgs were going to meet "the Italian boys from Griffith" in relation to the tomato tins container at the Pacific International Apartments at which they were booked to stay "for the week".⁸⁵

⁷⁹ Un-tendered Audio Summary of Meeting 49, 16 December 2008, 11 [75], VPL.2000.0002.4184 @.0010.

⁸⁰ Un-tendered Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 2, exhibited in *AB & EF v CD* [2017] VSC 350, 1 [19], MIN.0002.0001.0584 @.0585.

⁸¹ Un-tendered Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 8, exhibited in *AB & EF v CD* [2017] VSC 350, 1 [19], MIN.0002.0001.0584 @.0591

⁸² Exhibit RC0281 ICR2958 (031), 8 August 2008, 544, VPL.2000.0003.1284.

⁸³ Un-tendered Audio Summary of Meeting 45, 30 January 2008, 3 [23], VPL.2000.0002.4161 @.0002.

⁸⁴ Exhibit RC0281 ICR2958 (037) 1 September 2008, 575, VPL.2000.0003.1315.

⁸⁵ Exhibit RC0281 ICR3838 (086) 28 June 2007, 947, VPL.2000.0003.2533.

That information is recorded by police as having been “verbally disseminated” to Mr Green at the Drug Taskforce (DTF).⁸⁶ Days later, the room at the Pacific International Apartments in which Messrs Barbaro and Zirilli (both from Griffith) were staying, was the subject of an AFP listening device warrant. Listening devices had been installed in the room from 2 July 2007⁸⁷ and captured incriminating conversations⁸⁸ and the identities of further related accused.⁸⁹

39. In evidence before the Commission, Mr Green deposed that, having received Ms Gobbo’s information from Mr Fox about “the Italian boys from Griffith” staying at the Pacific International Apartments, he considered it to be “noteworthy intelligence as, until that point, DTF did not have direct evidence about who else was behind the importation with Karam and Higgs.”⁹⁰ Mr Green further deposed that later that day he attended a meeting at which he “noticed two AFP members attending”,⁹¹ and another meeting with AFP representatives on 30 June.⁹² Mr Green did not state whether he passed that “noteworthy” information to the AFP at either of those meetings, but conceded in cross-examination that “[d]efinitely that information was passed to the AFP at some point in time”,⁹³ and “I may have told them in the following day or two after this event, when the AFP had been notified of the drugs arriving and then we started exchanging information.”⁹⁴ Ultimately, as Mr Green deposed in his statement, by 5 July 2007, “it was decided by the AFP that the four main targets were Barbaro, Zirilli, Karam and Higgs.”⁹⁵
40. In confidential correspondence with the Commission, the AFP through its lawyers, stated that the affidavits filed in support of the applications for the listening device warrants were not based on information provided by Ms Gobbo, other than the fact of the interception of the ‘tomato tins’ container by Customs, which the AFP now understands is alleged to have occurred in part due to the provision of the bill of lading by Ms Gobbo to Victoria Police and incidental police data (such as checking an address on the Victoria Police LEAP database).⁹⁶ The AFP has asserted that it was independently aware of Messrs Barbaro and Zirilli’s movements in relation to the Pacific International Apartments from 14 June 2007.⁹⁷ However given that the Commission has not received production of communications passing between Victoria Police and the AFP, the Commission is unable to assess the AFP’s denial. Further, in light of evidence before the Commission of the verbal dissemination of the information provided by Ms Gobbo,⁹⁸ and the apparent

⁸⁶ Exhibit RC0281 ICR3838 (086) 28 June 2007, 947, VPL.2000.0003.2533.

⁸⁷ See, eg, *DPP v Karam & Ors* [2013] VSC 133, [14], [20]; *DPP v Barbaro & Anor* [2012] VSC 47, [19].

⁸⁸ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, RCMP.0009.0001.0030 @.0018; See also re “incriminating conversations...recorded” at Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 24, RCMP.0009.0001.0030 @.0024.

⁸⁹ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 14, RCMP.0009.0002.0025 @.0014.

⁹⁰ Exhibit RC0561 Further Statement of Mr Green, undated, 4 [23]. COM.0057.0002.0001 @.0004.

⁹¹ Exhibit RC0561 Further Statement of Mr Green, undated, 4 [24]. COM.0057.0002.0001 @.0004.

⁹² Exhibit RC0561 Further Statement of Mr Green, undated, 5 [26]. COM.0057.0002.0001 @.0005.

⁹³ Transcript of Mr Green, 8 October 2019, 7399, TRN.2019.10.08.01.P.

⁹⁴ Transcript of Mr Green, 8 October 2019, 7397, TRN.2019.10.08.01.P.

⁹⁵ Exhibit RC0561 Further Statement of Mr Green, undated, 5 [29], COM.0057.0002.0001 @.0005; see also Exhibit RC0567 Mr Green diary, 5 July 2007, 12, VPL.0100.0215.0001 @.0012, which notes “4 x main targets – H B2 +K”.

⁹⁶ Exhibit RC1908 Letter from Clayton Utz to Solicitors Assisting the Royal Commission dated 29 July 2019, sent by email from Clayton Utz (Pip Mitchell) to Solicitors Assisting the Royal Commission (Howard Rapke), 29 July 2019, RCMP.0184.0001.0001.

⁹⁷ Exhibit RC1904 Email from Clayton Utz Isabelle Minnett to Solicitors Assisting the Royal Commission (Alana Gilles and Howard Rapke), 1 August 2019, RCMP.0191.0001.0001.

⁹⁸ Exhibit RC0281 ICR3838 (086), 28 June 2007, 947, VPL.2000.0003.2533.

preference of Victoria Police for disseminating material to the AFP in an obscure manner,⁹⁹ it appears that the AFP may simply have been unaware of the true source of information it received.

41. Given the central roles of the abovementioned “four main targets”, and the importance of the information recorded at the Pacific International Apartments in the investigative evolution of all Operations and the ultimate prosecutions, Ms Gobbo’s provision of this information obtained from her client, Mr Karam, may have been instrumental to the success of the Operations, and the viability of the resultant charges.

Phone Numbers

42. Throughout the Operations, Ms Gobbo appears to have provided Victoria Police with the phone numbers of individuals who were investigation targets or persons of interest. For example, prior to the arrests on 8 August 2008, she is recorded as having provided police with the personally subscribed numbers of Messrs Karam,¹⁰⁰ Higgs,¹⁰¹ and Antonio Sergi.¹⁰² Many of those contact details appear to have been obtained directly or indirectly through information provided to her by her clients.
43. It appears probable that this information was used in obtaining the relevant telephone intercept warrants. Although the Commission has been unable to secure the affidavits in support of the telephone intercept warrants from the AFP, it appears that contact details were disseminated to the AFP in relation to Operation Bootham Moko.
44. Material before the Commission includes confidential correspondence between the Police and the Commonwealth Director of Public Prosecutions (CDPP) in relation to Ms Gobbo’s involvement in the Operations which gave rise to the relevant prosecutions. In a protected letter from Victoria Police to the CDPP dated 25 November 2016, Detective Superintendent Peter Brigham states that:

...[f]rom 13th May 2007 onwards [Ms Gobbo]...provided information concerning a series of large scale drug imports (possibly...AFP Investigation Operation INCA). Information in the human source management logs suggest that [Ms Gobbo]...was representing Karam ...at the time”.¹⁰³

45. As an aside and for clarity, it is apparent from the letter and its responsive context that Detective Superintendent Brigham had conflated Operations Inca

⁹⁹ See, eg, Exhibit RC0431 Mr Sandy White diary, 20 June 2007, 126, VPL.2000.0001.1151@.1210, @.1212; Exhibit RC1913 Memorandum from Detective Inspector James (Jim) O’Brien to Assistant Commissioner Cornelius, Response to Complaint by AFP Agent Paul Osborne, 16 July 2007, 2 [7], VPL.0100.0001.5982 @.5893; Un-tendered Legal Conflict Report, Registered Human Source #21803838 – The Matter of Rabie Karam (Example Three), 2 October 2014, 5 [13]-[14], VGSO.2000.1501.0263 @.0269.

¹⁰⁰ Exhibit RC0281 ICR3838 (016), 27 January 2006, 135, VPL.2000.0003.1721; Exhibit RC0283 Information Report SID367, 9 February 2006, VPL.2000.0003.8483; Exhibit RC0281 ICR3838 (020), 25 February 2006, 167, VPL.2000.0003.1753; Exhibit RC0281 ICR3838 (073), 7 April 2007, 772, VPL.2000.0003.2308; Exhibit RC0281 ICR3838 (093), 31 July 2007, 1075, VPL.2000.0003.2661; Exhibit RC0281 ICR2958 (009), 17 March 2008, 101, VPL.2000.0003.0841.

¹⁰¹ Exhibit RC0281 ICR3838 (044), 5 September 2006, 416, VPL.2000.0003.2002; Exhibit RC0281 ICR3838 (086), 10 January 2008, 1560, VPL.2000.0003.3146.

¹⁰² Exhibit RC0281 ICR3838 (018), 16 February 2006, 155, VPL.2000.0003.1741.

¹⁰³ Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 1, annexed to Anonymous Submission 034.

and Bootham Moko, and was referring to the latter in his remarks reproduced above.¹⁰⁴

46. The letter further states that “on 23 August 2007 the AFP met with Victoria Police Detective Inspector Gavin Ryan... regarding strategies for the investigation”.¹⁰⁵ Although that date is omitted in copies of the diaries of Mr Gavan Ryan produced to the Commission,¹⁰⁶ it is corroborated by other police records which state that the intention of those “strategies” was to “diffuse interest in 3838”.¹⁰⁷ The letter further recounts that after 17 March 2008, “[redacted] personally passed ...information [received from Ms Gobbo about Karam] to [Member 2] from the Australian Crime Commission...along with Karam’s phone number, as provided by [Ms Gobbo].”¹⁰⁸
47. While it remains unclear as to how such contact details may have been used by the AFP, such tracing is difficult in circumstances where the above represents yet another indication of a pattern of practice whereby Victoria Police would conceal Ms Gobbo’s involvement from the AFP, by disseminating information she provided through a third party agency.¹⁰⁹ In this context, it is probable that the AFP’s position that Ms Gobbo was not a source of information used to obtain warrants was genuinely held, but, given the apparent relevance and utility of the information, not necessarily correct.
48. The significance of both warranted and incidental telephone interception in the investigative evolution and ultimate prosecutions of all related accused underscores the important role that Ms Gobbo’s informing in this regard may have served.

Tasking of Ms Gobbo

49. Material before the Commission indicates that police members encouraged and tasked Ms Gobbo to obtain evidence in furtherance of their investigations, and that Ms Gobbo complied with some enthusiasm.¹¹⁰ Such tasking involved, for example, [redacted] to Mr Karam and reporting on his reactions, arranging and reporting on meetings between Mr Karam and potential co-offenders, and providing details of potential co-offenders.¹¹¹ This occurred at a time when it appears that police understood,¹¹² and/or were reckless as to the likelihood,¹¹³ that Ms Gobbo was acting for Mr Karam.

¹⁰⁴ See Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 1, annexed to Anonymous Submission 034.

¹⁰⁵ See Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 2, annexed to Anonymous Submission 034.

¹⁰⁶ Exhibit RC0312 Mr Gavan Ryan diary, 46-7, VPL.0005.0120.0020 @.0067-.0068, which omits entries between 20 August 2007 and 28 August 2007.

¹⁰⁷ Exhibit RC0324 Electronic Diary Entry of Mr Fox, 23 August 2007, 24 VPL.2000.0001.2978 @.3001.

¹⁰⁸ See Un-tendered Letter from Victoria Police to the CDPP, 16 January 2017, 2, annexed to Anonymous Submission 034; See also Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 1, annexed to Anonymous Submission 034.

¹⁰⁹ See, eg, [30] above. See also Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 3-4, annexed to Anonymous Submission 034; Un-tendered Letter from Victoria Police to the CDPP, 16 November 2017, 2, 7, 11, annexed to Anonymous Submission 034.

¹¹⁰ See eg, Karam analysis at [195] below.

¹¹¹ See eg, Karam analysis at [191]-[196] below and Higgs analysis at [232] below.

¹¹² See eg, Karam analysis at [171] below.

¹¹³ See, eg, Un-tendered Letter from Victoria Police to the CDPP, 25 November 2016, 1, annexed to Anonymous Submission 034.

Conduct of Ms Gobbo

55. First, Category 1A¹²⁰ applies in relation to the 15 cases in which Ms Gobbo acted for the relevant 10 related accused¹²¹ while she was a human source,¹²² and did not disclose same to them.¹²³
56. Secondly, Category 1B¹²⁴ applies in relation to the 15 cases in which Ms Gobbo provided information or assistance in relation to her clients to members of Victoria Police, prior to and/or during the period in which she acted for them, and did not disclose same to them.
57. Thirdly, Category 2A¹²⁵ applies in that evidence relied upon by the prosecution in all 38 cases in the tomato tins and related proceedings (such as evidence of the “four pivotal aspects of the Operations” described at [27] above, and the evidence obtained as a result thereof)¹²⁶ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.
58. It is to be noted in relation to paragraph [57] above that there are iniquity-based exceptions to various obligations owed by Ms Gobbo to her clients as described in the Legal Principles Submissions which may appear to deprive the very first instance of such conduct (ie the first instance of the provision of information and assistance concerning the “four pivotal aspects of the Operations” described at [27] above) of its illegality or impropriety. However, it is submitted that a Category 2A finding should not be precluded on this basis. That is because Ms Gobbo’s role as a registered human source, her general interest in assisting police including against the interests of her clients¹²⁷ and her earlier informing police against Mr Karam’s interests pre-dated her representation of him. As such, it constituted an undisclosed conflict of interest with her client, which tainted the relationship with impropriety or illegality prior to the first instance.¹²⁸ Such a conflict, if known, would likely have ended the lawyer-client relationship, depriving Ms Gobbo of the ability to engage in such conduct in the first instance. Accordingly, her non-disclosure may have been causative of the obtaining of that evidence.
59. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹²⁹ where the causal link is “tenuous”, this may affect the balancing exercise under

¹²⁰ See Legal Principles Submissions at [249].

¹²¹ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadi Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

¹²² See Legal Principles Submissions at [20].

¹²³ See Legal Principles Submissions at [239].

¹²⁴ See Legal Principles Submissions at [249].

¹²⁵ See Legal Principles Submissions at [249].

¹²⁶ See the individual case analyses and the submissions at [6]-[24] above as to the investigative evolution and commonality of evidence used.

¹²⁷ See Narrative Submissions, Chapter 1, [128].

¹²⁸ See, eg, R Karam case analysis at [172], [180]-[185], [195].

¹²⁹ See Legal Principles Submissions at [210].

section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹³⁰

60. Fourthly, Category 2B¹³¹ applies in that Ms Gobbo had knowledge of the circumstances founding paragraph [57] above and failed to disclose same to her 10 clients, thereby depriving them of the ability to object to the admission of that evidence.
61. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹³²
62. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

63. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹³³
 - 63.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including all 32 related accused;
 - 63.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including all 32 related accused, appropriate disclosure was made; or alternatively
 - 63.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the Director of Public Prosecutions (DPP) or the Victorian Government Solicitor's Office (VGSO) and then possibly a court.
64. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [63.1] were taken, and accordingly there was the potential for the rights of all 32 related accused to a fair trial to have been interfered with.

¹³⁰ See Legal Principles Submissions at [212]-[213].

¹³¹ See Legal Principles Submissions at [249].

¹³² See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹³³ See Legal Principles Submissions at [384] and [452]-[457].

65. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to all 32 related accused and/or their legal representatives.
66. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹³⁴
67. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of all 32 related accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹³⁵
68. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to all 32 related accused even after their respective convictions upon trial or guilty pleas.¹³⁶
69. Category 3A¹³⁷ applies in relation to the 15 cases in which Ms Gobbo acted for the relevant 10 related accused,¹³⁸ in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
70. Category 3B¹³⁹ applies in relation to the 15 cases in which Ms Gobbo acted for the related accused,¹⁴⁰ in that, before and/or during the period Ms Gobbo acted for the relevant 10 related accused,¹⁴¹ she provided information in relation to them to members of Victoria Police and/or otherwise assisted the prosecution of her clients,¹⁴² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
71. Category 4A¹⁴³ applies in that, as noted at paragraph [57] above, evidence relied upon by the prosecution in the cases of all 32 related accused may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
72. Category 4B¹⁴⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

¹³⁴ See Legal Principles Submissions at [380]-[385].

¹³⁵ See Legal Principles Submissions at [351], [362]-[373].

¹³⁶ See Legal Principles Submissions at [351], [374].

¹³⁷ See Legal Principles Submissions at [465].

¹³⁸ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadl Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

¹³⁹ See Legal Principles Submissions at [465].

¹⁴⁰ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadl Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

¹⁴¹ See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadl Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

¹⁴² See the individual case analyses for Salvatore Agresta, Mr Winters, Pasquale Barbaro, Antonino Di Pietro, Mr Maddox, Rob Karam, Fadl Maroun, Pasquale John Sergi, Antonio Sergi and Saverio Zirilli.

¹⁴³ See Legal Principles Submissions at [465].

¹⁴⁴ See Legal Principles Submissions at [465].

73. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon the respective trial of each accused, or the accused's pleas of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: PASQUALE BARBARO

Proceedings

74. On 8 August 2008, Mr Barbaro was arrested.¹⁴⁵ The six Commonwealth charges relevant to his ultimate plea are:¹⁴⁶
- 74.1. the conspired trafficking in a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from Operation Bootham Moko);
 - 74.2. the trafficking in a commercial quantity of MDMA between 24 January 2008 and 8 August 2008 (ie arising from *Operation Inca*);
 - 74.3. the attempted possession of a commercial quantity of cocaine between 24 July 2008 and 8 August 2008 (ie arising from *Operation Inca*);
 - 74.4. the conspired importation of a commercial quantity of pseudoephedrine, a border-controlled precursor in the manufacture of narcotics, between 14 May 2008 and 8 August 2008 (ie arising from *Operation Inca*);
 - 74.5. dealing with money of a value of \$1 million or more which was proceeds of crime between 22 February 2008 and 8 August 2008 (ie arising from *Operation Inca*); and
 - 74.6. the receiving, possessing, and disposing of money reasonably suspected to be the proceeds of crime between 22 July 2008 and 8 August 2008 (ie arising from *Operation Inca*).
75. He was also charged with two State offences. Ultimately, both State offences and the latter three Commonwealth offences were withdrawn. Mr Barbaro pleaded guilty to the remaining three charges,¹⁴⁷ and admitted guilt in relation to three withdrawn Commonwealth charges and sought that those admissions be considered in his sentencing.¹⁴⁸
76. The Court noted that Mr Barbaro's guilty pleas were "not early" and were "based upon a considered assessment of the evidence that was in [his] possession."¹⁴⁹ That evidence, as noted below, was predominantly based on surveillance evidence and seized material.
77. Mr Barbaro was sentenced together with Mr Zirilli (who had also pleaded guilty to the charges laid against him) on 23 February 2012.¹⁵⁰ Mr Barbaro was sentenced to life imprisonment with a non-parole period of 30 years.¹⁵¹ He and Zirilli unsuccessfully appealed their sentences¹⁵² and sought special leave to

¹⁴⁵ See *DPP v Barbaro & Anor* [2012] VSC 47, [49].

¹⁴⁶ Un-tendered Indictment, *R v Pasquale Barbaro*, 1 December 2011, RCMP1.00009.0001.0029; *DPP v Barbaro & Anor* [2012] VSC 47, [1]-[2].

¹⁴⁷ See *DPP v Barbaro & Anor* [2012] VSC 47, [1].

¹⁴⁸ Pursuant to s 16BA of the *Crimes Act* (Cth) 1914: see *DPP v Barbaro & Anor* [2012] VSC 47, [2].

¹⁴⁹ *DPP v Barbaro & Anor* [2012] VSC 47, [77].

¹⁵⁰ *DPP v Barbaro & Anor* [2012] VSC 47.

¹⁵¹ *DPP v Barbaro & Anor* [2012] VSC 47, [106].

¹⁵² *Barbaro v The Queen* [2012] VSCA 288.

appeal further to the High Court, which was granted, but the appeal dismissed.¹⁵³

Material Considered by the Court

Bail Applications

78. Mr Barbaro applied for bail on multiple occasions,¹⁵⁴ and █████ defended a CDPF appeal of a decision to grant him bail as well as another appeal on a jurisdictional point.¹⁵⁵ On many of those occasions, the court expressly referred to evidence of surveillance recordings in considering him a flight risk and refusing his applications or allowing the CDPF's appeals.¹⁵⁶ In relation to the charges arising from Operation Bootham Moko, Mr Barbaro was noted to be the only accused co-conspirator remaining in custody at the plea hearing in January 2012, some three and a half years after his arrest.¹⁵⁷

The Operation Bootham Moko Charge

79. In relation to the Operation Bootham Moko charge, the Court considered that Barbaro was "at the apex" of the criminal offending.¹⁵⁸ In its sentencing remarks, the Court referred to the "many relevant text messages and calls, recorded between the parties"¹⁵⁹ the listening devices to which the AFP had access at the Pacific International Apartments in which Mr Barbaro was staying,¹⁶⁰ and the "numerous conversations recorded".¹⁶¹ The Court also referred to enquiries made by Mr Barbaro of a reporter "through a series of mobile phone handsets and sim cards"¹⁶² about the seizure of the shipping container, in an attempt to make the seizure public to alleviate his concern that the suppliers may think Barbaro had stolen the container.¹⁶³
80. The prosecution case relied on evidence from a number of sources, including:
- 80.1. telephone communications which were intercepted¹⁶⁴ or obtained from mobile phones seized either upon arrest or after disposal observed by surveillance personnel;¹⁶⁵

¹⁵³ *Barbaro v The Queen* [2012] VSCA 288; *Barbaro v The Queen*; *Zirilli v The Queen* (2014) 253 CLR 58; [2014] HCA 2.

¹⁵⁴ See, eg, *CDPF v P Barbaro and Others (No 2) (Criminal)* [2009] VMC 27; *Barbaro v CDPF (Criminal)* [2010] VMC 31; *Barbaro v DPP & Anor* [2010] VSC 632.

¹⁵⁵ *DPP v Pasquale Barbaro* [2009] VSC 27; *DPP v Pasquale Barbaro* [2009] 20 VR 717; *DPP (Cth) v Magistrates' Court of Victoria & Barbaro* [2010] VSC 297.

¹⁵⁶ *CDPF v Pasquale Barbaro* [2009] VSC 27, [62]-[63]; *Barbaro v DPP (Cth) & Anor* (2009) 20 VR 717; [2009] VSCA 26, [27]-[31]; *Barbaro v DPP & Anor* [2010] VSC 632, [12], [28], [52].

¹⁵⁷ *DPP v Karam & Ors* [2013] VSC 133, [2].

¹⁵⁸ *DPP v Barbaro & Anor* [2012] VSC 47, [22], [31], [39].

¹⁵⁹ *DPP v Barbaro & Anor* [2012] VSC 47, [8], [19].

¹⁶⁰ *DPP v Barbaro & Anor* [2012] VSC 47, [18]-[19].

¹⁶¹ *DPP v Barbaro & Anor* [2012] VSC 47, [23].

¹⁶² *DPP v Barbaro & Anor* [2012] VSC 47, [24].

¹⁶³ *DPP v Barbaro & Anor* [2012] VSC 47 at [24].

¹⁶⁴ See, eg, Un-tendered Prosecution Plea Summary, *CDPF v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 14, RCMP.0009.0001.0030 @.0014.

¹⁶⁵ See, eg, Un-tendered Prosecution Plea Summary, *CDPF v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 15-16, RCMP.0009.0001.0030 @.0015-.0016.

- 80.2. conversations captured on listening devices at the Pacific International Apartments; and¹⁶⁶
- 80.3. conversations and meetings subject to covert physical surveillance.¹⁶⁷

The Operation Inca Charges

- 81. In relation to the Operation Inca charges, the Court found that following the failed tomato tins importation, Mr Barbaro “ultimately undertook financial responsibility for the repayment to the Europeans suppliers”,¹⁶⁸ and that “the major imperative for [the MDMA]... trafficking, was to enable ...[Barbaro] to repay to the Europeans the debt ... owed, as a result of the failed conspiracy to traffic” the tomato tins MDMA.¹⁶⁹
- 82. In its sentencing remarks, the Court referred to the “organised business records” of the MDMA trafficking enterprise kept by Mr Barbaro and Ms Ropa,¹⁷⁰ communications between Messrs Barbaro and Karam in relation to the interception of the cocaine importation,¹⁷¹ and the “many discussions” between Messrs Barbaro and Suri in relation to the precursor importation, and the transfer of funds.¹⁷² In respect of the proceeds of crime charge the Court considered the prosecution’s evidence of the use of a method called “cuckoo smurfing” and communications, including between Mr Barbaro and “Joey”, a Singapore contact.¹⁷³
- 83. In relation to these charges, the prosecution relied on the abovementioned sources of evidence, and additionally on:
 - 83.1. conversations and meetings subject to substantial covert surveillance,¹⁷⁴ including the use of audio-visual recording devices;¹⁷⁵
 - 83.2. conversations captured on listening and optical surveillance devices at the Carlton North townhouse,¹⁷⁶ and
 - 83.3. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following Mr Barbaro’s arrest.¹⁷⁷

¹⁶⁶ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, 24, RCMP.0009.0001.0030 @.0018,.0024.

¹⁶⁷ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, RCMP.0009.0001.0030 @.0018.

¹⁶⁸ *DPP v Barbaro & Anor* [2012] VSC 47, [23].

¹⁶⁹ *DPP v Barbaro & Anor* [2012] VSC 47, [34].

¹⁷⁰ *DPP v Barbaro & Anor* [2012] VSC 47, [36].

¹⁷¹ *DPP v Barbaro & Anor* [2012] VSC 47, [43].

¹⁷² *DPP v Barbaro & Anor* [2012] VSC 47, [49].

¹⁷³ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 62-64, RCMP.0009.0001.0030 @.0062-.0064.

¹⁷⁴ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 116, 120, RCMP.0009.0001.0030 @.0116,.0120.

¹⁷⁵ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 19, 44, RCMP.0009.0001.0030 @.0019,.0044.

¹⁷⁶ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 66, 93, RCMP.0009.0001.0030 @.0066,.0093.

¹⁷⁷ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 6, 78, 81, RCMP.0009.0001.0030 @.0006, @.0078,.0081.

Ms Gobbo's Conduct in relation to Pasquale Barbaro's Case

Representation

84. In submissions to the Commission, it is asserted on behalf of Mr Barbaro that he was visited "almost daily" by Ms Gobbo while on remand, during which visits he would seek legal advice,¹⁷⁸ and that Ms Gobbo remained in regular contact between September and December 2008 in relation to his proceeding.¹⁷⁹ The first visit is corroborated by police records that Ms Gobbo informed Mr Green that she visited Barbaro at the custody centre on the day of his arrest.¹⁸⁰
85. It was further asserted on Mr Barbaro's behalf that he was represented by Ms Gobbo (as junior counsel) at his first bail hearing,¹⁸¹ and at a subsequent hearing on 19 December 2008 in which he was granted bail.¹⁸²
86. Ms Gobbo's fee book records that she appeared on his behalf at three bail proceedings in around September 2008¹⁸³ and December 2008¹⁸⁴ and in March 2009.¹⁸⁵ An additional appearance at a bail appeal in January 2009 is reported in a published judgment,¹⁸⁶ and Corrections Victoria records note a "professional" visit by Ms Gobbo to Mr Barbaro on 8 December 2008.¹⁸⁷ Other material before the Commission records that while she told police that she refused to appear at a particular bail application,¹⁸⁸ she advised him in relation to it¹⁸⁹ and claimed to have done "a lot of work in the background"¹⁹⁰ which was ultimately responsible for its success. She did not appear for Barbaro at trial or on the subsequent appeals.
87. The extent of Ms Gobbo's engagement by Mr Barbaro is unclear, however it appears that she did act for Mr Barbaro between at least September 2008 and January 2009.

Informing or Assisting Police

Prior to Representation

88. As noted in the Overview at [38]-[41] above, on 28 June 2007, Ms Gobbo passed on information, obtained from her client Mr Karam, which may have played a role in the room in the Pacific International Apartments, in which Messrs Barbaro and Zirilli were staying, being fitted with listening devices by the AFP from 2 July 2007, and in Messrs Barbaro and Zirilli becoming persons

¹⁷⁸ Submission 058, Pasquale Barbaro, 2 [6], SUB.0058.0001.0001 @.0002.

¹⁷⁹ Submission 058, Pasquale Barbaro, 2 [7], SUB.0058.0001.0001 @.0002.

¹⁸⁰ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

¹⁸¹ Submission 058, Pasquale Barbaro, 2 [7], SUB.0058.0001.0001 @.0002.

¹⁸² Submission 058, Pasquale Barbaro, 3 [8], SUB.0058.0001.0001 @.0003.

¹⁸³ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 23 September 2008, 23. MIN.5000.7000.0103 @0125.

¹⁸⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 19 December 2008, 27. MIN.5000.7000.0103 @.0129.

¹⁸⁵ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 9 March 2009, 29. MIN.5000.7000.0103 @.0131.

¹⁸⁶ *CDPP v Pasquale Barbaro* [2009] VSC 27.

¹⁸⁷ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 March 2019, 27, CNS.0001.0003.0037 @.0063.

¹⁸⁸ Exhibit RC0281 ICR2958 (047), 25 November 2008, 714, VPL.2000.0003.1454.

¹⁸⁹ Exhibit RC0281 ICR2958 (048), 9 December 2008, 764, VPL.2000.0003.1504.

¹⁹⁰ Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526.

of interest to police. As noted at [79]-[80] above, evidence obtained by those devices was relied upon in the prosecution of Mr Barbaro.

89. In addition, material before the Commission indicates that on 31 June 2007 she notified her handler, Mr Sandy White, of a “significant meeting tonight” at Lygon Street with “Pat Barbaro and Sam Zirilli from Griffith”.¹⁹¹ On 7 July 2007 she appears to have assisted Mr Fox in identifying Barbaro from surveillance photos she was shown.¹⁹² Two days later, she informed Mr Fox that her client,¹⁹³ Mr Karam, told her that the tomato tins import “job [is being] controlled by...Pat Barbaro”, who may “spread the detection warnings to ward off [redacted: suppression order] from stealing [the container]”.¹⁹⁴
90. In May 2008 Ms Gobbo informed Mr Fox that Mr Karam carried multiple phones including one for a “Griffith” person whom she appeared to identify as Barbaro, and that Mr Karam had recently been entertaining “the Griffith people” who were “down for the last big import”.¹⁹⁵ The relevant police record indicates that the “Griffith people” appear were understood by her handler to be Messrs Barbaro and Zirilli.¹⁹⁶
91. As noted in the Overview at [35]-[36] above, Ms Gobbo has since twice made express reference to Mr Barbaro in relation to the impact of her provision of the bill of lading and associated information on the tomato tins trafficking conspiracy and appears to claim some responsibility for his arrest.¹⁹⁷ In addition, Ms Gobbo is recorded as having acknowledged that she would be “morally, ethically and legally conflicted” in representing Karam, Higgs and “everyone” arrested on 8 August 2008 in relation to the Operations.¹⁹⁸

Following Representation

92. While acting for Mr Barbaro following his arrest, Ms Gobbo provided information to Mr Green about him, including her meetings with him,¹⁹⁹ and the number of phones he used.²⁰⁰ She also passed on information that Mr Barbaro was overheard by her instructing solicitor, talking to a gaol visitor about a “hidden location of \$1 million dollars and a stash of guns”,²⁰¹ at the Carlton North townhouse which were “buried in the backyard under the concrete” and that members of the Barbaro syndicate were worried that Ms Ropa may attempt to retrieve it.²⁰² Firearms were subsequently discovered and seized by police upon their return to the Carlton North townhouse on 13 August 2008,²⁰³

¹⁹¹ Exhibit RC0431 Mr Sandy White diary, 31 June 2007, 153, VPL.2000.0001.1151 @.1231.

¹⁹² Exhibit RC0281 ICR3838 (088), 5 July 2007, 989, VPL.2000.0003.2575.

¹⁹³ See, eg, the R Karam analysis at [168].

¹⁹⁴ Exhibit RC0601c Mr Richards diary, 5 July 2007, 177, VPL.0009.0001.0206 @.0382.

¹⁹⁵ Exhibit RC0281 ICR2958 (017), 3 May 2008, 258, VPL.2000.0003.0998.

¹⁹⁶ Exhibit RC0281 ICR2958 (017), 3 May 2008, 258, VPL.2000.0003.0998.

¹⁹⁷ Un-tendered Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 2, 8, exhibited in *AB & EF v CD* [2017] VSC 350, [19], MIN.0002.0001.0584 @.0591; Exhibit RC0281 ICR2958 (031), 8 August 2008, 544, VPL.2000.0003.1284; Un-tendered Audio Summary of Meeting 45, 30 January 2008, 2 [13]-[14], VPL.2000.0003.0233 @.0002.

¹⁹⁸ Exhibit RC0281 ICR2958 (037) 1 September 2008, 575, VPL.2000.0003.1315.

¹⁹⁹ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

²⁰⁰ Exhibit RC0281 ICR2958 (033), 8 August 2008, 548, VPL.2000.0003.1288.

²⁰¹ Exhibit RC0281 ICR2958 (037), 5 September 2008, 583, VPL.2000.0003.1323; Exhibit RC0281 ICR2958 (037), 6 September 2008, 586, VPL.2000.0003.1326.

²⁰² Exhibit RC0281 ICR2958 (037), 6 September 2008, 586, VPL.2000.0003.1326.

²⁰³ See, eg, Un-tendered Prosecution Plea Opening, *R v Sharon Ropa*, 18 February 2013, 117 [53], RCMPI.0009.0002.0097 @.0117.

although that discovery does not appear to have played a role in subsequent prosecutions.

93. Notwithstanding the above, Ms Gobbo does not appear to have disclosed to Mr Barbaro that she had provided information to the police that was likely to have led to his arrest and charges, or that she continued to provide information to the police of possible adverse consequence to him or his case while representing him.

Submissions to the Commission

94. In submissions to the Commission, it is asserted on behalf of Mr Barbaro that his case may have been affected because, relevantly,²⁰⁴ “[b]y the time Mr Barbaro had instructed [his solicitor] to brief Ms Gobbo as Counsel in his case, she had already been involved in the provision of critical evidence to police obtained from a client and co-offender of Mr Barbaro, about that very case”.²⁰⁵ The submissions refers in particular to Ms Gobbo’s provision of “information, including a shipping manifest, to police in relation to [her client at the time, Mr Karam’s] offending.”²⁰⁶ Those submissions appear to be supported by material before the Commission and the analysis herein.

Submissions under the Terms of Reference in relation to Mr Barbaro

95. It is submitted that it is open to the Commissioner to find that the case of Mr Barbaro, being the indictment containing the three charges in respect of which he was convicted²⁰⁷ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
96. The extent to which the case of Mr Barbaro may have been affected can be measured by virtue of the following matters.

Conduct of Ms Gobbo

97. First, Category 1A²⁰⁸ applies in that, in between September 2008 and January 2009²⁰⁹ Ms Gobbo acted for Mr Barbaro while she was a human source,²¹⁰ and did not disclose same to him.²¹¹
98. Secondly, Category 1B²¹² applies in that, before and during the period that Ms Gobbo acted for Mr Barbaro in relation to the case, Ms Gobbo provided

²⁰⁴ That is, those submissions relevant to the scope of the present inquiry on the basis of the construction of “affected” at [22] of the Legal Principles Submissions.

²⁰⁵ Submission 058, Pasquale Barbaro, 4 [14], SUB.0058.0001.0001 @.0004.

²⁰⁶ Submission 058, Pasquale Barbaro, 4 [14], SUB.0058.0001.0001. @0004.

²⁰⁷ See Un-tendered Indictment, *R v Pasquale Barbaro*, 1 December 2011, RCMP1.00009.0001.0029; *DPP v Barbaro & Anor* [2012] VSC 47, [1]-[2].

²⁰⁸ See Legal Principles Submissions at [249].

²⁰⁹ See above at [87].

²¹⁰ See Legal Principles Submissions at [20].

²¹¹ See Legal Principles Submissions at [239].

²¹² See Legal Principles Submissions at [249].

information in relation to him to members of Victoria Police, and did not disclose same to him.²¹³

99. Thirdly, Category 2A²¹⁴ applies in that evidence relied upon by the prosecution in Mr Barbaro's case, ²¹⁵which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at [27] above, or the evidence obtained as a result thereof,²¹⁶ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.²¹⁷
100. Fourthly, Category 2B²¹⁸ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [99] above and failed to disclose same to her client, Mr Barbaro, thereby depriving him of the ability to object to the admission of that evidence.
101. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,²¹⁹ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.²²⁰
102. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²²¹
103. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

104. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the

²¹³ See above at [88]-[92].

²¹⁴ See Legal Principles Submissions at [249].

²¹⁵ Such as the evidence referred to at [79]-[83] above.

²¹⁶ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

²¹⁷ As described in the Overview above at [57]-[58].

²¹⁸ See Legal Principles Submissions at [249].

²¹⁹ See Legal Principles Submissions at [210].

²²⁰ See Legal Principles Submissions at [212]-[213].

²²¹ See Legal Principles Submissions at [302]-[329] and [307]-[309].

recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²²²

- 104.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Barbaro;
 - 104.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Barbaro, appropriate disclosure was made; or alternatively
 - 104.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
105. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [104.1] were taken, and accordingly there was the potential for the right of Mr Barbaro to a fair trial to have been interfered with.
106. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Barbaro and/or his legal representatives.
107. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²²³
108. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²²⁴
109. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.²²⁵
110. Category 3A²²⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
111. Category 3B²²⁷ applies in that, before and during the period that Ms Gobbo acted for Mr Barbaro in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police and otherwise assisted (or attempted to assist) in his prosecution,²²⁸ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest

²²² See Legal Principles Submissions at [384] and [452]-[457].

²²³ See Legal Principles Submissions at [380]-[385].

²²⁴ See Legal Principles Submissions at [351], [363]-[373].

²²⁵ See Legal Principles Submissions at [351]-[374].

²²⁶ See Legal Principles Submissions at [465].

²²⁷ See Legal Principles Submissions at [465].

²²⁸ See above at [88]-[92].

immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

112. Category 4A²²⁹ applies in that, as noted above at [99], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
113. Category 4B²³⁰ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
114. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²²⁹ See Legal Principles Submissions at [465].

²³⁰ See Legal Principles Submissions at [465].

CASE STUDY: SAVERIO ZIRILLI

Proceedings

115. On 8 August 2008, Mr Zirilli was arrested²³¹ and charged with three Commonwealth offences, namely:²³²
- 115.1. the conspired trafficking in a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*);
 - 115.2. the trafficking in a commercial quantity of MDMA between 24 January 2008 and 8 August 2008 (ie arising from *Operation Inca*); and
 - 115.3. the attempted possession of a commercial quantity of cocaine between 24 July 2008 and 8 August 2008. (ie arising from *Operation Inca*).
116. Mr Zirilli ultimately pleaded guilty to all three charges. The Court noted that Zirilli's guilty pleas were "not early" and were "based upon a considered assessment of the evidence that was in [his] possession."²³³ That evidence, as noted below, was predominantly based on surveillance evidence and seized material.
117. Mr Zirilli was sentenced together with Mr Barbaro (who had also pleaded guilty to the charges laid against him) on 23 February 2012.²³⁴ He was sentenced to 26 years' imprisonment with a non-parole period of 18 years.²³⁵ He and Barbaro unsuccessfully appealed their sentences²³⁶ and sought special leave to appeal further to the High Court, which was granted, but the appeal was dismissed.²³⁷

Material Considered by the Court

118. Many of the Court's sentencing remarks in relation to the evidence of Barbaro's involvement apply to Mr Zirilli. In summary, the prosecution relied on evidence from at least five sources, namely:
- 118.1. telephone communications which were intercepted²³⁸ or obtained from mobile phones seized either upon arrest or after disposal observed by surveillance personnel;²³⁹
 - 118.2. conversations captured on listening devices at the Pacific International Apartments;²⁴⁰

²³¹ *DPP v Barbaro & Anor* [2012] VSC 47, [49].

²³² Un-tendered Indictment, *R v Saverio Zirilli*, 6 December 2011, RCMPI.0009.0001.0138; *DPP v Barbaro & Anor* [2012] VSC 47, [3].

²³³ *DPP v Barbaro & Anor* [2012] VSC 47, [77], [81].

²³⁴ *DPP v Barbaro & Anor* [2012] VSC 47.

²³⁵ *DPP v Barbaro & Anor* [2012] VSC 47, [107].

²³⁶ *Barbaro v The Queen* [2012] VSCA 288.

²³⁷ *Barbaro v The Queen; Zirilli v The Queen* (2014) 253 CLR 58; [2014] HCA 2.

²³⁸ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 14, RCMPI.0009.0001.0030 @.0014.

²³⁹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, 24, RCMPI.0009.0001.0030 @.0018, @.0024.

²⁴⁰ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, 24, RCMPI.0009.0001.0030 @.0018, @.0024.

- 118.3. conversations and meetings subject to substantial covert surveillance,²⁴¹ including through the use of audio-visual recording devices;²⁴²
- 118.4. conversations captured on listening and optical surveillance devices at the Carlton North townhouse;²⁴³ and
- 118.5. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following Mr Zirilli's arrest.²⁴⁴

Ms Gobbo's Conduct in relation to Mr Zirilli's Case

Representation

- 119. Ms Gobbo's fee books indicate that she appeared for Mr Zirilli at a special mention and bail application in around September 2008,²⁴⁵ which accords with contemporaneous CDPP court notes.²⁴⁶ She did not appear at his plea or in relation to the subsequent appeals.
- 120. The extent of Ms Gobbo's engagement by Mr Zirilli is unclear, however it appears that she did act for Mr Zirilli at least in respect of his bail application in September 2008.

Informing or Assisting Police

Prior to Representation

- 121. As noted in the Overview at [38]-[41] above, on 28 June 2007, Ms Gobbo passed on information, obtained from her client Mr Karam, which may have played a role in the room in the Pacific International Apartments, in which Messrs Barbaro and Zirilli were staying, being fitted with listening devices by the AFP from 2 July 2007, and in Messrs Barbaro and Zirilli becoming persons of interest to police. As noted at [118.2] above, evidence obtained by those devices was relied upon in the prosecution of Mr Zirilli.
- 122. As noted in the analysis of Mr Barbaro's case at [89]-[90] above, Ms Gobbo provided police with details of Mr Zirilli's presence at "significant" meetings,²⁴⁷ and that Mr Karam had recently been entertaining "the Griffith people" who were "down for the last big import".²⁴⁸ Based on that police record, it appears that her handler understood "the Griffith people" to refer to Messrs Barbaro and Zirilli.

²⁴¹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 18, 116, RCMPI.0009.0001.0030 @.0018, .0116.

²⁴² See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 56-57, RCMPI.0009.0001.0030 @.0056-.0057.

²⁴³ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 66, 92-93, RCMPI.0009.0001.0030 @.0066, .0092-.0093.

²⁴⁴ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 6, 78, 81, RCMPI.0009.0001.0030 @.0006, .0078, .0081.

²⁴⁵ Exhibit RC1569 Ms Nicola Gobbo fee book 02, 9 September 2008, 22, MIN.5000.7000.0103 @.0124; Exhibit RC1569 Meldrum & Hyland Invoice for Fees Due to Ms Nicola Gobbo, 10 September 2008, 57, GMH.0001.0001.0004 @.0057.

²⁴⁶ Un-tendered Zirilli Bail Notes, 8 September 2008, 1, RCMPI.0033.0001.0022.

²⁴⁷ Exhibit RC0431 Mr Sandy White diary, 31 June 2007, 153. VPL.2000.0001.1151 @.1231.

²⁴⁸ Exhibit RC0281 ICR2958 (017), 3 May 2008, 258, VPL.2000.0003.0998.

123. As noted in the Overview at [35]-[36] above, Ms Gobbo has since made express reference to Mr Zirilli in relation to the impact of her provision of the bill of lading and associated information on the tomato tins trafficking conspiracy and appears to claim some responsibility for his arrest.²⁴⁹ In addition, Ms Gobbo is recorded as having acknowledged that she would be “morally, ethically and legally conflicted” in representing Karam, Higgs and “everyone” arrested on 8 August 2008 in relation to the Operations.²⁵⁰

Following Representation

124. In addition, while possibly acting for Mr Zirilli following his arrest, Ms Gobbo provided information to Mr Peter Smith about Mr Zirilli, including his new phone number, [REDACTED]²⁵¹

125. She does not appear to have disclosed to Mr Zirilli that she had provided information to the police that was likely to have led to his arrest and charges, or that she continued to provide information to the police of possible adverse consequence to him or his case while representing him.

Submissions under the Terms of Reference in relation to Mr Zirilli

126. It is submitted that it is open to the Commissioner to find that the case of Mr Zirilli, being the indictment containing the three charges in respect of which he was convicted²⁵² may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

127. The extent to which the case of Mr Zirilli may have been affected may be measured by virtue of the following matters:

Conduct of Ms Gobbo

128. First, Category 1A²⁵³ applies in that, in or around September 2008²⁵⁴ Ms Gobbo acted for Mr Zirilli while she was a human source,²⁵⁵ and did not disclose same to him.²⁵⁶

129. Secondly, Category 1B²⁵⁷ applies in that, before and during the period that Ms Gobbo acted for Mr Zirilli in relation to the case, Ms Gobbo provided

²⁴⁹ Un-tendered Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 2, 8, exhibited in *AB & EF v CD* [2017] VSC 350, [19], MIN.0002.0001.0584 @.0591; Exhibit RC0281 ICR 2958 (031), 8 August 2008, 544, VPL.2000.0003.1284; Un-tendered Audio Summary of Meeting 45, 30 January 2008, 3-4 [23], VPL.2000.0002.4161 @.0002-.0003.

²⁵⁰ Exhibit RC0281 ICR2958 (037) 1 September 2008, 575, VPL.2000.0003.1315.

²⁵¹ Exhibit RC0281 ICR2958 (048), 4 December 2008, 755, VPL.2000.0003.1495.

²⁵² See Un-tendered Indictment, *R v Saverio Zirilli*, 6 December 2011, RCMP.0009.0001.0138; *DPP v Barbaro & Anor* [2012] VSC 47, [3].

²⁵³ See Legal Principles Submissions at [249].

²⁵⁴ See above at [120].

²⁵⁵ See Legal Principles Submissions at [20].

²⁵⁶ See Legal Principles Submissions at [239].

²⁵⁷ See Legal Principles Submissions at [249].

information in relation to him to members of Victoria Police, and did not disclose same to him.²⁵⁸

130. Thirdly, Category 2A²⁵⁹ applies in that evidence relied upon by the prosecution in Mr Zirilli's case,²⁶⁰ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at [27] above, or the evidence obtained as a result thereof,²⁶¹ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.²⁶²
131. Fourthly, Category 2B²⁶³ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [130] above and failed to disclose same to her client, Mr Zirilli, thereby depriving him of the ability to object to the admission of that evidence.
132. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,²⁶⁴ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.²⁶⁵
133. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.²⁶⁶
134. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

135. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the

²⁵⁸ See above at [121]-[123].

²⁵⁹ See Legal Principles Submissions at [249].

²⁶⁰ Such as the evidence referred to at [118] above.

²⁶¹ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

²⁶² As described in the Overview above at [57]-[58].

²⁶³ See Legal Principles Submissions at [249].

²⁶⁴ See Legal Principles Submissions at [210].

²⁶⁵ See Legal Principles Submissions at [212]-[213].

²⁶⁶ See Legal Principles Submissions at [320]-[329] and [307]-[309].

recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:²⁶⁷

- 135.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Zirilli;
 - 135.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Zirilli, appropriate disclosure was made; or alternatively
 - 135.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
136. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [135.1] were taken, and accordingly there was the potential for the right of Mr Zirilli to a fair trial to have been interfered with.
137. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Zirilli and/or his legal representatives.
138. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.²⁶⁸
139. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.²⁶⁹
140. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after guilty plea.²⁷⁰
141. Category 3A²⁷¹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
142. Category 3B²⁷² applies in that, before and during the period that Ms Gobbo acted for Mr Zirilli in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,²⁷³ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

²⁶⁷ See Legal Principles Submissions at [384] and [452]-[457].

²⁶⁸ See Legal Principles Submissions at [380]-[385].

²⁶⁹ See Legal Principles Submissions at [351], [362]-[373].

²⁷⁰ See Legal Principles Submissions at [351], [374].

²⁷¹ See Legal Principles Submissions at [465].

²⁷² See Legal Principles Submissions at [465].

²⁷³ See above at [121]-[123].

143. Category 4A²⁷⁴ applies in that, as noted at paragraph [130] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
144. Category 4B²⁷⁵ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
145. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

²⁷⁴ See Legal Principles Submissions at [465].

²⁷⁵ See Legal Principles Submissions at [465].

CASE STUDY: RABIE (ROB) KARAM

Proceedings

146. Mr Karam was arrested on 8 August 2008,²⁷⁶ in relation to all Operations and ultimately charged with five Commonwealth offences, namely:
- 146.1. conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*);²⁷⁷
 - 146.2. trafficking a commercial quantity of MDMA between 5 February 2008 and 7 August 2008 (ie arising from *Operation Inca*);²⁷⁸
 - 146.3. conspiracy to possess a commercial quantity of cocaine between 26 June 2008 and 8 August 2008. (ie arising from *Operation Inca*);²⁷⁹
 - 146.4. conspiracy to import a commercial quantity of a border-controlled precursor, between 16 March 2008 and 7 August 2008 (ie arising from *Operation Inca*);²⁸⁰ and
 - 146.5. trafficking and aiding/abetting Mr Maroun's trafficking in commercial quantity of MDMA on or about 10 May 2008 (ie arising from *Operation Cardinia*).²⁸¹
147. Mr Karam faced three separate trials and two sentencing hearings in relation to the abovementioned charges.
148. In relation to the Operation Bootham Moko charge (conspiracy to possess a commercial quantity of MDMA), he pleaded not guilty and was tried together with co-conspirators Mr John Higgs, Mr Salvatore Agresta, and Mr Pasquale John Sergi, and convicted on 24 May 2012.²⁸² On 30 April 2013, he was sentenced to 19 years' imprisonment.²⁸³ Mr Karam unsuccessfully appealed his conviction and sentence in 2015,²⁸⁴ and sought special leave to appeal further to the High Court in 2016, which was refused.²⁸⁵

²⁷⁶ See, eg, Un-tendered Summary of Prosecution Opening, *CDPP v Rob Karam, John Higgs, Pasquale Sergi & Salvatore Agresta R v Karam, Higgs, Agresta and Sergi*, undated, 59, RCMP1.0009.0002.0025 @.0059 [Restricted].

²⁷⁷ See Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, 2, RCMP1.0009.0002.0023 @.0002.

²⁷⁸ See Un-tendered Indictment, *R v Rob Karam*, 30 July 2013, 2, RCMP1.0009.0002.0050 @.0002.

²⁷⁹ See Un-tendered Indictment, *R v Rob Karam*, 30 July 2013, 2, RCMP1.0009.0002.0050 @.0002.

²⁸⁰ See Un-tendered Indictment, *R v Rob Karam*, 30 July 2013, 3, RCMP1.0009.0002.0050 @.0003.

²⁸¹ See *R v Rob Karam* [2015] VCC 855, [1]; see also Un-tendered Indictment, *R v Rob Karam & Fadl Maroun*, 2015, 2, RCMP1.0009.0002.0073 @.0002. Note that Karam was initially also charged with conspiracy to import a border-controlled precursor as part of the Cardinia charges, but that charge was ultimately discontinued: See, eg, Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, RCMP1.0009.0002.0109 @.0007; See also Un-tendered Ruling, 26 August 2014, 1, RCMP1.0009.0002.0041.

²⁸² *DPP v Karam & Ors* [2013] VSC 133, [2].

²⁸³ See, *Rob Karam v The Queen* [2015] VSCA 50, [2]; Cf *DPP v Karam & Ors* [2013] VSC 133. The sentencing was delayed while the Court of Appeal was considering the appeals of Messrs Barbaro and Zirilli in *DPP v Barbaro and Zirilli* [2012] VSCA 288, which was handed down on 30 November 2012: see *DPP v Karam & Ors* [2013] VSC 133, [2].

²⁸⁴ *Rob Karam v The Queen* [2015] VSCA 50.

²⁸⁵ *Karam v The Queen* [2016] HCATrans 91.

149. In relation to his three Operation Inca charges (trafficking a commercial quantity of MDMA, conspiracy to possess a commercial quantity of cocaine, and conspiracy to import a commercial quantity of a border-controlled precursor), Mr Karam was ultimately²⁸⁶ tried and convicted by a jury of the MDMA and cocaine charges on 14 November 2014,²⁸⁷ and the precursor charge on 17 November 2014.²⁸⁸ His sentencing was then delayed pending the determination of his appeal in relation to the Bootham Moko charge.²⁸⁹
150. In relation to the relevant Operation Cardinia charge (trafficking and aiding/abetting trafficking in commercial quantity of MDMA), Mr Karam pleaded guilty on 1 May 2014.²⁹⁰ His sentencing was also delayed in relation to that charge until his appeal was determined.²⁹¹
151. On 23 June 2015, Mr Karam was sentenced in respect of the Operation Inca²⁹² and Cardinia²⁹³ charges to 27 years' imprisonment, bringing his total effective sentence to 37 years' imprisonment.²⁹⁴ In July 2016, Mr Karam made an application to the Court of Appeal for an extension of time to appeal and leave to appeal,²⁹⁵ which proceeding is ongoing.

Material Considered by the Court

152. In the above proceedings, the Court considered the following.

The Operation Bootham Moko Charge

153. In a preliminary ruling, the Court considered that there was sufficient evidence, which included telephone communications, to permit the relevant reasonable inferences that each co-accused was a party to the conspiracy as charged.²⁹⁶
154. In sentencing Mr Karam in relation to the Operation Bootham Moko charge, the Court found the same circumstances of offending as it did in relation to Messrs Barbaro and Zirilli,²⁹⁷ and applied to Mr Karam's offending remarks made in relation to Messrs Barbaro and Zirilli by the Court of Appeal about the severity of the offending.²⁹⁸
155. Before arriving at its finding of guilt, the jury was presented with the evidence obtained by the surveillance of the Pacific International Apartments, to which

²⁸⁶ Karam was initially tried in October 2012, but that trial did not result in a conviction, as the jury failed to reach a unanimous verdict, and was discharged. Subsequently, on 14 March 2014, the prosecution made an application to file a new Un-tendered Indictment, containing the three charges noted above: See, eg, Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 2. RCMP1.0009.0002.0109 @.0006

²⁸⁷ *R v Rob Karam* [2015] VCC 855, [1], [3].

²⁸⁸ *R v Rob Karam* [2015] VCC 855, [2].

²⁸⁹ See *R v Rob Karam* [2015] VCC 855, [22].

²⁹⁰ See *R v Rob Karam* [2015] VCC 855, [1]. Note that Karam was initially tried with Mr Fadl Maroun in respect of the (ultimately discontinued) import charge, but the jury in that trial was discharged on 29 May 2015 after failing to reach a unanimous verdict: See, eg, Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 3. RCMP1.0009.0002.0109 @.0007.

²⁹¹ See *R v Rob Karam* [2015] VCC 855, [22].

²⁹² *R v Rob Karam* [2015] VCC 855, [54]-[56].

²⁹³ *R v Rob Karam* [2015] VCC 855, [57].

²⁹⁴ *R v Rob Karam* [2015] VCC 855, [58].

²⁹⁵ See, eg, *AB v CD; EF v CD* [2017] VSC 350, [231].

²⁹⁶ Un-tendered Transcript of Proceedings, *R v Karam, Higgs, Agresta and Sergi* (Supreme Court of Victoria, King J, 2012), RCMP1.0009.0001.0023 [Restricted].

²⁹⁷ See *DPP v Karam & Ors* [2013] VSC 133, [3].

²⁹⁸ *DPP v Karam & Ors* [2013] VSC 133, [35]-[36].

surveillance the Court made express reference in its sentencing reasons.²⁹⁹ The Court also made reference to evidence obtained through the numerous telephone intercepts,³⁰⁰ some of which was presented to the jury in relation to Mr Karam's personal mobile phone.³⁰¹ The Court referred to Mr Karam's use of Mr Higgs as a conduit for communications with co-conspirators³⁰² and Mr Karam's eventual direct telephone contact with Messrs Barbaro and Falanga in relation to the conspiracy,³⁰³ and numerous meetings with other co-conspirators,³⁰⁴ some of which were subject to physical surveillance.³⁰⁵

156. On the basis of the evidence before it, the Court concluded that Mr Karam "held a very important position within the planning group, in that his advice was sought and his views acted upon",³⁰⁶ and this central role was recognised by the Court of Appeal.³⁰⁷
157. It appears from the Court and prosecution materials before the Commission that three sources of evidence, namely the electronic surveillance of the Pacific International Apartments, telephone interception, and physical surveillance of meetings were material to the prosecution's case and Mr Karam's conviction and sentence in relation to the Operation Bootham Moko charge.

The Operation Inca charges

158. In relation to the Operation Inca charges, the "vast bulk" of the prosecution's case (which it called a "tapes case"³⁰⁸) was comprised of evidence of communications obtained via listening devices, telephone intercepts, and physical surveillance.³⁰⁹ It also referred to key evidence in material seized (including from co-conspirators) upon arrest, and the fact that Mr Karam had made a number of formal admissions, making it "reasonable to say that there ...[was] not going to be a lot of controversy with respect to the prosecution evidence".³¹⁰ The Court noted that those admissions "had a significant effect in shortening the length of the trial",³¹¹ but did not warrant a reduction in sentence.
159. In particular, the prosecution's evidence in relation to all three charges included communications intercepted in phone calls and text messages or obtained from mobile phones seized either upon arrest³¹² or after disposal observed by surveillance personnel.³¹³ The prosecution also referred to conversations

²⁹⁹ *DPP v Karam & Ors* [2013] VSC 133, [13]-[14], [20].

³⁰⁰ *DPP v Karam & Ors* [2013] VSC 133, [14].

³⁰¹ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 14, 18-19, RCMPPI.0009.0002.0025 @.0014,.0018-.0019.

³⁰² *DPP v Karam & Ors* [2013] VSC 133, [17].

³⁰³ *DPP v Karam & Ors* [2013] VSC 133, [18], [25].

³⁰⁴ *DPP v Karam & Ors* [2013] VSC 133, [19].

³⁰⁵ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 42-44, RCMPPI.0009.0002.0025 @.0042-.0044.

³⁰⁶ *DPP v Karam & Ors* [2013] VSC 133, [22].

³⁰⁷ *Rob Karam v The Queen* [2015] VSCA 50, [119].

³⁰⁸ Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 8, RCMPPI.0009.0002.0069 @.0008

³⁰⁹ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 8, RCMPPI.0009.0002.0069 @.0008

³¹⁰ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 8, RCMPPI.0009.0002.0069 @.0008.

³¹¹ *R v Rob Karam* [2015] VCC 855, [52].

³¹² See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 17, RCMPPI.0009.0002.0069 @.0017.

³¹³ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 17-18, RCMPPI.0009.0002.0069 @.0017-.0018.

between co-conspirators captured on listening devices installed in Mr Karam's car.³¹⁴

160. In relation to the MDMA trafficking charge, the Court noted the prosecution's case that Mr Karam was "the leader of a group of several persons who took possession of ecstasy tablets supplied... by Pasquale Barbaro, and that [he was]... Barbaro's major wholesale customer."³¹⁵ The prosecution referred to corroborative detailed financial records of the trafficking enterprise maintained by Messrs Karam and Barbaro and Ms Ropa,³¹⁶ and covertly observed meetings between co-conspirators, including Mr Karam.³¹⁷
161. In relation to the conspired cocaine possession charge, the Court noted the evidence of conversations between co-conspirators,³¹⁸ including direct communications between Messrs Karam and Barbaro,³¹⁹ which highlighted Mr Karam's "key" role.³²⁰ The prosecution noted that the evidence showed that Mr Karam spoke with all but one named cocaine co-conspirator,³²¹ and that material seized from Mr Karam's car contained references to geographic source location and "piggy back" importation (a method of smuggling contraband into an otherwise legitimate shipment which was used to import the cocaine).³²²
162. In relation to the conspired precursor importation charge, the prosecution case was that Mr Karam provided the name of the legitimate and unsuspecting furniture importer as consignor, and liaised with all other charged co-conspirators other than Mr Batticciotto.³²³ The Court found that Mr Karam played an "important" enabling role as "facilitator of...documentation" for the importation.³²⁴ Relevant evidence appears to have included material seized from Mr Karam's car upon arrest containing details of the purported consignor.³²⁵
163. It appears from the Court and prosecution materials before the Commission that four sources of evidence, namely the electronic surveillance of Mr Karam's car, telephone interceptions, physical surveillance of meetings and material seized upon arrest were material to the prosecution's case and Mr Karam's conviction and sentence in relation to the Operation Inca charges.

³¹⁴ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 75-76, RCMP.0009.0002.0069 @.0075-.0076.

³¹⁵ *R v Rob Karam* [2015] VCC 855, [6].

³¹⁶ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 91, RCMP.0009.0002.0069 @.0091.

³¹⁷ See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 60, RCMP.0009.0002.0069 @.0060.

³¹⁸ *R v Rob Karam* [2015] VCC 855, [9].

³¹⁹ *R v Rob Karam* [2015] VCC 855, [14]; See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 14, 24, RCMP.0009.0002.0069 @.0014, @.0024.

³²⁰ *R v Rob Karam* [2015] VCC 855, [14].

³²¹ Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 435, RCMP.0009.0002.0065 @.0036.

³²² Un-tendered Transcript of Proceedings, *R v Rob Karam* (County Court of Victoria, Judge Montgomery, 1 September 2014) 462-3, RCMP.0009.0002.0066 @.0018-.0019.

³²³ *R v Rob Karam* [2015] VCC 855, [17].

³²⁴ *R v Rob Karam* [2015] VCC 855, [49].

³²⁵ See, eg, Un-tendered Prosecution Plea Summary, *R v Rob Karam*, 10 January 2015, 29, RCMP.0009.0002.0051 @.0029.

The Operation Cardinia Charges

164. The evidence referred to in relation to the Operation Cardinia charge broadly included telephone intercepts and physical surveillance. Multiple key conversations between Messrs Karam, Maroun and “Micheal” [sic], an undercover police officer ██████████ were covertly video and audio recorded.³²⁶ A subsequent meeting ██████████ in which Mr Maroun provided “Rosie”, an undercover police officer, with MDMA pills ██████████ was covertly captured on video both on the street and in her car.³²⁷ Physical surveillance captured Mr Maroun’s collection of those MDMA pills from Barbaro or his representatives,³²⁸ and the remission of its proceeds on behalf of Mr Karam to Mr Barbaro via Ms Ropa.³²⁹
165. In addition, text messages between Mr Karam and undercover police officers ██████████ were used in evidence,³³⁰ as were intercepted telephone communications between Messrs Karam and Barbaro,³³¹ and Karam and Maroun.³³²
166. While the evidence of the undercover police officers may have been critical in the prosecution of the Operation Cardinia charge, it appears from the Court and prosecution materials before the Commission that three sources of evidence, namely telephone interceptions, physical surveillance of meetings and material seized upon arrest were material to the prosecution’s case and Mr Karam’s conviction and sentence in relation to the Operation Cardinia charges.

Ms Gobbo’s Conduct in relation to Mr Karam’s Cases

Representation

167. Following his arrest on 8 August 2008, Mr Karam appears to have been represented by Ms Gobbo on several occasions. Material before the Commission indicates that she appeared on his behalf on 18 August 2008 in an application to be moved to Melbourne Assessment Prison,³³³ on 31 August

³²⁶ See, eg, Un-tendered Prosecution Plea Summary, *R v Rob Karam*, 10 January 2015, 6, RCMP.0009.0002.0051 @.0006; See, eg, Un-tendered Prosecution Opening, *R v Rob Karam*, undated, 49, 94-95, RCMP.0009.0002.0069 @.0049, .0094-.0095; Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 15 [50], RCMP.0009.0002.0074 @.0015; See, eg, Prosecution Opening, *R v Rob Karam*, undated, 105-106, RCMP.0009.0002.0069 @.0105-.0106; Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 17 [55], RCMP.0009.0002.0074 @.0015.

³²⁷ Prosecution Opening, *R v Rob Karam*, undated, 118, RCMP.0009.0002.0069 @.0118.

³²⁸ Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 11 [31], RCMP.0009.0002.0074 @.0011.

³²⁹ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 14 [46]-[47], RCMP.0009.0002.0074 @.0014.

³³⁰ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 14 [46]-[47], RCMP.0009.0002.0074 @.0014.

³³¹ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 10-11, [27]-[29], [32], RCMP.0009.0002.0074 @.0010-.0011.

³³² See, eg, Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 6-11 [14]-[34], RCMP.0009.0002.0074 @.0006-.0011.

³³³ Exhibit RC1918 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDPP between 1/01/1995 and 12/01/2009 (*Rob Karam*), 18 August 2008, CDP.0001.0001.0020.

2008,³³⁴ 27 October 2008³³⁵ and on 18 December 2008³³⁶ at applications to vary bail. It appears that she did not appear on his behalf after 18 December 2008, although records indicate that Ms Gobbo and Mr Karam met to discuss his cases in January 2009,³³⁷ and that she repeatedly visited him in gaol in 2012 and 2013.³³⁸

168. Importantly however, it appears that Ms Gobbo had earlier acted and appeared for Mr Karam in relation to a drug importation charge arising from an earlier AFP operation (Operation Kaka) on multiple occasions between 2005³³⁹ and 2007 including as junior counsel at his trial in June 2007,³⁴⁰ in which Mr Karam was acquitted on 10 July 2007.³⁴¹ It is submitted that the overlap between this period and the period of offending in relation to his Bootham Moko charge is of significance.
169. In addition, Ms Gobbo maintained social contact with Mr Karam after the acquittal. She is recorded as having remarked to her handler, Mr Fox, that her relationship with Mr Karam was particularly close given the length of the Operation Kaka proceedings, and Mr Karam that would “get used to her being around and start talking about other things”.³⁴² For this reason, she appears to have viewed herself as a particularly valuable source for police in relation to Mr Karam, among others.³⁴³
170. On the basis of the above, a reasonable inference may be made that Ms Gobbo’s representation of Mr Karam was ongoing since his Operation Kaka matter. However, material before the Commission indicates with more certainty that she acted for Mr Karam, in at least the period between November 2005 and July 2007 (in relation to the Operation Kaka charges), and between August 2008 and January 2009 in relation to charges arising from the Operations.

Informing or Assisting Police – Prior to Arrest

171. Material before the Commission indicates that Ms Gobbo extensively provided information and assistance to Victoria Police in relation to Mr Karam since around September 2005,³⁴⁴ during the prosecution of the Operation Kaka charge.

³³⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 31 October 2009, 24, MIN.5000.7000.0103 @.0126.

³³⁵ Exhibit RC1918 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDPP between 1/01/1995 and 12/01/2009 (Rob Karam), 18 August 2008, CDP.0001.0001.0020.

³³⁶ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 18 December 2008, 27, MIN.5000.7000.0103 @0129; Exhibit RC1918 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDPP between 1/01/1995 and 12/01/2009 (Rob Karam), 18 August 2008, CDP.0001.0001.0020.

³³⁷ Exhibit RC0281 ICR2958 (053), 10 January 2009, 821, VPL.2000.0003.1561.

³³⁸ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 March 2019, 27, CNS.0001.0003.0037 @.0063.

³³⁹ Exhibit RC0281 ICR3838 (008), 12 November 2005, 53, VPL.2000.0003.1639.

³⁴⁰ See Exhibit RC1568 Ms Nicola Gobbo fee book 02, 23 September 2009, 23, MIN.5000.7000.0103 @.0125; Exhibit RC1568 Ms Nicola Gobbo fee book 01, 21 November 2005 and 20 March 2006, 92, 94, 95, MIN.5000.7000.0001 @.0092, .0094, .0095; Exhibit RC1568 Ms Nicola Gobbo Fee Book 02, 15 May, 15 June, 6 July 2009, 4, 5, 6, MIN.5000.7000.0103 @.0106, .0107, .0108; Exhibit RC0281 ICR3838 (079), 18 May 2007, 840, VPL.2000.0003.2426.

³⁴¹ See, eg, *DPP v Karam & Ors* [2013] VSC 133, [18]; *Rob Karam v The Queen* [2015] VSCA 50, [20].

³⁴² Exhibit RC0281 ICR3838 (087), 3 July 2007, 973, VPL.2000.003.2559.

³⁴³ Exhibit RC0281 ICR3838 (087), 3 July 2007, 973, VPL.2000.0003.2559.

³⁴⁴ Exhibit RC0281 ICR3838 (002), 21 September 2005, 12, VPL.2000.0003.1598; Victoria Police, Information Report SID277, 7 October 2005, VPL.2000.0003.8408.

172. Ms Gobbo's handlers appear to have been aware of her representation of Mr Karam between 2005 and 2007 in relation to the Operation Kaka charge. From as early as 12 November 2005, Ms Gobbo was recorded by her handler, Mr Peter Smith, as "working on Karam's brief".³⁴⁵ On 25 January 2006, the same handler recorded that Ms Gobbo "is now acting for Karam".³⁴⁶ On 14 June 2007 an internal police document, maintained by a second handler, Mr Sandy White, recorded that Ms Gobbo was "currently representing [Mr Karam]...re import trial",³⁴⁷ on 21 July 2007 a third handler, Mr Wolf, recorded that Ms Gobbo "has invoiced [Mr Karam]",³⁴⁸ and on 29 August 2006 she was recorded by a fourth handler, Mr Green, to have referred to Mr Karam's payment plan for her representation at trial.³⁴⁹ In addition, throughout the period of her informing, she is recorded as having referred to and indicated familiarity with the current stage of his proceeding.³⁵⁰ Finally, a fifth handler Mr Fox recorded that that Ms Gobbo was told by police that "if she hears anything whilst she is with Rob during the trial then she must tell us."³⁵¹
173. Of specific relevance to the tomato tins and related proceedings, Ms Gobbo appears to have provided police with the following information or assistance:
- 173.1. importation plans
 - 173.2. the bill of lading
 - 173.3. details of the Pacific International Apartments accommodation
 - 173.4. contact details
 - 173.5. details of Mr Karam's movements.
174. Each of the above is detailed in turn below.

Importation Plans

175. Ms Gobbo is recorded as passing on information she received from Mr Karam in relation to a future importation of narcotics from Italy, as early as 14 March 2006.³⁵² That information was further disseminated by police.³⁵³ Twice in November 2006 she informed her handler of Mr Karam's association with someone from Italy in relation to a future ecstasy import.³⁵⁴
176. In May 2008, Ms Gobbo informed police that Mr Karam may be involved in a "pseudo import",³⁵⁵ and later in June 2008 informed Police that Mr Karam had spoken about using a furniture company in relation to a new pseudoephedrine

³⁴⁵ Exhibit RC0281 ICR3838 (008), 12 November 2006, 57, VPL.2000.0003.1643.

³⁴⁶ Exhibit RC0281 ICR3838 (016), 25 January 2006, 133, VPL.2000.0003.1719.

³⁴⁷ Exhibit RC0284 SML3838, 14 June 2007, 112, VPL.2000.0001.9447 @.4559.

³⁴⁸ Exhibit RC0281 ICR2958 (029), 21 July 2008, 503, VPL.2000.0003.1243.

³⁴⁹ Exhibit RC0281 ICR3838 (043), 29 August 2006, 409, VPL.2000.0003.1995.

³⁵⁰ Exhibit RC0281 ICR3838 (008), 3 July 2007, 57, VPL.2000.0003.1643; Exhibit RC0281 ICR3838 (008), 16 November 2005, 58, VPL.2000.0003.1644; Exhibit RC0281 ICR3838 (008), 17 November 2005, 59, VPL.2000.0003.1645; Exhibit RC0281 ICR3838 (018), 16 February 2006, 155, VPL.2000.0003.1741; Exhibit RC0281 ICR3838 (034), 8 June 2007, 321, VPL.2000.0003.1907; Exhibit RC0281 ICR3838 (042), 24 August 2006, 405, VPL.2000.0003.1991.

³⁵¹ Exhibit RC0281 ICR3838 (088), 4 July 2007, 983, VPL.2000.0003.2569.

³⁵² Exhibit RC0281 ICR3838 (022), 14 March 2006, 187, VPL.2000.0003.1773.

³⁵³ Exhibit RC0283 Information Report SID529, 14 March 2006, VPL.2000.0003.8634.

³⁵⁴ Exhibit RC0281 ICR3838 (052), 8 November 2006, 546, VPL.2000.0003.2132; Exhibit RC0281 ICR3838 (054), 29 November 2006, 568, VPL.2000.0003.2154.

³⁵⁵ Exhibit RC0281 ICR2958 (020), 19 May 2008, 317, 319, VPL.2000.0003.1057, VPL.2000.0003.1059.

import.³⁵⁶ This appears to accord with the time and methodology used in the precursor importation conspiracy (ie the subject of *Operation Inca D*) for which he was ultimately charged.

177. It appears likely that the above information received by police from Ms Gobbo was of relevance to, and of possible assistance in the success of, the Operations.

The Bill of Lading

178. As noted in the Overview at [29]-[37] above, in early June 2007, Ms Gobbo is recorded as having provided Victoria Police with a photocopied bill of lading relating to the tomato tins shipment, assisted police in translating the document into English, and was tasked by police to provide further information from Mr Karam about the importation. During this time, police understood,³⁵⁷ and/or were reckless as to the likelihood,³⁵⁸ that, Ms Gobbo was representing Mr Karam.³⁵⁹ That information and assistance appears to have been instrumental in the seizure of the container and the success of Operation Bootham Moko.
179. As noted in the Overview at [34]-[37] above, material before the Commission appears to contain acknowledgement by both Ms Gobbo and police of her important role in the success of Operation Bootham Moko, and Ms Gobbo's acknowledged resultant conflict in representing Mr Karam.

Pacific International Apartment Details

180. On 28 June 2007, Ms Gobbo is recorded as having informed her handler that her client Mr Karam was to meet others at the Pacific International Apartments, which information, as noted in the Overview at [38]-[41] above, likely enabled police to capture further evidence and obtain the identities of further related accused.

Contact Details

181. Material before the Commission records that Ms Gobbo had provided police with Mr Karam's numerous mobile phone numbers since at least September 2005.³⁶⁰ In February 2006, she provided two further phone numbers,³⁶¹ which were repeatedly provided as current throughout 2007³⁶² and well into 2008.³⁶³ In

³⁵⁶ Exhibit RC0281 ICR2958 (022), 6 June 2008, 396, VPL.2000.0003.1136.

³⁵⁷ See eg, Karam analysis at [171] below.

³⁵⁸ See, eg, Un-tendered Letter from Victoria Police to the CDP, 25 November 2016, 1 at 7, annexed to Anonymous Submission 034.

³⁵⁹ Exhibit RC0281 ICR3838 (082), 5 June 2007, 877, VPL.2000.0003.2463; Un-tendered Audio Summary of Meeting 38, 5 June 2008, 2 [13]-[14], VPL.2000.0003.0233.0001.

³⁶⁰ Exhibit RC0281 ICR3838 (002), 21 September 2005, 12, VPL.2000.0003.1598.

³⁶¹ Exhibit RC0281 ICR3838 (020), 25 February 2006, 167, VPL.2000.0003.1753; Exhibit RC0283 Information Report SID446, 25 February 2006, VPL.2000.0003.8559.

³⁶² See, eg, Exhibit RC0281 ICR3838 (036), 20 June 2006, 337, VPL.2000.0003.1923; Exhibit RC0281 ICR3838 (051), 27 October 2006, 525, VPL.2000.0003.2111; Exhibit RC0281 ICR3838 (081), 29 May 2007, 866, VPL.2000.0003.2452; Exhibit RC0281 ICR3838 (089), 13 July 2007, 1011, VPL.2000.0003.2597; Exhibit RC0281 ICR3838 (093), 31 June 2007, 1075, VPL.2000.0003.2661; Exhibit RC0281 ICR3838 (106), 24 November 2007, 1315, VPL.2000.0003.2901; Exhibit RC0281 ICR3838 (118), 10 January 2008, 1560, VPL.2000.0003.3146; Exhibit RC0281 ICR2958 (019), 17 June 2008, 311, VPL.2000.0003.1051; Exhibit RC0281 ICR2958 (023), 11 June 2008, 412, VPL.2000.0003.1152.

³⁶³ Exhibit RC0281 ICR3838 (118), 20 June 2006, 1560, VPL.2000.0003.3146; Exhibit RC0281 ICR2958 (023), 11 June 2008, 412, VPL.2000.0003.1152.

April 2007 she provided another number³⁶⁴ which was still in use in July 2008.³⁶⁵

182. In May 2007, Ms Gobbo is recorded as having provided police with the phone number of a consignee in relation to an importation in which Mr Karam is involved.³⁶⁶ On the same day, she reportedly told police that when Mr Karam had recently left his phone charging in her chambers,³⁶⁷ she had copied down some of his contacts, which numbers she passed on to her handlers.³⁶⁸
183. Police records report that Ms Gobbo provided various additional phone numbers used by Mr Karam in 2007³⁶⁹ and 2008,³⁷⁰ the latter of which she repeated in June 2008³⁷¹ was still being used by Mr Karam, and was used by Mr Karam to co-ordinate Mr Maroun's movements,³⁷² and to receive updates from Mr Maroun about his meetings with "Rosie" in relation to Operation Cardinia activities.³⁷³ She again provided police with Mr Karam's phone number in September, following his arrest.³⁷⁴
184. Material before the Commission indicates that Mr Karam's mobile numbers, and other details were disseminated to other agencies, including an investigator [Member 2] at the Australian Crime Commission. 375
185. It appears that police tasked Ms Gobbo to obtain such information. Police material records that as early as October 2005, police asked Ms Gobbo to discover the location of a meeting with Mr Karam, and to obtain his phone number and registration.³⁷⁶ She was recorded to have been asked again to obtain additional phone numbers used by Mr Karam in January 2006,³⁷⁷ and on 21 July 2008.³⁷⁸
186. Given the importance of telephone intercepts in the success of the Operations and in evidence relied upon by the prosecution, the provision of Mr Karam's phone numbers, especially when tasked by police to obtain them, and when further disseminated, is likely to have assisted police in their investigation of Mr Karam.

³⁶⁴ Exhibit RC0281 ICR3838 (073), 7 April 2007, 771, VPL.2000.0003.2357.

³⁶⁵ Exhibit RC0281 ICR3838 (089), 12 July 2007, 1010, VPL.2000.0003.2596.

³⁶⁶ Exhibit RC0281 ICR3838 (080), 24 May 2007, 853, VPL.2000.0003.2439.

³⁶⁷ Exhibit RC0281 ICR3838 (073), 24 May 2007, 852, VPL.2000.0003.2438.

³⁶⁸ Exhibit RC0281 ICR3838 (073), 25 May 2007, 856, VPL.2000.0003.2442.

³⁶⁹ Exhibit RC0281 ICR3838 (073), 31 July 2007, 1075, VPL.2000.0003.2661.

³⁷⁰ Exhibit RC0281 ICR2958 (009), 17 March 2008, 100, VPL.2000.0003.0840.

³⁷¹ Exhibit RC0281 ICR2958 (023), 11 June 2008, 412, VPL.2000.0003.1152; Exhibit RC0281 ICR2958 (025), 22 June 2008, 471, 475, VPL.2000.0003.1211, VPL.2000.0003.1215.

³⁷² See Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 10-13 [30], [35], [39], [40], RCMP.0009.0002.0074 @.0010-.0013.

³⁷³ See Un-tendered Prosecution Opening for Plea Hearing, *R v Rob Karam*, 14 January 2015, 14 [45], RCMP.0009.0002.0074 @.0014.

³⁷⁴ Exhibit RC0281 ICR2958 (039), 16 September 2008, 617, VPL.2000.0003.1357.

³⁷⁵ Exhibit RC1929 Taskforce Landow – Loricated Intel Dissemination Log, 16 March 2008, 90, VPL.0100.0057.0019 @.0108.

³⁷⁶ Exhibit RC0281 ICR3838 (006), 12 October 2005, 29, VPL.2000.0003.1615; Exhibit RC0281 ICR3838 (006), 13 October 2005, 31, VPL.2000.0003.1617; Exhibit RC0281 ICR3838 (006), 14 October 2005, 33, VPL.2000.0003.1619.

³⁷⁷ Exhibit RC0281 ICR3838 (016), 24 January 2004, 132, VPL.2000.0003.1718; Exhibit RC0281 ICR3838 (016), 28 January 2004, 134, VPL.2000.0003.1720.

³⁷⁸ Exhibit RC0281 ICR2958 (029), 21 July 2008, 503, VPL.2000.0003.1243.

Details of Mr Karam's Movements

187. In addition to phone numbers, Ms Gobbo appears to have provided police with information as to Mr Karam's movements.
188. For example, in June 2007 she is recorded as having reported to Mr Fox that Mr Karam met with Higgs and the "Italians from Griffith" at a Maribyrnong restaurant, the purpose of which, Mr Karam told her, was "to organise the next import from Italy".³⁷⁹ Later in June 2007 she appears to have reported the contents of an overheard dinner conversation between Messrs Karam and Higgs in relation to the tomato tins container.³⁸⁰
189. Also in June 2007 she notified police of Mr Karam's intention to meet co-conspirators at the Pacific International Apartments, as noted in the Overview at [38]-[41] above. In August 2007, she not only informed police that Mr Karam was attending a meeting with Mr Barbaro,³⁸¹ but that he had used Mr Antonio Sergi's car (a related accused), the registration details of which she provided to police, to do so.³⁸²
190. In 2008, Ms Gobbo is recorded as having notified police of Mr Karam's planned departure for the [REDACTED] meetings in relation to Operation Cardinia.³⁸³ Later, she told police that Mr Karam was returning to Melbourne for his [REDACTED] [REDACTED] on 8 August 2008³⁸⁴ — the date on which Mr Karam was ultimately arrested.
191. Again, Ms Gobbo appears to have been tasked by police to provide updates regarding Mr Karam's movements,³⁸⁵ and even to use the GPS function [REDACTED] [REDACTED] when meeting with him.³⁸⁶ In relation to the tomato tins shipment, she was reportedly asked to find out from Mr Karam who was involved in the shipment, their phone numbers, the name of the freight forwarder,³⁸⁷ whether the container had swapped ships,³⁸⁸ the occupation of Mr Karam's contact, and whether he had heard from him.³⁸⁹ On one occasion, police asked her to find out who had called Mr Karam with an update on a particular date at a particular time.³⁹⁰
192. On 21 June 2007, police informed Ms Gobbo that Customs had identified the container and police would not be tasking her with further questions to ask Mr

³⁷⁹ Exhibit RC0281 ICR3838 (084), 21 June 2007, 920, VPL.2000.0003.2506.

³⁸⁰ See, eg, Exhibit RC0281 ICR3838 (086), 29 June 2007, 949, VPL.2000.0003.2535.

³⁸¹ Exhibit RC0281 ICR3838 (096), 22 August 2007, 1127, VPL.2000.0003.2713; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1129, VPL.2000.0003.2715; Exhibit RC0281 ICR3838 (096), 23 August 2007, 1134, VPL.2000.0003.2720.

³⁸² Exhibit RC0281 ICR3838 (096), 23 August 2007, 1134, VPL.2000.0003.2720.

³⁸³ In relation to the 13 March 2008 meeting see Exhibit RC0281 ICR2958 (007), 8 March 2008, 82, VPL.2000.0003.0822; In relation to the 14 May 2008 meeting see Exhibit RC0281 ICR2958 (020), 6 May 2008, 273, VPL.2000.0003.1013; In relation to the 2 July 2008 meeting see Exhibit RC0281 ICR2958 (026), 4 July 2008, 479, VPL.2000.0003.1219.

³⁸⁴ Exhibit RC0281 ICR2958 (026), 26 June 2008, 478, VPL.2000.0003.1218; Exhibit RC0281 ICR2958 (028), 17 July 2008, 495, VPL.2000.0003.1235; Exhibit RC0281 ICR2958 (029), 25 July 2008, 513, VPL.2000.0003.1253.

³⁸⁵ Exhibit RC0281 ICR3838 (094), 14 August 2007, 1085, VPL.2000.0003.2671; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1127, VPL.2000.0003.2713.

³⁸⁶ Exhibit RC0281 ICR3838 (112), 25 November 2007, 1456, VPL.2000.0003.3042.

³⁸⁷ Exhibit RC0281 ICR3838 (083), 15 June 2007, 898, VPL.2000.0003.2484.

³⁸⁸ Exhibit RC0281 ICR3838 (084), 15 June 2007, 910, VPL.2000.0003.2496.

³⁸⁹ Exhibit RC0281 ICR3838 (084), 18 June 2007, 912, VPL.2000.0003.2498.

³⁹⁰ Exhibit RC0281 ICR3838 (086), 29 June 2007, 952, VPL.2000.0003.2538.

Karam, and instead preferred that she take a passive role and report unprompted information she received,³⁹¹ which she did.³⁹²

193. However, from 29 June 2007, within a day of the shipment being intercepted, Ms Gobbo was tasked to ascertain whether Mr Karam was suspicious or concerned about police involvement,³⁹³ and to provide immediate updates in relation to Mr Karam's comments and movements on an ongoing basis,³⁹⁴ which she did.³⁹⁵
194. Police material further records that on 10 July 2007, police tasked Ms Gobbo to [REDACTED] his discovery that the shipment had been intercepted.³⁹⁶ Also in July, Ms Gobbo indicated willingness to facilitate a restaurant meeting with Messrs Karam and Higgs for the purpose of [REDACTED] about the container.³⁹⁷ The dinner appears to have gone ahead, and the Ms Gobbo's informing about it is recorded as having been verbally disseminated to Mr Green.³⁹⁸
195. In addition, police appear to have used Ms Gobbo to improve the effectiveness of police surveillance. For example, in December 2005, after Ms Gobbo had reported Mr Karam's suspicions that he was the subject of undercover police vehicle surveillance, Police asked her to retain a list of suspected registrations which Mr Karam gave her and to hint to Mr Karam that she may have connections who can ascertain whether they are in fact surveillance vehicles.³⁹⁹
196. Ms Gobbo is recorded as having expressed her delight at being tasked by police,⁴⁰⁰ and appears to have complained when police told her that they would no longer task her out of concern for her safety.⁴⁰¹
197. Police materials record that after having told her on 16 September 2008 that she was no longer tasked as police were "in a phase now of looking after her security and welfare",⁴⁰² police again tasked her on 4 December 2008 to ask Mr Karam about Ms Ropa.⁴⁰³ This occurred well after Mr Karam's arrest and while she appears to have been acting for him in relation to charges arising from the Operations.

³⁹¹ Exhibit RC0281 ICR3838 (084), 18 June 2007, 913, VPL.2000.0003.2499.

³⁹² See, eg, Exhibit RC0281 ICR3838 (086), 29 June 2007, 949, VPL.2000.0003.2535.

³⁹³ Exhibit RC0281 ICR3838 (086), 29 June 2007, 952, VPL.2000.0003.2538; Exhibit RC0281 ICR3838 (086), 30 June 2007, 956, VPL.2000.0003.2542.

³⁹⁴ Exhibit RC0281 ICR3838 (088), 4 July 2007, 983, VPL.2000.0003.2569; Exhibit RC0281 ICR3838 (088), 5 July 2007, 989, VPL.2000.0003.2575; Exhibit RC0281 ICR3838 (096), 22 August 2007, 1127, VPL.2000.0003.2713; Exhibit RC0281 ICR3838 (088), 5 July 2007, 989, VPL.2000.0003.2575.

³⁹⁵ See, eg, Exhibit RC0601c Mr Richards diary, 5 July 2007, 177, VPL.0009.0001.0206 @.0177.

³⁹⁶ Exhibit RC0281 ICR3838 (088), 10 July 2007, 1000, VPL.2000.0003.2586.

³⁹⁷ Exhibit RC0431 Mr Sandy White diary, 18 June 2007, 169-170, VPL.2000.0001.1151 @.1244 – 1245; Exhibit RC0281 ICR3838 (091), 18 July 2007, 1031, VPL.2000.0003.2617; Exhibit RC0281 ICR3838 (091), 18 July 2007, 1032, VPL.2000.0003.2618; Exhibit RC0281 ICR3838 (091), 22 July 2007, 1043, VPL.2000.0003.2629.

³⁹⁸ See, eg, Exhibit RC0281 ICR3838 (095), 15 August 2007, 1094, VPL.2000.0003.2680; Exhibit RC0281 ICR3838 (095), 16 August 2007, 1100, VPL.2000.0003.2868.

³⁹⁹ Exhibit RC0281 ICR3838 (011), 7 December 2005, 76, VPL.2000.0003.1662.

⁴⁰⁰ Exhibit RC0281 ICR3838 (095), 6 July 2007, 994, VPL.2000.0003.2580.

⁴⁰¹ Exhibit RC0281 ICR3838 (095), 16 August 2007, 1103, VPL.2000.0003.2689.

⁴⁰² Exhibit RC0281 ICR2958 (039), 16 August 2008, 618, 620, VPL.2000.0003.1358-VPL.2000.0003.1360.

⁴⁰³ Exhibit RC0281 ICR2958 (048), 4 December 2008, 753, VPL.2000.0003.1493.

Informing or Assisting Police – After Arrest

198. On 8 August 2008, the day of Mr Karam’s arrest, Ms Gobbo is recorded as having informed police that she visited Mr Karam at the custody centre, during which visit Mr Karam had asked Ms Gobbo to ask his brother and Mr Maroun to have their Asian connection change phones, so that incriminating text messages do not appear on phones seized by police, and told her that the AFP missed a “crucial” laptop.⁴⁰⁴ In that phone call to her handler, Mr Green, she expressed her concern that she not be precluded from representing Mr Karam, by making a statement.⁴⁰⁵ Shortly thereafter she reportedly informed police that Mr Karam told her he “still has money stashed away somewhere”.⁴⁰⁶ In September 2008, at which stage she appears to have been acting for Mr Karam, she appears to have provided police with Mr Karam’s new phone number⁴⁰⁷ and reported that Mr Karam intended to arrange another import to fund his legal fees.⁴⁰⁸ In December 2008, police records state that an AFP search warrant was executed at Mr Karam’s parent’s house revealed more than \$200,000 in cash.⁴⁰⁹ Shortly thereafter, in January 2008, Ms Gobbo reported that Mr Karam told her that the AFP had seized \$150,000 from him “a few weeks ago...[which had] severely depleted his fighting fund” and that he may attempt to resolve that financial difficulty with another import.⁴¹⁰
199. It appears from the above extensive informing that Ms Gobbo provided information to the police which may have assisted all Operations in respect of which charges were laid against Mr Karam, and that she did so, at least in part, when she was representing him in relation to the Operation Kaka proceeding. It appears further that police knew of and deliberately exploited that professional relationship, and Ms Gobbo welcomed their efforts.
200. Nevertheless, and despite her acknowledgement of conflict,⁴¹¹ Ms Gobbo appears to have represented Mr Karam on multiple occasions, and does not appear to have disclosed to him that she had provided information to the police that was likely to have led to his arrest and charges, or that she continued to provide information in support of the case against him, or generally adverse to his interests, to police while representing him.

Submissions under the Terms of Reference in relation to Mr Karam

201. It is submitted that it is open to the Commissioner to find that the cases of Mr Karam, being the three indictments⁴¹² containing the charges in respect of which he was convicted,⁴¹³ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their

⁴⁰⁴ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

⁴⁰⁵ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

⁴⁰⁶ Exhibit RC0281 ICR2958 (029), 14 August 2008, 557, VPL.2000.0003.1297.

⁴⁰⁷ Exhibit RC0281 ICR2958 (029), 16 September 2008, 619, VPL.2000.0003.1369.

⁴⁰⁸ Exhibit RC0281 ICR2958 (029), 20 September 2008, 625, VPL.2000.0003.1365.

⁴⁰⁹ Exhibit RC0281 ICR2958 (048), 11 December 2008, 766, VPL.2000.0003.1506.

⁴¹⁰ Exhibit RC0281 ICR2958 (053), 10 January 2009, 821, VPL.2000.0003.1561.

⁴¹¹ Exhibit RC0281 ICR2958 (037) 1 September 2008, 575, VPL.2000.0003.1315.

⁴¹² Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, 2, RCMP.0009.0002.0023 @.0002; Un-tendered Indictment, *R v Rob Karam*, 30 July 2013, 2, RCMP.0009.0002.0050 @.0002; Un-tendered Indictment, *R v Rob Karam & Fadl Maroun*, 2015, 2, RCMP.0009.0002.0073 @.0002.

⁴¹³ Un-tendered Indictment, *R v Pasquale Barbaro*, 1 December 2011, RCMP.00009.0001.0029; *DPP v Barbaro & Anor* [2012] VSC 47, [1]-[2].

recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

202. These submissions should be read in conjunction with the Narrative Submissions, Chapters 10, 13 and 15, which contain an account of the conduct of Ms Gobbo and members of Victoria Police in relation to Mr Karam.
203. The extent to which the cases of Mr Karam may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

204. First, Category 1A⁴¹⁴ applies in that, in between at least August 2008 and January 2009⁴¹⁵ Ms Gobbo acted for Mr Karam while she was a human source,⁴¹⁶ and did not disclose same to him.⁴¹⁷
205. Secondly, Category 1B⁴¹⁸ applies in that, before and during the period that Ms Gobbo acted for Mr Karam in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁴¹⁹
206. Thirdly, Category 2A⁴²⁰ applies in that evidence relied upon by the prosecution in Mr Karam's cases,⁴²¹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁴²² may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴²³
207. Fourthly, Category 2B⁴²⁴ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [206] above and failed to disclose same to her client, Mr Karam, thereby depriving him of the ability to object to the admission of that evidence.
208. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁴²⁵ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁴²⁶
209. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may

⁴¹⁴ See Legal Principles Submissions at [249].

⁴¹⁵ See above at [170].

⁴¹⁶ See Legal Principles Submissions at [20].

⁴¹⁷ See Legal Principles Submissions at [239].

⁴¹⁸ See Legal Principles Submissions at [249].

⁴¹⁹ See above at [171]-[200].

⁴²⁰ See Legal Principles Submissions at [249].

⁴²¹ Such as the evidence referred to at [153]-[166] above.

⁴²² Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁴²³ As described in the Overview above at [57]-[58].

⁴²⁴ See Legal Principles Submissions at [249].

⁴²⁵ See Legal Principles Submissions at [210].

⁴²⁶ See Legal Principles Submissions at [212]-[213].

constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁴²⁷

210. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

211. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴²⁸
- 211.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Karam;
 - 211.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Karam, appropriate disclosure was made; or alternatively
 - 211.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
212. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [211.1] were taken, and accordingly there was the potential for the right of Mr Karam to a fair trial to have been interfered with.
213. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Karam and/or his legal representatives.
214. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴²⁹
215. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

⁴²⁷ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁴²⁸ See Legal Principles Submissions at [384] and [452]-[457].

⁴²⁹ See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.⁴³⁰

216. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁴³¹
217. Category 3A⁴³² applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
218. Category 3B⁴³³ applies in that, before and during the period that Ms Gobbo acted for Mr Karam in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁴³⁴ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
219. Category 4A⁴³⁵ applies in that, as noted above at [206], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
220. Category 4B⁴³⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
221. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: JOHN HIGGS

Proceedings

222. On 8 August 2008, Mr Higgs was arrested⁴³⁷ and charged with the conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*).⁴³⁸

⁴³⁰ See Legal Principles Submissions at 351], [362]-[373].

⁴³¹ See Legal Principles Submissions at [351], [374].

⁴³² See Legal Principles Submissions at [465].

⁴³³ See Legal Principles Submissions at [465].

⁴³⁴ See above at [171]-[200].

⁴³⁵ See Legal Principles Submissions at [465].

⁴³⁶ See Legal Principles Submissions at [465].

⁴³⁷ See Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 59, RCMP1.0033.0001.0044 @.0059.

⁴³⁸ See Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, RCMP1.0009.0001.0006.

223. Mr Higgs pleaded not guilty on 1 August 2010⁴³⁹ and was tried together with co-conspirators Messrs Karam, Salvatore Agresta, and Pasquale John Sergi, and convicted on 24 May 2012.⁴⁴⁰ On 30 April 2013, he was sentenced to 18 years' imprisonment, with a non-parole period of 14 years.⁴⁴¹ Mr Higgs unsuccessfully appealed his conviction and sentence in 2015,⁴⁴² and applied for an extension of time to seek special leave to appeal further to the High Court in 2016. The High Court considered that the proposed ground of appeal lacked sufficient prospects of success and dismissed his application.⁴⁴³

Material Considered by the Court

224. In a preliminary ruling, the Court considered that there was sufficient evidence, which included telephone communications, to permit the relevant reasonable inferences that each co-accused was a party to the conspiracy as charged.⁴⁴⁴

225. In sentencing Mr Higgs, the Court made express reference to Mr Higgs' attendance at recorded⁴⁴⁵ meetings with co-conspirators at the Pacific International apartments,⁴⁴⁶ and meetings of "significance"⁴⁴⁷ with co-conspirators, especially Mr Karam.⁴⁴⁸ The Court also referred to text messages sent by Mr Higgs in which his knowledge of and involvement in the conspiracy was evident.⁴⁴⁹ The Court found that Higgs was a "necessary partner" with Mr Karam in the conspiracy,⁴⁵⁰ and that he acted as an intermediary between Messrs Karam and Barbaro⁴⁵¹ and facilitator of their meetings.⁴⁵² The Court found that Mr Higgs was "considered by all to be an important participant, with his knowledge, experience and contacts."⁴⁵³

226. The Court considered the evidence relied upon by the prosecution, which generally arose from three sources:

226.1. intercepted telephone communications between Higgs' and co-conspirators⁴⁵⁴

⁴³⁹ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁴⁰ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁴¹ *DPP v Karam & Ors* [2013] VSC 133, [84]. The sentencing was delayed while the Court of Appeal was considering the appeals of Barbaro and Zirilli: *Director of Public Prosecutions (Cth) v Barbaro and Zirilli* [2012] VSCA 288, which was handed down on 30 November 2012: see *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁴² *John Higgs v The Queen* [2015] VSCA 223.

⁴⁴³ *John Higgs v The Queen* [2016] HCASL 259.

⁴⁴⁴ Un-tendered Reasons for Sentence, *R v Karam, Higgs, Agresta and Sergi* [2012] VSC, RCMP1.0009.0001.0023 [Restricted].

⁴⁴⁵ *DPP v Karam & Ors* [2013] VSC 133, [20]-[21].

⁴⁴⁶ *DPP v Karam & Ors* [2013] VSC 133, [13].

⁴⁴⁷ *DPP v Karam & Ors* [2013] VSC 133, [20].

⁴⁴⁸ *DPP v Karam & Ors* [2013] VSC 133, [13], [19].

⁴⁴⁹ *DPP v Karam & Ors* [2013] VSC 133, [24].

⁴⁵⁰ *DPP v Karam & Ors* [2013] VSC 133, [24].

⁴⁵¹ *DPP v Karam & Ors* [2013] VSC 133, [23].

⁴⁵² *DPP v Karam & Ors* [2013] VSC 133, [24]-[25].

⁴⁵³ *DPP v Karam & Ors* [2013] VSC 133 at [22].

⁴⁵⁴ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 13, 22-24, RCMP1.0033.0001.0044 @.0013,.0022-.0024.

- 226.2. conversations involving Higgs and co-conspirators which were captured on a listening device installed at the Pacific International Apartments ⁴⁵⁵
- 226.3. conversations and meetings subject to substantial covert surveillance.⁴⁵⁶

Ms Gobbo's Conduct in relation to Mr Higgs' case

Representation

227. It appears that Ms Gobbo did not act for Mr Higgs in relation to the tomato tins proceeding, although she is recorded as having told police that she visited Mr Higgs at the custody centre on the day of his arrest,⁴⁵⁷ and is recorded as having visited him (albeit in a non-professional capacity) in gaol on 28 July 2012.⁴⁵⁸

Informing or Assisting Police

228. As early as 8 June 2007, Gobbo informed her handlers of her suspicions that Messrs Higgs and Karam were in discussion about an importation.⁴⁵⁹ Relevantly, in relation to the evidence relied upon at trial, Ms Gobbo provided information or assistance in three respects, each of which is detailed further below, namely:

- 228.1. intelligence in relation to the Pacific International Apartments
- 228.2. Mr Higgs' contact details
- 228.3. Mr Higgs' movements.

Pacific International Apartments

229. As noted in the Overview at [38]-[41] above, on 28 June 2007, Ms Gobbo appears to have passed on information, obtained from her client Mr Karam, that Mr Higgs would be meeting with co-conspirators at the Pacific International Apartments. That information may have played a role in the room in which Mr Higgs met with co-conspirators, being fitted with listening devices by the AFP from 2 July 2007, and in Mr Higgs becoming a person of interest to police. Evidence obtained by those devices was relied upon in the prosecution of Mr Higgs.⁴⁶⁰

Contact Details

230. Ms Gobbo is recorded as having provided Mr Higgs' phone number to police in 2006,⁴⁶¹ she provided it again on 29 June 2007, together with a "new" one.⁴⁶²

⁴⁵⁵ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 14-15, RCMPPI.0033.0001.0044 @.0014-.0015.

⁴⁵⁶ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 12, 21, RCMPPI.0033.0001.0044 @.0012, .0021.

⁴⁵⁷ Exhibit RC0281 ICR 2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

⁴⁵⁸ See Exhibit RC1359 Prisoners visited by Ms Nicola Gobbo archive report, 13 March 2019, 27, CNS.0001.0003.0037 @.0063.

⁴⁵⁹ Exhibit RC0281 ICR3838 (082), 8 June 2007, 885, VPL.2000.0003.2471.

⁴⁶⁰ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 15, RCMPPI.0033.0001.0044 @.0015.

⁴⁶¹ Exhibit RC0281 ICR3838 (044), 5 September 2006, 416, VPL.2000.0003.2002.

⁴⁶² Exhibit RC0281 ICR3838 (086), 29 June 2007, 950, VPL.2000.0003.2546.

She continued to provide his phone numbers,⁴⁶³ and those of a girlfriend of Mr Higgs, throughout 2008.⁴⁶⁴ That information may have been of assistance in obtaining the telephone intercepts which were placed on his mobile phone and captured the incriminating communications referred to at his trial.

Movements

231. Ms Gobbo is also recorded as having provided police with information as to Higgs' whereabouts, which information she appears to have obtained through her client at the time, Mr Karam. For example, police records state that in June 2007 she reported to Mr Fox that Mr Higgs met with her client, Mr Karam, and the "Italians from Griffith" at a Maribyrnong restaurant, the purpose of which, Karam told her, was "to organise the next import from Italy".⁴⁶⁵ Later in June 2007 she reported the contents of an overheard dinner conversation between Messrs Higgs and Karam in relation to the tomato tins container.⁴⁶⁶
232. At the time she provided the above information, Ms Gobbo appears to have been tasked by police to ascertain whether Mr Higgs was suspicious or concerned about police involvement,⁴⁶⁷ Also in July 2007 (as noted in the case analysis of Mr Karam at [194]) Ms Gobbo was recorded as having indicated willingness to facilitate a restaurant meeting with Messrs Karam and Higgs for the purpose of police recording conversations about the container.⁴⁶⁸
233. While Mr Higgs appears to have been under surveillance in advance of the abovementioned informing,⁴⁶⁹ it appears likely that the information provided by Ms Gobbo in relation to the above three sources of evidence may have assisted in the success of the investigation of Mr Higgs in Operation Bootham Moko and, given the express reliance on those sources at trial, his conviction.
234. As noted in the Overview at paragraphs [35]-[36] above, Ms Gobbo has since made express reference to Mr Higgs in relation to the impact of her provision of the bill of lading and associated information on the tomato tins trafficking conspiracy and appears to claim some responsibility for his arrest.⁴⁷⁰ In addition, Ms Gobbo is recorded as having acknowledged that she would be "morally, ethically and legally conflicted" in representing Messrs Karam, Higgs and "everyone" arrested on 8 August 2008 in relation to the Operations.⁴⁷¹

⁴⁶³ See, eg, Exhibit RC0281 ICR3838 (118), 10 January 2008, 1560, VPL.2000.0003.3146.

⁴⁶⁴ See, eg, Exhibit RC0281 ICR 2958 (021), 28 May 2008, 364, VPL.2000.0003.1104.

⁴⁶⁵ Exhibit RC0281 ICR3838 (084), 21 June 2007, 920, VPL.2000.0003.2506.

⁴⁶⁶ See, eg, Exhibit RC0281 ICR3838 (086), 29 June 2007, 949, VPL.2000.0003.2535.

⁴⁶⁷ Exhibit RC0281 ICR3838 (086), 29 June 2007, 952, VPL.2000.0003.2538.

⁴⁶⁸ Exhibit RC0431 Mr Sandy White diary, 18 June 2007, 169-170, VPL.2000.0001.1151 @.1244-.1245; Exhibit RC0281 ICR3838 (091), 18 July 2007, 1031, VPL.2000.0003.2617; Exhibit RC0281 ICR3838 (091), 18 June 2007, 1033, VPL.2000.0003.2619; Exhibit RC0281 ICR3838 (091), 22 July 2007, 1043, VPL.2000.0003.2629.

⁴⁶⁹ See, eg, Un-tendered Prosecution Plea Summary, *CDPP v Pasquale Barbaro & Saverio Zirilli*, 17 January 2012, 13, RCMP.0009.0001.0030 @.0013; Exhibit RC0281 ICR 2958 (029), 25 July 2008, 510, VPL.2000.0003.1250; Exhibit RC0281 ICR 2958 (029), 25 July 2008, 511, VPL.2000.0003.1251.

⁴⁷⁰ Un-tendered Letter from Nicola Gobbo to Assistant Commissioner Stephen Fontana, 30 June 2015, 2, 8, exhibited in *AB & EF v CD [2017] VSC 350*, [19], MIN.0002.0001.0584 @.0591 [confidential]; Exhibit RC0281 ICR 2958 (031), 8 August 2008, 544, VPL.2000.0003.1284; Un-tendered Audio Summary of Meeting 45, 30 January 2008, 3-4 [23], VPL.2000.0002.4161 @.0002-.0003.

⁴⁷¹ Exhibit RC0281 ICR2958 (037) 1 September 2008, 575, VPL.2000.0003.1315.

Available Findings

Submissions under the Terms of Reference in relation to Mr Higgs

235. It is submitted that it is open to the Commissioner to find that the case of Mr Higgs, being the indictment containing the three charges in respect of which he was convicted⁴⁷² may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
236. The extent to which the case of Mr Higgs may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

237. Category 2A⁴⁷³ applies in that evidence relied upon by the prosecution in Mr Higgs' case, ⁴⁷⁴which was derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above,⁴⁷⁵ or the evidence obtained as a result thereof,⁴⁷⁶ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁴⁷⁷
238. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁴⁷⁸ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁴⁷⁹
239. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

240. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁴⁸⁰

⁴⁷² See Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, RCMPI.0009.0001.0006.

⁴⁷³ See Legal Principles Submissions at [249].

⁴⁷⁴ Such as the evidence referred to at [226] above.

⁴⁷⁵ See above at [229] and [231]-[232].

⁴⁷⁶ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁴⁷⁷ As described in the Overview above at [57]-[58].

⁴⁷⁸ See Legal Principles Submissions at [210].

⁴⁷⁹ See Legal Principles Submissions at [212]-[213].

⁴⁸⁰ See Legal Principles Submissions at [384] and [452]-[457].

- 240.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Higgs;
 - 240.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Higgs, appropriate disclosure was made; or alternatively
 - 240.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
241. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [240.1] were taken, and accordingly there was the potential for the right of Mr Higgs to a fair trial to have been interfered with.
 242. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Higgs and/or his legal representatives.
 243. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁴⁸¹
 244. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁴⁸²
 245. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁴⁸³
 246. Category 4A⁴⁸⁴ applies in that, as noted at paragraph [237] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
 247. Category 4B⁴⁸⁵ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
 248. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁴⁸¹ See Legal Principles Submissions at [380]-[385].

⁴⁸² See Legal Principles Submissions at [351], [362]-[373].

⁴⁸³ See Legal Principles Submissions at [351], [374].

⁴⁸⁴ See Legal Principles Submissions at [465].

⁴⁸⁵ See Legal Principles Submissions at [465].

CASE STUDY: SALVATORE AGRESTA

Proceedings

249. On 8 August 2008, Mr Agresta was arrested at his home.⁴⁸⁶ He was charged with:
- 249.1. the conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from Operation Bootham Moko);⁴⁸⁷ and
 - 249.2. trafficking a commercial quantity of MDMA between 5 February 2008 and 7 August 2008 (ie arising from Operation Inca);⁴⁸⁸
250. Mr Agresta pleaded not guilty to the Operation Bootham Moko charge on 10 August 2010⁴⁸⁹ and was tried together with co-conspirators Messrs Karam, Higgs, and Pasquale John Sergi, and convicted on 24 May 2012.⁴⁹⁰ On 30 April 2013, he was sentenced to 12 years' imprisonment, with a non-parole period of eight years and six months.⁴⁹¹
251. Mr Agresta pleaded guilty to the Operation Inca charge and was convicted and sentenced on 11 September 2014 to 10 year's imprisonment, bringing his total effective sentence to 16 years' imprisonment.⁴⁹²

Material Considered by the Court

252. In sentencing Agresta, the Court considered the following.

The Operation Bootham Moko Charge

253. In a preliminary ruling, the Court considered that there was sufficient evidence, which included telephone communications, to permit the relevant reasonable inferences that each co-accused was a party to the conspiracy as charged.⁴⁹³
254. The Court noted that the first evidence of Mr Agresta's involvement was in early July 2007 when Messrs Zirilli and Barbaro contacted him by phone.⁴⁹⁴ It made reference to subsequent phone calls between Messrs Sergi and

⁴⁸⁶ See Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 59, RCMPPI.0033.0001.0044 @.0059.

⁴⁸⁷ See Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, RCMPPI.0009.0001.0006.

⁴⁸⁸ Un-tendered Indictment, *R v Salvatore Agresta*, 5 May 2014, RCMPPI.0009.0001.0025.

⁴⁸⁹ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁹⁰ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁹¹ *DPP v Karam & Ors* [2013] VSC 133, [84]. The sentencing was delayed while the Court of Appeal was considering the appeals of Messrs Barbaro and Zirilli in *Barbaro & Zirilli v The Queen* [2012] VSCA 288, which was handed down on 30 November 2012: see *DPP v Karam & Ors* [2013] VSC 133, [2].

⁴⁹² *DPP v Agresta* [2014] VCC 2328, [50]-[51].

⁴⁹³ Un-tendered Reasons for Sentence, *R v Karam, Higgs, Agresta and Sergi* [2012] VSC (King J), RCMPPI.0009.0001.0023 [Restricted].

⁴⁹⁴ *DPP v Karam & Ors* [2013] VSC 133, [26].

Barbaro⁴⁹⁵ and meetings with co-conspirators including Messrs Barbaro and Zirilli,⁴⁹⁶ and noted that his active involvement ceased in early July 2007.⁴⁹⁷

255. The prosecution relied on evidence of telephone conversations between Messrs Agresta, Barbaro and Zirilli⁴⁹⁸ (at least one of which was also captured by the listening device installed at the Pacific International Apartments⁴⁹⁹), and covertly observed meetings between Mr Agresta and related accused.⁵⁰⁰

The Operation Inca Charge

256. In relation to the Operation Inca charge, the prosecution relied upon the following sources of evidence:
- 256.1. intercepted telephone communications between Messrs Agresta and Barbaro⁵⁰¹ as well as intercepted communications between other members of the Barbaro syndicate in which Mr Agresta's involvement was implicated;⁵⁰² and
- 256.2. business records which were seized at the Carlton North townhouse on the day of the arrests detailing Mr Agresta's payments in relation to MDMA trafficking.⁵⁰³

Ms Gobbo's Conduct in relation to Mr Agresta's Cases

Representation

257. Material before the Commission indicates that Ms Gobbo acted for Mr Agresta on at least one occasion. Ms Gobbo's fee book records her appearance in respect of Agresta at his bail application in around September 2008,⁵⁰⁴ which accords with submissions made on behalf of Mr Agresta.⁵⁰⁵ However, it appears that Ms Gobbo did not appear on his behalf thereafter.⁵⁰⁶

Informing or Assisting Police

258. While Gobbo does not appear to have informed directly about Mr Agresta, it appears that her informing about the following matters had a bearing on his cases:

⁴⁹⁵ *DPP v Karam & Ors* [2013] VSC 133, [27].

⁴⁹⁶ *DPP v Karam & Ors* [2013] VSC 133, [19], [27].

⁴⁹⁷ *DPP v Karam & Ors* [2013] VSC 133, [27].

⁴⁹⁸ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 15, 22-25, RCMP.0009.0001.0008 @.0015, .0022-.0025.

⁴⁹⁹ Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 15, RCMP.0009.0001.0008 @.0015.

⁵⁰⁰ See, eg, Un-tendered Summary of Prosecution Opening, *R v Karam, Higgs, Agresta and Sergi*, undated, 23, RCMP.0009.0001.0008 @.0023.

⁵⁰¹ See, eg, Un-tendered Prosecution Plea H, *R v Salvatore Agresta*, 3 September 2014, 6-10, RCMP.0009.0001.0024 @.0006-.0010.

⁵⁰² See Un-tendered Prosecution Plea H, *R v Salvatore Agresta*, 3 September 2014, 9-10, RCMP.0009.0001.0024 @.0009-.0010.

⁵⁰³ See, eg, Un-tendered Prosecution Plea H, *R v Salvatore Agresta*, 3 September 2014, 9, RCMP.0009.0001.0024 @.0009.

⁵⁰⁴ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 1 September 2008, 21, MIN.5000.7000.0103 @.0123.

⁵⁰⁵ Submission 087, Salvatore Agresta, 1 [5], SUB.0087.0001.0001

⁵⁰⁶ Submission 087, Salvatore Agresta, 1 [6]-[7], SUB.0087.0001.0001.

- 258.1. the bill of lading
 - 258.2. the Pacific International Apartments
 - 258.3. telephone contact numbers of co-accused.
259. It appears likely that the information provided by Ms Gobbo in relation to the above three sources of evidence (as described in the Overview section at paragraphs [27]-[49] above) may have been critical to the success of the investigation of Mr Agresta in Operations Bootham Moko and Inca, and, given the express reliance on those sources at trial, to his convictions. Ms Gobbo does not appear to have disclosed to Mr Agresta that she had provided information to the police that was likely to have led to his arrest and charges.

Submissions to the Commission

260. In submissions to the Commission, lawyers for Mr Agresta relevantly state a belief that Mr Agresta's cases may have been affected by "Ms Gobbo's dealings with Victoria Police".⁵⁰⁷ In support of that belief it is asserted Ms Gobbo provided information to police in relation to the tomato tins import, including shipping documents.⁵⁰⁸ That appears to be the case,⁵⁰⁹ and to be supported by actual or implied admissions by Ms Gobbo, as noted in the Overview section at paragraphs [35]-[36] above.
261. Mr Agresta's lawyers further assert that Ms Gobbo may have passed on instructions or defence strategies to police or provided legal advice contrary to his interests.⁵¹⁰ Material reviewed before the Commission does not indicate that Ms Gobbo provided police with such information.

Submissions under the Terms of Reference in relation to Mr Agresta

262. It is submitted that it is open to the Commissioner to find that the cases of Mr Agresta, being the two indictments containing the charges in respect of which he was convicted⁵¹¹ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
263. The extent to which the cases of Mr Agresta may have been affected may be measured by virtue of the following matters.

⁵⁰⁷ Submission 087, Salvatore Agresta, 2 [10], SUB.0087.0001.0001 @.0002

⁵⁰⁸ Submission 087, Salvatore Agresta, 2 [11], SUB.0087.0001.0001 @.0002.

⁵⁰⁹ See the Overview section at [29]-[37] above.

⁵¹⁰ Submission 087, Salvatore Agresta, 2 [11], SUB.0087.0001.0001 @.0002.

⁵¹¹ Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, RCMPI.0009.0001.0006; Un-tendered Indictment, *R v Salvatore Agresta*, 5 May 2014, RCMPI.0009.0001.0025.

Conduct of Ms Gobbo

264. First, Category 1A⁵¹² applies in that, in September 2008⁵¹³ Ms Gobbo acted for Mr Agresta while she was a human source,⁵¹⁴ and did not disclose same to him.⁵¹⁵
265. Secondly, Category 1B⁵¹⁶ applies in that, before and during the period that Ms Gobbo acted for Mr Agresta in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁵¹⁷
266. Thirdly, Category 2A⁵¹⁸ applies in that evidence relied upon by the prosecution in Mr Agresta's cases,⁵¹⁹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁵²⁰ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁵²¹
267. Fourthly, Category 2B⁵²² applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [266] above and failed to disclose same to her client, Mr Agresta, thereby depriving him of the ability to object to the admission of that evidence.
268. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁵²³ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁵²⁴
269. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵²⁵
270. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo

⁵¹² See Legal Principles Submissions at [249].

⁵¹³ See above at [257].

⁵¹⁴ See Legal Principles Submissions at [20].

⁵¹⁵ See Legal Principles Submissions at [239].

⁵¹⁶ See Legal Principles Submissions at [249].

⁵¹⁷ See above at [258].

⁵¹⁸ See Legal Principles Submissions at [20].

⁵¹⁹ Such as the evidence referred to at [255], [256] and [258] above.

⁵²⁰ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁵²¹ As described in the Overview above at [57]-[58].

⁵²² See Legal Principles Submissions at [249].

⁵²³ See Legal Principles Submissions at [210].

⁵²⁴ See Legal Principles Submissions at [212]-[213].

⁵²⁵ See Legal Principles Submissions at [320]-[329] and [307]-[309].

passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

271. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵²⁶
- 271.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Agresta;
 - 271.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Agresta, appropriate disclosure was made; or alternatively
 - 271.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
272. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [271.1] were taken, and accordingly there was the potential for the right of Mr Agresta to a fair trial to have been interfered with.
273. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Agresta and/or his legal representatives.
274. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵²⁷
275. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵²⁸
276. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.⁵²⁹
277. Category 3A⁵³⁰ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of

⁵²⁶ See Legal Principles Submissions at [384] and [452]-[457].

⁵²⁷ See Legal Principles Submissions at [380]-[385].

⁵²⁸ See Legal Principles Submissions at [351], [362]-[373].

⁵²⁹ See Legal Principles Submissions at [351], [374].

⁵³⁰ See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

278. Category 3B⁵³¹ applies in that, before and during the period that Ms Gobbo acted for Mr Agresta in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵³² and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
279. Category 4A⁵³³ applies in that, as noted at paragraph [266] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
280. Category 4B⁵³⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
281. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁵³¹ See Legal Principles Submissions at [465].

⁵³² See above at [258].

⁵³³ See Legal Principles Submissions at [465].

⁵³⁴ See Legal Principles Submissions at [465].

CASE STUDY: PASQUALE JOHN SERGI

Proceedings

282. On 8 August 2008, Mr Sergi was arrested at the Carlton North townhouse.⁵³⁵ He was charged with:
- 282.1. the conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*);⁵³⁶ and
 - 282.2. trafficking a commercial quantity of MDMA between 21 May 2008 and 28 July 2008 (ie arising from *Operation Inca*);⁵³⁷
283. Mr Sergi pleaded not guilty to the Operation Bootham Moko charge on 10 August 2010⁵³⁸ and was tried together with co-conspirators Messrs Karam, Higgs, and Agresta, and convicted on 24 May 2012.⁵³⁹ On 30 April 2013, he was sentenced to 10 years' imprisonment, with a non-parole period of six years and nine months.⁵⁴⁰
284. In relation to the Operation Inca charge, Mr Sergi entered a late guilty plea⁵⁴¹ and was convicted and sentenced on 13 August 2014 to a lengthy imprisonment sentence, which contained a cumulative component in respect of the sentence he was serving in relation to the Operation Bootham Moko charge.⁵⁴²

Material Considered by the Court

The Operation Bootham Moko Charge

285. In a preliminary ruling, the Court considered that there was sufficient evidence, which included telephone communications, and listening device recordings at the Pacific International Apartments (in relation to Mr Sergi⁵⁴³) to permit the relevant reasonable inferences that each co-accused was a party to the conspiracy as charged.⁵⁴⁴

⁵³⁵ See Un-tendered Summary of Prosecution Opening, *DPP v Rob Karam, John Higgs, Pasquale Sergi & Salvatore Agresta*, undated, 59. RCMP1.0033.0001.0044 @.0059.

⁵³⁶ Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012, RCMP1.0009.0001.0006.

⁵³⁷ Un-tendered Indictment, *DPP v Pasquale Sergi*, 29 July 2014, RCMP1.0009.0001.0100.

⁵³⁸ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁵³⁹ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁵⁴⁰ *DPP v Karam & Ors* [2013] VSC 133, [84]; The sentencing was delayed while the Court of Appeal was considering the appeals of Messrs Barbaro and Zirilli in *Barbaro & Zirilli v The Queen* [2012] VSCA 288, which was handed down on 30 November 2012. See also *DPP v Karam & Ors* [2013] VSC 133, [2].

⁵⁴¹ *DPP v Pasquale Sergi* [2014] VCC 1301, [20].

⁵⁴² *DPP v Pasquale Sergi* [2014] VCC 1301, [40]-[41].

⁵⁴³ Un-tendered Transcript of Proceedings, *R v Karam, Higgs, Agresta and Sergi* (Supreme Court of Victoria, King J, 2012), 29, RCMP1.0009.0001.0023 @.0029 [Restricted].

⁵⁴⁴ Un-tendered Transcript of Proceedings, *R v Karam, Higgs, Agresta and Sergi* (Supreme Court of Victoria, King J, 2012), RCMP1.0009.0001.0023 [Restricted].

286. In sentencing Mr Sergi, the Court made reference to his “main demonstrated involvement”⁵⁴⁵ in the conspiracy as his attendance with co-conspirators at the Pacific International Apartments,⁵⁴⁶ in which listening devices were installed,⁵⁴⁷ capturing incriminating conversations in relation to the tomato tins container.⁵⁴⁸ The Court found Mr Sergi to be “a foot soldier, willing and waiting to do what was asked of [him]”⁵⁴⁹ and referred to his role in driving co-conspirators to meetings.⁵⁵⁰

The Operation Inca Charge

287. In relation to the Operation Inca charge, the prosecution relied upon the following sources of evidence:

- 287.1. telephone communications between Messrs Sergi, Barbaro and Mr Khan which appear to have been intercepted⁵⁵¹
- 287.2. conversations and activity captured on the surveillance devices installed at the Carlton North townhouse⁵⁵²
- 287.3. business records which were seized at the Carlton North townhouse on the day of the arrests detailing payments to Sergi’s payments in relation to MDMA trafficking.⁵⁵³

Ms Gobbo’s Conduct in relation to Mr Sergi’s Cases

Representation

288. Ms Gobbo’s fee book records her appearance in respect of Mr Sergi at his bail application in August 2008,⁵⁵⁴ which is corroborated by material produced by the CDDP.⁵⁵⁵ There are no records before the Commission of any subsequent appearances by Ms Gobbo on behalf of Mr Sergi.

Informing or Assisting Police

289. While Gobbo does not appear to have informed directly about Mr Sergi, it appears that her informing or assistance in relation to:

- 289.1. the bill of lading
- 289.2. the Pacific International Apartments

⁵⁴⁵ *DPP v Karam & Ors* [2013] VSC 133, [30].

⁵⁴⁶ *DPP v Karam & Ors* [2013] VSC 133, [13].

⁵⁴⁷ *DPP v Karam & Ors* [2013] VSC 133, [20].

⁵⁴⁸ *DPP v Karam & Ors* [2013] VSC 133, [21], [30].

⁵⁴⁹ *DPP v Karam & Ors* [2013] VSC 133, [29].

⁵⁵⁰ *DPP v Karam & Ors* [2013] VSC 133, [31].

⁵⁵¹ See, eg, Un-tendered Agreed Plea Hearing Summary, *DPP v Pasquale Sergi*, 28 July 2014, [33], 7. RCMP1.0009.0001.0101 @.0007.

⁵⁵² See, eg, Un-tendered Agreed Plea Hearing Summary, *DPP v Pasquale Sergi*, 28 July 2014, 6-7 [22]-[29], RCMP1.0009.0001.0101 @.0006, .0007.

⁵⁵³ See, eg, Un-tendered Agreed Plea Hearing Summary, *DPP v Pasquale Sergi*, 28 July 2014, 8 [37]. RCMP1.0009.0001.0101 @.0008.

⁵⁵⁴ See Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 August 2008, 21, MIN.5000.7000.0103 @.0123.

⁵⁵⁵ Exhibit RC1917 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDDP between 1/01/1995 and 12/01/2009 (*Pasquale Sergi*), 26 August 2008, CDP.0001.0001.0039.

289.3. telephone contact numbers that;

290. may have been critical to the success of the investigation of Mr Sergi in Operations Bootham Moko and Inca,⁵⁵⁶ and, given the express reliance on those sources at trial, to his convictions. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁵⁵⁷ It appears that she did not disclose to Mr Sergi that she had provided information to the police that was likely to have led to his arrest and charges.

Submissions under the Terms of Reference in relation to Mr Sergi

290.1.1. It is submitted that it is open to the Commissioner to find that the cases of Mr Sergi, being the two indictments containing the charges in respect of which he was convicted⁵⁵⁸ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

290.1.2. The extent to which the cases of Mr Sergi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

291. First, Category 1A⁵⁵⁹ applies in that, in August 2008⁵⁶⁰ Ms Gobbo acted for Mr Sergi while she was a human source,⁵⁶¹ and did not disclose same to him.⁵⁶²

292. Secondly, Category 1B⁵⁶³ applies in that, before the period that Ms Gobbo acted for Mr Sergi in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁵⁶⁴

293. Thirdly, Category 2A⁵⁶⁵ applies in that evidence relied upon by the prosecution in Mr Sergi's cases, ⁵⁶⁶which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁵⁶⁷ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁵⁶⁸

⁵⁵⁶ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁵⁵⁷ See the Overview at [35]-[36].

⁵⁵⁸ Un-tendered Indictment, *R v Karam, Higgs, Agresta and Sergi*, 30 January 2012 RCMPI.0009.0001.0006; Un-tendered Indictment, *DPP v Pasquale Sergi*, 29 July 2014. RCMPI.0009.0001.0100.

⁵⁵⁹ See Legal Principles Submissions at [249].

⁵⁶⁰ See above at [288].

⁵⁶¹ See Legal Principles Submissions at [20].

⁵⁶² See Legal Principles Submissions at [239].

⁵⁶³ See Legal Principles Submissions at [249].

⁵⁶⁴ See above at [289].

⁵⁶⁵ See Legal Principles Submissions at [249].

⁵⁶⁶ Such as the evidence referred to at [79]-[83] above.

⁵⁶⁷ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁵⁶⁸ As described in the Overview above at [57]-[58].

294. Fourthly, Category 2B⁵⁶⁹ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [293] above and failed to disclose same to her client, Mr Sergi, thereby depriving him of the ability to object to the admission of that evidence.
295. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁵⁷⁰ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁵⁷¹
296. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁵⁷²
297. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

298. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁵⁷³
- 298.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sergi;
- 298.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sergi, appropriate disclosure was made; or alternatively
- 298.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁵⁶⁹ See Legal Principles Submissions at [249].

⁵⁷⁰ See Legal Principles Submissions at [210].

⁵⁷¹ See Legal Principles Submissions at [212]-[213].

⁵⁷² See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁵⁷³ See Legal Principles Submissions at [384] and [452]-[457].

299. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [298.1] were taken, and accordingly there was the potential for the right of Mr Sergi to a fair trial to have been interfered with.
300. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sergi and/or his legal representatives.
301. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁵⁷⁴
302. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁵⁷⁵
303. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁵⁷⁶
304. Category 3A⁵⁷⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
305. Category 3B⁵⁷⁸ applies in that, before the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁵⁷⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
306. Category 4A⁵⁸⁰ applies in that, as noted at paragraph [293] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
307. Category 4B⁵⁸¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
308. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police

⁵⁷⁴ See Legal Principles Submissions at [380]-[385].

⁵⁷⁵ See Legal Principles Submissions at [351], [362]-[373].

⁵⁷⁶ See Legal Principles Submissions at [351], [374].

⁵⁷⁷ See Legal Principles Submissions at [465].

⁵⁷⁸ See Legal Principles Submissions at [465].

⁵⁷⁹ See above at [289].

⁵⁸⁰ See Legal Principles Submissions at [465].

⁵⁸¹ See Legal Principles Submissions at [465].

members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: CARMELO FALANGA

Proceedings

309. On 8 August 2008 Mr Falanga was arrested.⁵⁸² He was charged with the conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*).⁵⁸³
310. Mr Falanga pleaded not guilty and was tried together with co-conspirator Mr Jan Visser, and convicted on 4 July 2014.⁵⁸⁴ On that day, he was sentenced to 23 years' imprisonment with a non-parole period of 16 years and six months.⁵⁸⁵ He and Mr Visser sought unsuccessfully to appeal their convictions and sentences.⁵⁸⁶

Material Considered by the Court

311. In sentencing Mr Falanga, the Court found the same circumstances of offending as it did in relation to Messrs Barbaro and Zirilli.⁵⁸⁷ The Court noted the "clear" evidence that he and Mr Barbaro shared responsibility for the debt incurred due to the seizure of the tomato tins shipment,⁵⁸⁸ and referred to his "heavy" involvement on "crucial days" in July 2007;⁵⁸⁹ his involvement in the financing of the conspired importation;⁵⁹⁰ and as the provider of "safe phones" to co-conspirators.⁵⁹¹ The Court ultimately found that Mr Falanga's level of criminality within the syndicate was "at the higher end of the organisation" and that his knowledge and involvement was "very slightly below that of Zirilli".⁵⁹²
312. The prosecution relied on the following sources of evidence:

⁵⁸² Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [9], RCMP.0009.0002.0010 @.0003 [Restricted].

⁵⁸³ See Un-tendered Indictment, *R v Falanga & Visser* [2014] VSC 306, 5 February 2014. RCMP.0009.0002.0002.

⁵⁸⁴ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁵⁸⁵ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 26 [70], RCMP.0009.0002.0010 @.0026; Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [6], RCMP.0009.0002.0010 @.0003 [Restricted].

⁵⁸⁶ *Jan Visser v The Queen; Carmelo Falanga v The Queen* [2015] VSCA 168.

⁵⁸⁷ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 2 [3]. RCMP.0009.0002.0010 @.0002.

⁵⁸⁸ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [5]. RCMP.0009.0002.0010 @.0003.

⁵⁸⁹ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [6]. RCMP.0009.0002.0010 @.0003 [Restricted].

⁵⁹⁰ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [5], RCMP.0009.0002.0010 @.0003 [Restricted]; Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 4.9. RCMP.0009.0002.0006 @.0009.

⁵⁹¹ Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [6], RCMP.0009.0002.0010 @.0003 [Restricted].

⁵⁹² Un-tendered Reasons for Sentence, *R v Carmelo Falanga and Jan Visser* [2014] VSC 306, 3 [5], RCMP.0009.0002.0010 @.0003 [Restricted].

- 312.1. intercepted telephone communications between Mr Falanga and related accused members of the Barbaro syndicate including Messrs Barbaro⁵⁹³ Higgs,⁵⁹⁴ and Karam,⁵⁹⁵
- 312.2. conversations and activity captured on the surveillance devices installed at the Pacific International Apartments,⁵⁹⁶ and
- 312.3. covertly observed meetings between Mr Falanga and related accused.⁵⁹⁷

Ms Gobbo's Conduct in relation to Mr Falanga's Case

Representation

313. It appears that Ms Gobbo did not represent Falanga.

Informing or Assisting Police

314. Ms Gobbo appears to have only once provided Mr Peter Smith with information about Mr Falanga, being confirmation that he was a shareholder in the criminal enterprise.⁵⁹⁸ It is to be noted that the Court made express reference to his involvement in the financing of the conspired importation.⁵⁹⁹
315. Material before the Commission records that a joint investigation between Victoria Police and the AFP in relation to "Karam imports" had begun in around July 2007, with Messrs Falanga, Karam, Higgs and Barbaro as targets.⁶⁰⁰ This record arises shortly after evidence was obtained via the listening devices at the Pacific International Apartments at which Mr Falanga was present, and a covertly observed restaurant meeting involving all four of those individuals. Given that those are the first two instances of Mr Falanga's involvement referred to in the prosecution's narrative,⁶⁰¹ and that Mr Falanga's name is not otherwise referred to in Informer Contact Reports (ICRs) during the investigative stage of the Operations, it is possible that Mr Falanga's status as a target may have been informed by that evidence, and had only come onto the police "radar" on account of surveillance of Messrs Karam, Higgs and Barbaro.⁶⁰²

⁵⁹³ See, eg, Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 22-36. RCMP.0009.0002.0006 @.0022-.0036.

⁵⁹⁴ See, eg, Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 26, 37. RCMP.0009.0002.0006 @.0026, @.0037.

⁵⁹⁵ See, eg, Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 27. RCMP.0009.0002.0006 @.0027.

⁵⁹⁶ See, eg, Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 14. RCMP.0009.0002.0006 @.0014.

⁵⁹⁷ See, eg, Un-tendered Summary of Prosecution Opening, *R v Falanga & Visser*, undated, 12, 17. RCMP.0009.0002.0006 @.0012, @.0017.

⁵⁹⁸ Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526.

⁵⁹⁹ Un-tendered Reasons for Sentence, *R v Falanga and Visser* [2014] VSC 306, [5], RCMP.0009.0002.0010; Summary of Prosecution Opening, *CDPP v Carmelo Falanga & Jan Visser*, undated, 4, 9, RCMP.0009.0002.0006 @.0004, .0009.

⁶⁰⁰ Exhibit RC0281 ICR3838 (093), 27 July 2007, 983, VPL.2000.0003.2659.

⁶⁰¹ See, eg, Un-tendered Summary of Prosecution Opening, *CDPP v Carmelo Falanga & Jan Visser*, undated, 12-13, RCMP.0009.0002.0006 @.0012-.0013.

⁶⁰² See the Overview section at [6]-[24] above in relation to the investigative evolution of the Operations, and the possible implications for the indirect effects of Ms Gobbo's conduct on the cases of co-accused.

316. Further, it appears that Ms Gobbo's general informing or assistance in relation to:
- 316.1. the bill of lading
 - 316.2. the Pacific International Apartments
 - 316.3. telephone contact numbers that;
317. may have been critical to the success of the investigation of Mr Falanga,⁶⁰³ and ultimately to his conviction. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁶⁰⁴

Submissions to the Commission

318. It was submitted to the Commission that Ms Gobbo provided information to "the authorities which she had obtained by way of her professional legal and social relationship with [Mr] Karam",⁶⁰⁵ and that had he known this information he would have challenged the admissibility of evidence obtained via that information.⁶⁰⁶
319. Material before the Commission supports the general effect of those assertions, as is outlined above and summarised below.

Submissions under the Terms of Reference in relation to Mr Falanga

320. It is submitted that it is open to the Commissioner to find that the case of Mr Falanga, being the indictment containing the charge in respect of which he was convicted⁶⁰⁷ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
321. The extent to which the case of Mr Falanga may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

322. Category 2A⁶⁰⁸ applies in that evidence relied upon by the prosecution in Mr Falanga's case,⁶⁰⁹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁶¹⁰ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶¹¹

⁶⁰³ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁶⁰⁴ See the Overview at [35]-[36].

⁶⁰⁵ Anonymous Submission 034, 1.

⁶⁰⁶ Anonymous Submission 034, 4 [6].

⁶⁰⁷ Un-tendered Indictment, *R v Carmelo Falanga and Jan (John) Visser*, 5 February 2014, RCMPI.0009.0002.0002.

⁶⁰⁸ See Legal Principles Submissions at [249].

⁶⁰⁹ Such as the evidence referred to at [311]-[315] above.

⁶¹⁰ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁶¹¹ As described in the Overview above at [57]-[58].

323. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

324. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶¹²
- 324.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Falanga;
 - 324.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Falanga, appropriate disclosure was made; or alternatively
 - 324.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
325. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [324.1] were taken, and accordingly there was the potential for the right of Mr Falanga to a fair trial to have been interfered with.
326. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Falanga and/or his legal representatives.
327. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁶¹³
328. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁶¹⁴
329. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁶¹⁵
330. Category 4A⁶¹⁶ applies in that, as noted at paragraph [322] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

⁶¹² See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁶¹³ See Legal Principles Submissions at [380]-[385].

⁶¹⁴ See Legal Principles Submissions at [351], [362]-[373].

⁶¹⁵ See Legal Principles Submissions at [351], [374].

⁶¹⁶ See Legal Principles Submissions at [465].

331. Category 4B⁶¹⁷ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
332. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶¹⁷ See Legal Principles Submissions at [465].

CASE STUDY: JAN (JOHN) VISSER

Proceedings

333. On 11 August 2012 Mr Visser was arrested.⁶¹⁸ He was charged with the conspiracy to possess a commercial quantity of MDMA between 13 June 2007 and 3 October 2007 (ie arising from *Operation Bootham Moko*).⁶¹⁹
334. Mr Visser pleaded not guilty and was tried together with co-conspirator Mr Falanga, and convicted on 4 July 2014.⁶²⁰ On that day, he was sentenced to 11 years' imprisonment with a non-parole period of 8 years.⁶²¹ He and Mr Visser sought unsuccessfully to appeal their convictions and sentences.⁶²² In 2015, Mr Visser applied for an extension of time to seek special leave to appeal further to the High Court, which leave the High Court refused.⁶²³

Material Considered by the Court

335. In sentencing Mr Visser, the Court found the same circumstances of offending as it did in relation to Messrs Barbaro and Zirilli.⁶²⁴ The Court expressly referred to his "comments, recorded on the intercepts in hotel rooms" which demonstrated his knowledge of and involvement in the conspiracy,⁶²⁵ and characterised Mr Visser's role as "a foot soldier" at "the same level as [Pasquale John] Sergi".⁶²⁶
336. The prosecution relied on the following sources of evidence:
- 336.1. numerous conversations and activity captured on the surveillance devices installed at the Pacific International Apartments;⁶²⁷
 - 336.2. meetings between Mr Visser and related accused;⁶²⁸ and
 - 336.3. numerous text message exchanges between Messrs Barbaro and Visser,⁶²⁹ which may have been intercepted.

⁶¹⁸ Un-tendered Plea Proceedings - Prosecution Submissions, *R v Falanga and Visser*, undated, 3, RCMP.0009.0001.0120 @.0003.

⁶¹⁹ See Un-tendered Indictment, *R v Carmelo Falanga and Jan (John) Visser*, 5 February 2014, RCMP.0009.0002.0002.

⁶²⁰ *DPP v Karam & Ors* [2013] VSC 133, [2].

⁶²¹ Un-tendered Reasons for Sentence, *R v Falanga and Visser* [2014] VSC 306, [73], RCMP.0009.0002.0010.

⁶²² *Visser v The Queen; Falanga v The Queen* [2015] VSCA 168.

⁶²³ *Jan (John) Visser v The Queen* [2016] HCSL 139.

⁶²⁴ Un-tendered Reasons for Sentence, *R v Falanga and Visser* [2014] VSC 306, 1 [3], RCMP.0009.0002.0010.

⁶²⁵ Un-tendered Reasons for Sentence, *R v Falanga and Visser* [2014] VSC 306, 1 [7], RCMP.0009.0002.0010.

⁶²⁶ Un-tendered Reasons for Sentence, *R v Falanga and Visser* [2014] VSC 306, 1 [7], RCMP.0009.0002.0010.

⁶²⁷ Un-tendered Summary of Prosecution Opening, *CDPP v Carmelo Falanga & Jan Visser*, undated, 4, 13-15, 18, RCMP.0009.0002.0006 @.0004, .0013-.0015, .0018.

⁶²⁸ See, eg, Un-tendered Summary of Prosecution Opening, *CDPP v Carmelo Falanga & Jan Visser*, undated, 36, 51, RCMP.0009.0002.0006 @.0036, .0051.

⁶²⁹ See, eg, Un-tendered Summary of Prosecution Opening, *CDPP v Carmelo Falanga & Jan Visser*, undated, 57-59, RCMP.0009.0002.0006 @.0057-.0059. It is to be noted that while these

Ms Gobbo's Conduct in relation to Mr Visser's Case

Representation

337. It appears that Ms Gobbo did not represent Mr Visser.

Informing or assisting police

338. It does not appear that Gobbo informed directly about Visser, however it appears that her informing or assistance in relation to:

338.1. the bill of lading

338.2. the Pacific International Apartments

338.3. telephone contact numbers that;

339. may have been critical to the success of the investigation of Mr Visser,⁶³⁰ and ultimately to his conviction.

Submissions to the Commission

340. Mr Visser has filed a detailed public submission to the Commission, in which he asserts, among other things, that Ms Gobbo provided information to police which assisted with the investigation of all the tomato tins co-accused. In particular, he relevantly⁶³¹ asserts that:

340.1. Ms Gobbo provided a bill of lading in relation to the tomato tins shipment, information about which she had received information from Mr Karam, her client at the time⁶³²

340.2. that at that time she also provided police with the names of suspects namely Karam, Barbaro and Higgs⁶³³

340.3. that the AFP used information received from Ms Gobbo to arrange surveillance, including through telephone intercepts and listening devices,⁶³⁴ which "gathered further suspected participants in the matter and placed further phone intercepts on the following people Sam Zirilli, Carmello Falanga, Pat Sergi, Sam Agresta"⁶³⁵ rendering the evidence obtained via Ms Gobbo's informing and adduced at trial "illegally obtained".⁶³⁶

341. Material before the Commission supports the general effect of those assertions, as is outlined above and summarised below.

communications took place after the offending as described in the Indictment, they were admitted into evidence to indicate Visser's continuing association with co-accused, and to contradict his defence. See also *Visser v The Queen; Falanga v The Queen* [2015] VSCA 168, [81].

⁶³⁰ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁶³¹ That is, those submissions relevant to the scope of the present inquiry on the basis of the construction of "affected" at [22] of the Legal Principles Submissions.

⁶³² Submission 004, Jan Visser, 2 [4], SUB.1008.0001.0002 @.0002.

⁶³³ Submission 004, Jan Visser, 2 [5], 7 [2], SUB.1008.0001.0002 @.0002, .0007.

⁶³⁴ Submission 004, Jan Visser, 2 [6], 7 [2]-[4], SUB.1008.0001.0002 @.0002, .0007.

⁶³⁵ Submission 004, Jan Visser, 2 [7], SUB.1008.0001.0002 @.0002.

⁶³⁶ Submission 004, Jan Visser, 6 [34], SUB.1008.0001.0002 @.0006.

Submissions under the Terms of reference in relation to Mr Visser

342. It is submitted that it is open to the Commissioner to find that the case of Mr Visser, being the indictment containing the charge in respect of which he was convicted⁶³⁷ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
343. The extent to which the case of Mr Visser may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

344. Category 2A⁶³⁸ applies in that evidence relied upon by the prosecution in Mr Visser's case,⁶³⁹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁶⁴⁰ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁴¹
345. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁶⁴² where the causal link is "tenuous", this may affect the balancing under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁶⁴³
346. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

347. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶⁴⁴
- 347.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Visser;

⁶³⁷ Un-tendered Indictment, *R v Carmelo Falanga and Jan (John) Visser*, 5 February 2014, RCMP1.0009.0002.0002.

⁶³⁸ See Legal Principles Submissions at [249].

⁶³⁹ Such as the evidence referred to at [335]-[336] above.

⁶⁴⁰ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁶⁴¹ As described in the Overview above at [57]-[58].

⁶⁴² See Legal Principles Submissions at [210].

⁶⁴³ See Legal Principles Submissions at [212]-[213].

⁶⁴⁴ See Legal Principles Submissions at [320]-[329] and [307]-[309].

- 347.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Visser, appropriate disclosure was made; or alternatively
- 347.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
348. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [347.1] were taken, and accordingly there was the potential for the right of Mr Visser to a fair trial to have been interfered with.
349. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Visser and/or his legal representatives.
350. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁶⁴⁵
351. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁶⁴⁶
352. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁶⁴⁷
353. Category 4A⁶⁴⁸ applies in that, as noted above at [344], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
354. Category 4B⁶⁴⁹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
355. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶⁴⁵ See Legal Principles Submissions at [380]-[385].

⁶⁴⁶ See Legal Principles Submissions at [351], [362]-[373].

⁶⁴⁷ See Legal Principles Submissions at [351], [374].

⁶⁴⁸ See Legal Principles Submissions at [465].

⁶⁴⁹ See Legal Principles Submissions at [465].

CASE STUDY: PINO VARALLO

Proceedings

356. Mr Varallo was arrested on 8 August.⁶⁵⁰ He was charged with trafficking a commercial quantity of MDMA between 5 February and 7 August 2008 (ie arising from *Operation Inca*).⁶⁵¹
357. Mr Varallo pleaded guilty to the above-mentioned charge,⁶⁵² albeit “relatively late”⁶⁵³ and was sentenced on 26 November 2013 to eight and a half years’ imprisonment with a non-parole period of six and a half years.⁶⁵⁴ A pecuniary penalty order under section 134 of the *Proceeds of Crime Act 2002* (Cth) was also made, by consent, for the sum of \$205,000.⁶⁵⁵

Material Considered by the Court

358. In sentencing Mr Varallo, the Court found that he had trafficked the MDMA he had received from Mr Barbaro. The Court made reference to Mr Varallo’s role in “storage, preparation and transportation activities to assist the more expansive commercial MDMA trafficking enterprise of Mr Barbaro.”⁶⁵⁶ The prosecution relied on the following sources of evidence:
- 358.1. numerous observed meetings and interactions with Mr Barbaro and Ms Ropa;⁶⁵⁷
 - 358.2. intercepted phone calls between Messrs Varallo, Barbaro⁶⁵⁸ and Ms Ropa,⁶⁵⁹ and the use of cell tower data to determine Mr Varallo’s movements;⁶⁶⁰ and
 - 358.3. material seized upon arrest including detailed records kept by Mr Barbaro and Ms Ropa in relation to the MDMA trafficking enterprise,⁶⁶¹ and a mobile phone handset registered under a false name and used by Mr Varallo.⁶⁶²

⁶⁵⁰ Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 10 [B11], RCMPI.0009.0002.0101 @.0010.

⁶⁵¹ Un-tendered Indictment, *R v Pino Varallo*, 5 April 2013, RCMPI.0009.0002.0100

⁶⁵² *DPP v Varallo* [2013] VCC 1868, [1].

⁶⁵³ *DPP v Varallo* [2013] VCC 1868, [6].

⁶⁵⁴ *DPP v Varallo* [2013] VCC 1868, [35].

⁶⁵⁵ *DPP v Varallo* [2013] VCC 1868, [10].

⁶⁵⁶ *DPP v Varallo* [2013] VCC 1868, [2].

⁶⁵⁷ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 5-6 [6]-[7], 9 [9], RCMPI.0009.0002.0101 @.0005-0006, 0009.

⁶⁵⁸ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 5 [6], 8 [9], RCMPI.0009.0002.0101 @.0005, .0008.

⁶⁵⁹ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 8 [9], RCMPI.0009.0002.0101 @.0008.

⁶⁶⁰ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 7 [8], RCMPI.0009.0002.0101 @.0007.

⁶⁶¹ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 2 [3], 3 [3], 10 [10], [12], RCMPI.0009.0002.0101 @.0002, @.0003, .0010.

⁶⁶² See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 10 [11], RCMPI.0009.0002.0101 @.0010.

Ms Gobbo's Conduct in relation to Mr Varallo's Case

Representation

359. It is unclear whether Mr Varallo was represented by Ms Gobbo. In an anonymous submission to the Commission, it is asserted that Mr Varallo was represented by Gobbo at a bail hearing on around 31 August 2008, after which he maintained informal contact with her for 12 months.⁶⁶³ However, there is an absence of corroborative material.

Informing or Assisting Police

360. On the basis of material before the Commission, it does not appear that Gobbo informed directly about Varallo, however it appears that her informing or assistance in relation to:

360.1. the bill of lading

360.2. the Pacific International Apartments

360.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Varallo,⁶⁶⁴ and ultimately to his conviction. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁶⁶⁵

Submissions to the Commission

361. In the anonymous submission to the Commission, it is asserted that Ms Gobbo provided information to police which assisted with the investigation of the case. It is further asserted that Mr Varallo was represented by Gobbo for a period of time,⁶⁶⁶ and ultimately pleaded guilty on the advice of Mr Varallo's legal team",⁶⁶⁷ however the submission does not state whether Mr Varallo's legal team included Ms Gobbo at that stage.

362. It is further asserted that Ms Gobbo encouraged a client of hers, [REDACTED], to provide police with evidence against Mr Varallo. That assertion is based on Ms Gobbo's knowledge of details of a storage facility which it is asserted could only have come from [REDACTED].⁶⁶⁸

363. The assertion as to [REDACTED] is not supported by material reviewed before the Commission. In that regard it may be noted that there appear to have been [REDACTED] clients of Ms Gobbo in possession of the location of the storage facility, including Messrs [REDACTED].⁶⁶⁹

364. However, material before the Commission supports the general assertion that Ms Gobbo provided information to police which assisted with the investigation of Mr Varallo's case, as is outlined above and summarised below. As noted at

⁶⁶³ Anonymous Submission 068, 1, 2.

⁶⁶⁴ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁶⁶⁵ See the Overview at [35]-[36].

⁶⁶⁶ Anonymous Submission 068, 1, 2.

⁶⁶⁷ Anonymous Submission 068, 1.

⁶⁶⁸ Anonymous Submission 068, 2.

⁶⁶⁹ See, eg, Un-tendered Summary of Facts, *R v Pino Varallo*, 23 July 2013, 7 [8], RCMP1.0009.0002.0101 @.0007.

paragraph [359] above, material reviewed before the Commission does not corroborate the assertion as to representation.

365. If Ms Gobbo did in fact represent Mr Varallo at any stage, and did not disclose to him that she had provided information to the police that was likely to have led to his arrest and charge, any effect of her conduct on his case would likely be exacerbated. It would be further exacerbated if she was a member of his “legal team” at the time when he was advised to plead guilty.

Submissions under the Terms of Reference in relation to Mr Varallo

366. It is submitted that it is open to the Commissioner to find that the case of Mr Varallo, being the indictment containing the charge in respect of which he was convicted⁶⁷⁰ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
367. The extent to which the case of Mr Varallo may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

368. Category 2A⁶⁷¹ applies in that evidence relied upon by the prosecution in Mr Varallo’s case,⁶⁷² which was likely derived from one or more of the “four pivotal aspects of the Operations” described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁶⁷³ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁶⁷⁴
369. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

370. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁶⁷⁵
- 370.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Varallo;

⁶⁷⁰ Un-tendered Indictment, *R v Pino Varallo*, 5 April 2013, RCMP1.0009.0002.0100.

⁶⁷¹ See Legal Principles Submissions at [249].

⁶⁷² Such as the evidence referred to at [358] above.

⁶⁷³ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁶⁷⁴ As described in the Overview above at [57]-[58].

⁶⁷⁵ See Legal Principles Submissions at [384] and [452]-[457].

- 370.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Varallo, appropriate disclosure was made; or alternatively
- 370.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
371. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [370.1] were taken, and accordingly there was the potential for the right of Mr Varallo to a fair trial to have been interfered with.
372. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Varallo and/or his legal representatives.
373. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁶⁷⁶
374. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁶⁷⁷
375. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁶⁷⁸
376. Category 4A⁶⁷⁹ applies in that, as noted at paragraph [368] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
377. Category 4B⁶⁸⁰ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
378. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁶⁷⁶ See Legal Principles Submissions at [380]-[385].

⁶⁷⁷ See Legal Principles Submissions at [351], [362]-[373].

⁶⁷⁸ See Legal Principles Submissions at [351], [374].

⁶⁷⁹ See Legal Principles Submissions at [465]

⁶⁸⁰ See Legal Principles Submissions at [465].

CASE STUDY: ANTONIO (TONY) SERGI

Proceedings

379. There are three relevant cases of Mr Sergi:

- 379.1. the first arose on account of offending the subject of Operation Inca, and concerned summary offences such as dealing with property suspected of being proceeds of crime (the Proceeds of Crime case);
- 379.2. the second arose on account of offending the subject of Operation Inca and was prosecuted by the CDDP (the Inca case); and
- 379.3. the third appears to have arisen on account of unrelated offending, and was prosecuted by the OPP in relation to a charge of possession of items for trafficking a drug of dependence (the Possession case).

380. Each is addressed in turn.

The Proceeds of Crime Case

381. Mr Sergi was first relevantly arrested on 15 June 2008, apparently following a routine and random police check. A search of the car he was driving at the time revealed his possession of ecstasy tablets, a notebook recording drug trafficking transactions, mobile telephones which had been used in incriminating conversations with members of the Barbaro syndicate, and some cash, all of which were seized.⁶⁸¹ He was charged and on 22 July 2008 convicted before the Broadmeadows Magistrates' Court of trafficking ecstasy, possessing cannabis, and dealing with property suspected of being proceeds of crime,⁶⁸² (the Proceeds of Crime case) before being released on a Community Based Order on 22 July 2008.⁶⁸³

The Inca Case

382. Mr Sergi was subsequently arrested on 8 August 2008, along with other members of the Barbaro syndicate,⁶⁸⁴ and was charged with the Commonwealth offence of trafficking a commercial quantity of MDMA between 10 February and 14 June 2008 (ie arising from *Operation Inca*)⁶⁸⁵

383. Mr Sergi pleaded guilty to the Commonwealth charge,⁶⁸⁶ and was sentenced in relation to it (together with other State charges which were laid in around 2013

⁶⁸¹ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonio Sergi*, undated, 9 [47], RCMP1.0009.0001.0105 @.0009.

⁶⁸² See, eg, Un-tendered Reasons for Sentence, *DPP v Antonio Sergi* (County Court of Victoria, Judge Montgomery, 13 May 2014), 2 [4], RCMP1.0009.0001.0106 @.0002 [Restricted].

⁶⁸³ See, eg, Un-tendered Victoria Police Criminal History Report, *Tony Sergi*, 16 December 2019, 3-4, VPL.0099.0193.4586 @.4588-.4589; Un-tendered Presentment No. X03167839, *R v Tony Sergi*, 2009, 7, OPP.0053.0001.0013.0007; cf Un-tendered Prosecution Plea Hearing Summary, *R v Antonio Sergi*, undated, 66 [48], OPP.0053.0001.0013 @.0066.

⁶⁸⁴ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonio Sergi*, undated, 66 [51], OPP.0053.0001.0013 @.0066.

⁶⁸⁵ Un-tendered Indictment, *R v Antonio Sergi*, 2 December 2013, RCMP1.0009.0001.0108.

⁶⁸⁶ Un-tendered Reasons for Sentence, *DPP v Antonio Sergi* (County Court of Victoria, Judge Montgomery, 13 May 2014), 2 [4], RCMP1.0009.0001.0106 @.0002 [Restricted].

to which he had also pleaded guilty⁶⁸⁷) on 13 May 2014. In relation to the Commonwealth charge, he was sentenced to nine years' imprisonment with a non-parole period of seven years.⁶⁸⁸ He unsuccessfully appealed his sentence in 2015.⁶⁸⁹

The Possession Case

384. The offending occurred on 5 November 2008, when police searched premises occupied by Mr Sergi and found him in possession of, among other things, items relating to the production and manufacture of methylamphetamine,⁶⁹⁰ and was arrested and charged with such possession.⁶⁹¹ He pleaded guilty and on 11 December 2009, was convicted and sentenced to 12 months' imprisonment, with 126 days suspended for 12 months.⁶⁹²

Material Considered by the Court

The Proceeds of Crime Case

385. Given the manner in which Mr Sergi's case proceeded, there is little material before the Commission through which the Court's considerations may be ascertained.⁶⁹³

The Inca Case

386. In sentencing Mr Sergi, the Court referred to his involvement in the Barbaro drug trafficking syndicate and noted his association with Mr Karam.⁶⁹⁴ The prosecution relied on sources of evidence including the following:

386.1. numerous observed meetings and interactions between Mr Sergi and related accused, including Messrs Barbaro and Zirilli,⁶⁹⁵ Karam,⁶⁹⁶ Potter and Ms Ropa⁶⁹⁷

386.2. intercepted telephone communications between related accused⁶⁹⁸ and Mr Sergi⁶⁹⁹

⁶⁸⁷ See, eg, Un-tendered Reasons for Sentence, *DPP v Antonio Sergi* (County Court of Victoria, Judge Montgomery, 13 May 2014), 2 [1]-[2], 3 [9]-[10], RCMP1.0009.0001.0106 @.0002-3 [Restricted].

⁶⁸⁸ See, eg, Un-tendered Reasons for Sentence, *DPP v Antonio Sergi* (County Court of Victoria, Judge Montgomery, 13 May 2014), 11 [29], RCMP1.0009.0001.0106 @.0011 [Restricted].

⁶⁸⁹ *Sergi v DPP (Cth) & Anor* [2015] VSCA 181.

⁶⁹⁰ Un-tendered Reasons for Sentence, *R v Tony Sergi* [2009] VCC 1824, 1-2 [5]-[7], OPP.0053.0001.0013 @.0022-3 [Restricted].

⁶⁹¹ Un-tendered Presentment No. X03167839, *R v Tony Sergi*, 2009, 6, OPP.0053.0001.0013 @.0006.

⁶⁹² Un-tendered Reasons for Sentence, *R v Tony Sergi* [2009] VCC 1824, 3-4 [16], OPP.0053.0001.0013 @.0024-.0025 [Restricted].

⁶⁹³ See Annexure A to Legal Principles Submissions.

⁶⁹⁴ See, eg, Un-tendered Reasons for Sentence, *DPP v Antonio Sergi* (County Court of Victoria, Judge Montgomery, 13 May 2014), 3 [6]-[7], RCMP1.0009.0001.0106 @.0002 [Restricted].

⁶⁹⁵ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 17, RCMP1.0009.0001.0103 @.0017.

⁶⁹⁶ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 36, RCMP1.0009.0001.0103 @.0036.

⁶⁹⁷ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 32, RCMP1.0009.0001.0103 @.0032.

⁶⁹⁸ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonio Sergi*, 28 April 2014, 6 [26], RCMP1.0009.0001.0105 @.0006; Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 26, RCMP1.0009.0001.0103 @.0026.

⁶⁹⁹ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 9, 12, 24, RCMP1.0009.0001.0103 @.0009, .0012, .0024.

- 386.3. covertly observed and recorded meetings between related accused⁷⁰⁰
- 386.4. numerous conversations and activity captured on the surveillance devices installed at the Carlton North townhouse⁷⁰¹
- 386.5. material seized upon arrest including detailed records kept by Mr Barbaro⁷⁰² and Ms Ropa⁷⁰³ in relation to the MDMA trafficking enterprise, which were corroborated by records kept in a notebook seized from Mr Sergi's car upon his initial arrest in June 2008.⁷⁰⁴

The Possession Case

- 387. In sentencing Mr Sergi, the Court noted that the prosecution conceded that he was storing such materials for a related offender, Mr Cam Morris.⁷⁰⁵ The prosecution did not allege any connection between this offending and the subject of Operation Inca.

Ms Gobbo's Conduct in relation to Mr Sergi's Cases

Representation

- 388. Material before the Commission indicates that Ms Gobbo appeared on behalf of Mr Sergi at the Broadmeadows Magistrates' Court on 22 July 2008 in relation to the Proceeds of Crime case.⁷⁰⁶
- 389. It also indicates that Ms Gobbo visited Mr Sergi at the custody centre on the date of his arrest in relation to the offending subject of the Inca case,⁷⁰⁷ and appeared for him on at least one occasion thereafter,⁷⁰⁸ being a bail application in August 2008, which is corroborated by CDP⁷⁰⁹ and Court material.⁷¹⁰
- 390. Material before the Commission also indicates that Ms Gobbo again represented Mr Sergi at a bail application in December 2008.⁷¹¹ However, on

⁷⁰⁰ See, eg, Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 9-10, 39, RCMP.0009.0001.0103 @.0009-0010, .0039.

⁷⁰¹ See, eg, Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 41, 47-8, RCMP.0009.0001.0103 @.0041, 0047-8.

⁷⁰² Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 38-9, RCMP.0009.0001.0103 @.0038-9.

⁷⁰³ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 9, RCMP.0009.0001.0103 @.0009.

⁷⁰⁴ Un-tendered Detailed Statement of Facts, *R v Antonio ('Tony') Sergi*, 24 April 2014, 9, 12, 24, RCMP.0009.0001.0103 @.0045-6.

⁷⁰⁵ Un-tendered Reasons for Sentence, *R v Tony Sergi* [2009] VCC 1824, 2 [8]-[9], OPP.0053.0001.0013 @.0002 [Restricted].

⁷⁰⁶ Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Ms Nicola Gobbo, 22 July 2008, 21, MCV.0001.0001.0001 @.0021.

⁷⁰⁷ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

⁷⁰⁸ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 August 2008, 21, MIN.5000.7000.0103 @.0123.

⁷⁰⁹ Un-tendered Listing/Adjournment Report, 25 August 2008, RCMP.0033.0001.0029; Exhibit RC1919 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDP between 1/01/1995 and 12/01/2009, 25 August 2008, CDP.0001.0001.0038.

⁷¹⁰ Exhibit RC1841 Magistrates' Court of Victoria Persons represented by Ms Nicola Gobbo, 25 August 2008, 19, MCV.0001.0001.0001 @.0021.

⁷¹¹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 18 December 2008, 27, MIN.5000.7000.0103 @.0129.

the basis of other material before the commission,⁷¹² it is highly probable that it occurred in relation to the Possession case.

391. Notably, it appears that Ms Gobbo previously represented Mr Sergi in relation to other charges in 2005 and 2006.⁷¹³

Informing or Assisting Police

392. Material before the Commission includes ICRs containing references to Mr Sergi in as early as September 2005, when Ms Gobbo is recorded as having informed police that she “represents Karam’s co-accused, Anton [sic] Sergi... [REDACTED]”⁷¹⁴ Since then, she appears to have frequently provided police with information about Mr Sergi, including after his arrests, but the dates and nature of much of the information provided to police renders its utility to the Inca and Possession cases unclear.

In relation to the Proceeds of Crime Case

393. Following his arrest, Ms Gobbo is recorded as providing information to police about Mr Sergi, including an update on his bail application,⁷¹⁵ his concerns that police will conduct a further search and find safes located at his house⁷¹⁶ and his mother’s house, the address of which she provided.⁷¹⁷ It is unclear whether or how such information was used.

In relation to the Inca Case

394. Over the course of time, Ms Gobbo is recorded as having provided her handlers with Mr Sergi’s phone numbers⁷¹⁸ and address⁷¹⁹ and details of his meetings and discussions with individuals such as Mr Karam⁷²⁰ and “the Griffiths people”.⁷²¹ This more general informing may have played a role in Operation Inca, although it remains unclear due to the timing of that informing.

395. Nevertheless, it appears that her informing or assistance in relation to:

- 395.1. the bill of lading
- 395.2. the Pacific International Apartments

⁷¹² Compare temporal references to Mr Sergi’s 10 November 2008 statement in Un-tendered Crown Summary for Case Conference, *Tony Sergi*, 5 October 2009, 18, OPP.0053.0001.0013 @.0018; Exhibit RC0281 ICR2958 (049), 18 December 2008, 786, VPL.2000.0003.1526.

⁷¹³ Exhibit RC1568 Ms Nicola Gobbo fee book 01, 28 September 2005 and 20 March 2006, 89, 94, MIN.5000.7000.0001 @.0089, .0094; Exhibit RC1603 Corrections Victoria, Archive Visit Enquiry: Prisoner Antonio Sergi, 13 June 2005, CNS.0001.0003.1088; Exhibit RC1841 Magistrates’ Court of Victoria Persons represented by Ms Nicola Gobbo, 15 June 2005, 16, MCV.0001.0001.0001 @.0018; Exhibit RC0281 ICR3838 (008), 16 November 2005, 58, VPL.2000.0003.1655.

⁷¹⁴ Exhibit RC0281 ICR2958 (024), 15 June 2008, 435, VPL.2000.0003.1175.

⁷¹⁵ Exhibit RC0281 ICR2958 (025), 18 June 2008, 465, VPL.2000.0003.1205.

⁷¹⁶ Exhibit RC0281 ICR2958 (024), 15 June 2008, 460, VPL.2000.0003.1200.

⁷¹⁷ Exhibit RC0281 ICR3838 (018), 16 February 2006, 155, VPL.2000.0003.1741; Exhibit RC0281 ICR2958 (014), 14 April 2008, 158, VPL.2000.0003.0898.

⁷¹⁸ Exhibit RC0281 ICR3838 (080), 25 May 2007, 857, VPL.2000.0003.2443.

⁷¹⁹ Exhibit RC0281 ICR3838 (080), 25 May 2007, 856, VPL.2000.0003.2442.

⁷²⁰ Exhibit RC0281 ICR3838 (107), 1 November 2007, 1343, VPL.2000.0003.2929.

- 395.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Sergi,⁷²² and ultimately to his conviction in the Inca case. This appears to be supported by actual or implied admissions by Ms Gobbo.⁷²³

In relation to the Possession Case

396. Material before the Commission does not indicate that Ms Gobbo provided any information or assistance to police in relation to the Possession case prior to Mr Sergi's arrest. However, she is recorded as having informed her handlers of Sergi's arrest,⁷²⁴ and provided updates as to [REDACTED] the time of his bail application.⁷²⁵

Submissions under the Terms of Reference in relation to Mr Sergi — *The Proceeds of Crime Case*

397. It is submitted that it is open to the Commissioner to find that the summary Proceeds of Crime case of Mr Sergi may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
398. The extent to which the case of Mr Sergi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

399. First, Category 1A⁷²⁶ applies in that, in July 2008⁷²⁷ Ms Gobbo acted for Mr Sergi while she was a human source,⁷²⁸ and did not disclose same to him.⁷²⁹
400. Secondly, Category 1B⁷³⁰ applies in that, before and during the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁷³¹
401. The above conduct by Ms Gobbo under Categories 1A and 1B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷³²
402. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she

⁷²² See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁷²³ See the Overview at [35]-[36].

⁷²⁴ Exhibit RC0281 ICR2958 (045), 4 November 2008, 696, VPL.2000.0003.1436.

[REDACTED]

⁷²⁶ See Legal Principles submissions at [249].

⁷²⁷ See above at [388].

⁷²⁸ See Legal Principles Submissions at [20].

⁷²⁹ See Legal Principles Submissions at [239].

⁷³⁰ See Legal Principles submissions at [249].

⁷³¹ See above at [392]-[393].

⁷³² See Legal Principles Submissions at [320]-[329] and [307]-[309].

was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

403. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷³³
- 403.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sergi;
 - 403.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sergi, appropriate disclosure was made; or alternatively
 - 403.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
404. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [403.1] were taken, and accordingly there was the potential for the right of Mr Sergi to a fair trial to have been interfered with.
405. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sergi and/or his legal representatives.
406. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷³⁴
407. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷³⁵
408. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction.⁷³⁶

⁷³³ See Legal Principles Submissions at [384] and [452]-[457].

⁷³⁴ See Legal Principles Submissions at [380]-[385].

⁷³⁵ See Legal Principles Submissions at [351], [362]-[373].

⁷³⁶ See Legal Principles Submissions at [351], [374].

409. Category 3A⁷³⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
410. Category 3B⁷³⁸ applies in that, before and during the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁷³⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
411. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Submissions under the Terms of Reference in relation to Mr Sergi — *The Inca Case*

412. It is submitted that it is open to the Commissioner to find that the case of Mr Sergi, being the indictment containing the charge in respect of which he was convicted⁷⁴⁰ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
413. The extent to which the case of Mr Sergi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

414. First, Category 1A⁷⁴¹ applies in that, in August 2008⁷⁴² Ms Gobbo acted for Mr Sergi while she was a human source,⁷⁴³ and did not disclose same to him.⁷⁴⁴
415. Secondly, Category 1B⁷⁴⁵ applies in that, before the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁷⁴⁶
416. Thirdly, Category 2A⁷⁴⁷ applies in that evidence relied upon by the prosecution in Mr Sergi's case,⁷⁴⁸ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27]

⁷³⁷ See Legal Principles Submissions at [465].

⁷³⁸ See Legal Principles Submissions at [465].

⁷³⁹ See above at [392]-[393].

⁷⁴⁰ Un-tendered Indictment, *R v Antonio Sergi*, 2 December 2013, RCMP1.0009.0001.0108.

⁷⁴¹ See Legal Principles Submissions at [249].

⁷⁴² See above at [388].

⁷⁴³ See Legal Principles Submissions at [20].

⁷⁴⁴ See Legal Principles Submissions at [239].

⁷⁴⁵ See Legal Principles Submissions at [249].

⁷⁴⁶ See above at [392]-[395].

⁷⁴⁷ See Legal Principles Submissions at [249].

⁷⁴⁸ Such as the evidence referred to at [386] above.

above, or the evidence obtained as a result thereof,⁷⁴⁹ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁷⁵⁰

417. Fourthly, Category 2B⁷⁵¹ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [416] above and failed to disclose same to her client, Mr Sergi, thereby depriving him of the ability to object to the admission of that evidence.
418. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁷⁵² where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁷⁵³
419. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷⁵⁴
420. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

421. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷⁵⁵
- 421.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sergi;

⁷⁴⁹ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁷⁵⁰ As described in the Overview above at [57]-[58].

⁷⁵¹ See Legal Principles Submissions at [249].

⁷⁵² See Legal Principles Submissions at [210].

⁷⁵³ See Legal Principles Submissions at [212]-[213].

⁷⁵⁴ See Legal Principles Submissions at [320]-[329] and [307]-[309].

⁷⁵⁵ See Legal Principles Submissions at [384] and [452]-[457].

- 421.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sergi, appropriate disclosure was made; or alternatively
- 421.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
422. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [421.1] were taken, and accordingly there was the potential for the right of Mr Sergi to a fair trial to have been interfered with.
423. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sergi and/or his legal representatives.
424. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁵⁶
425. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷⁵⁷
426. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁷⁵⁸
427. Category 3A⁷⁵⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
428. Category 3B⁷⁶⁰ applies in that, before the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁷⁶¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
429. Category 4A⁷⁶² applies in that, as noted at paragraph [416] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
430. Category 4B⁷⁶³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of

⁷⁵⁶ See Legal Principles Submissions at [380]-[385].

⁷⁵⁷ See Legal Principles Submissions at [351], [362]-[373].

⁷⁵⁸ See Legal Principles Submissions at [351], [374].

⁷⁵⁹ See Legal Principles Submissions at [465].

⁷⁶⁰ See Legal Principles Submissions at [465].

⁷⁶¹ See above at [392]-[395].

⁷⁶² See Legal Principles Submissions at [465].

⁷⁶³ See Legal Principles Submissions at [465].

public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

431. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Submissions under the Terms of Reference in relation to Mr Sergi — *The Possession Case*

432. It is submitted that it is open to the Commissioner to find that the case of Mr Sergi, being the presentment containing the charge in respect of which he was convicted⁷⁶⁴ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
433. The extent to which the case of Mr Sergi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

434. First, Category 1A⁷⁶⁵ applies in that, in December 2008⁷⁶⁶ Ms Gobbo acted for Mr Sergi while she was a human source,⁷⁶⁷ and did not disclose same to him.⁷⁶⁸
435. Secondly, Category 1B⁷⁶⁹ applies in that, before and during the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁷⁷⁰
436. The above conduct by Ms Gobbo under Categories 1A and 1B evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁷⁷¹
437. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

⁷⁶⁴ Un-tendered Presentment No. X03167839, *R v Tony Sergi*, 2009, 6, OPP.0053.0001.0013 @.0006.

⁷⁶⁵ See Legal Principles Submissions at [249].

⁷⁶⁶ See above at [39087].

⁷⁶⁷ See Legal Principles Submissions at [20].

⁷⁶⁸ See Legal Principles Submissions at [239].

⁷⁶⁹ See Legal Principles Submissions at [240].

⁷⁷⁰ See above at [392] and [396].

⁷⁷¹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

438. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁷⁷²
- 438.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sergi;
 - 438.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sergi, appropriate disclosure was made; or alternatively
 - 438.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
439. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [438.1] were taken, and accordingly there was the potential for the right of Mr Sergi to a fair trial to have been interfered with.
440. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sergi and/or his legal representatives.
441. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁷⁷³
442. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁷⁷⁴
443. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁷⁷⁵
444. Category 3A⁷⁷⁶ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

⁷⁷² See Legal Principles Submissions at [384] and [452]-[457].

⁷⁷³ See Legal Principles Submissions at [380]-[385].

⁷⁷⁴ See Legal Principles Submissions at [351], [362]-[373].

⁷⁷⁵ See Legal Principles Submissions at [351], [374].

⁷⁷⁶ See Legal Principles Submissions at [465].

445. Category 3B⁷⁷⁷ applies in that, before and during the period that Ms Gobbo acted for Mr Sergi in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁷⁷⁸ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
446. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁷⁷⁷ See Legal Principles Submissions at [465].

⁷⁷⁸ See above at [392] and [396].

CASE STUDY: SHARON ROPA

Proceedings

447. Ms Sharon Ropa was arrested on 8 August 2008.⁷⁷⁹ She was charged with three Commonwealth offences (arising from *Operation Inca*) namely:⁷⁸⁰
- 447.1. trafficking a commercial quantity of MDMA between 10 February and 7 August 2008;
 - 447.2. dealing with proceeds of crime in excess of \$1 million between 13 February and 7 August 2008; and
 - 447.3. dealing with property reasonably suspected of being the proceeds of crime between 22 July and 8 August 2008.
448. Ropa pleaded guilty to all three charges⁷⁸¹ and was sentenced on 26 June 2013 to a total effective sentence of nine and a half years' imprisonment⁷⁸² with a non-parole period of seven years.⁷⁸³

Material Considered by the Court

449. The facts as set out in the prosecution's opening were largely⁷⁸⁴ undisputed, and therefore formed the basis for the Court's sentencing considerations.⁷⁸⁵ The prosecution relied on sources of evidence including the following:
- 449.1. numerous observed meetings and interactions between Ms Ropa and related accused;⁷⁸⁶
 - 449.2. intercepted telephone communications between Ms Ropa and related accused⁷⁸⁷ including Mr Barbaro;⁷⁸⁸

⁷⁷⁹ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 129, RCMPI.0009.0002.0097 @.0129.

⁷⁸⁰ Un-tendered Indictment, *DPP v Sharon Ropa*, 26 September 2012, RCMPI.0009.0002.0096.

⁷⁸¹ Un-tendered Reasons for Sentence, *DPP v Ropa* [2013] VCC, 2 [1], RCMPI.0009.0002.0098 @.0002 [Restricted].

⁷⁸² Un-tendered Reasons for Sentence, *DPP v Ropa* [2013] VCC, 20 [85], RCMPI.0009.0002.0098 @.0002 [Restricted].

⁷⁸³ Un-tendered Reasons for Sentence, *DPP v Ropa* [2013] VCC, 21 [89], RCMPI.0009.0002.0098 @.0002 [Restricted].

⁷⁸⁴ Cf, eg, evidentiary ruling in Un-tendered Transcript of Proceedings, *DPP v Sharon Ropa* (County Court of Victoria, CR-12-00335, Judge Montgomery, 28 February 2013), 88-99, RCMPI.0009.0002.0094 @.0002-.0003.

⁷⁸⁵ Un-tendered Reasons for Sentence, *DPP v Ropa* [2013] VCC, 2 [2]-[3], RCMPI.0009.0002.0098 @.0002 [Restricted].

⁷⁸⁶ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 19, 22, 30-1, 44, 110, RCMPI.0009.0002.0097 @.0019, .0022, .0030-1, .0044, .0110.

⁷⁸⁷ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 11, RCMPI.0009.0002.0097 @.0011.

⁷⁸⁸ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 2, RCMPI.0009.0002.0097 @.0002.

- 449.3. covertly observed and activity of Ms Ropa, including her travel⁷⁸⁹ and disposal of mobile phone handsets containing records of incriminating communications;⁷⁹⁰
- 449.4. conversations and activity captured on the surveillance devices installed at the Carlton North townhouse,⁷⁹¹ and in Mr Karam's vehicle;⁷⁹² and
- 449.5. material seized upon arrest including detailed records kept by Mr Barbaro and Ms Ropa⁷⁹³ in relation to the MDMA trafficking enterprise.

Ms Gobbo's conduct in relation to Ms Ropa's case

Representation

450. Material produced to the Commission by the CDPP indicates that on 8 August 2008, Ms Ropa's solicitors informed the CDPP that Ms Gobbo would "probably" be briefed to represent Ropa, and that Ms Gobbo did appear for Ms Ropa at a bail application in early September 2008.⁷⁹⁴ However, that material conflicts with other more formal or contemporaneous records produced by the CDPP, which indicate that different solicitors and counsel acted for Ms Ropa at her bail application.⁷⁹⁵ In addition, there is no record in Ms Gobbo's fee books or other such material to suggest that Ms Gobbo represented Ms Ropa at any stage.

Informing or Assisting Police

451. It does not appear that Ms Gobbo provided any information concerning Ms Ropa to police prior to Ms Ropa's arrest on 8 August 2008. However, it appears that Ms Gobbo's informing or assistance in relation to:
- 451.1. the bill of lading
 - 451.2. the Pacific International Apartments
 - 451.3. telephone contact numbers, may have been critical to the success of the investigation of Ms Ropa,⁷⁹⁶ and ultimately to her convictions. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁷⁹⁷

⁷⁸⁹ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 84, 95, RCMPI.0009.0002.0097 @.0084, .0095.

⁷⁹⁰ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 40-1, RCMPI.0009.0002.0097 @.0040-.0041.

⁷⁹¹ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 27-8, 70, RCMPI.0009.0002.0097 @.0027-.0028, .0070.

⁷⁹² See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 29, RCMPI.0009.0002.0097 @.0029.

⁷⁹³ See, eg, Un-tendered Prosecution Plea Opening, *DPP v Sharon Ropa*, 18 February 2013, 53-4, 69, 127-8, RCMPI.0009.0002.0097 @.0053-.0054, .0069, .0127-.0128.

⁷⁹⁴ Exhibit RC1921 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDPP between 1/01/1995 and 12/01/2009, 8 August and 4 September 2008, CDP.0032.0001.0006.

⁷⁹⁵ See Un-tendered Listing/Adjournment Report, 4 September 2008, RCMPI.0033.0001.0026; Un-tendered CDPP handwritten bail notes, undated, RCMPI.0033.0001.0027.

⁷⁹⁶ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁷⁹⁷ See the Overview at [35]-[36].

Submissions under the Terms of Reference in relation to Ms Ropa

452. It is submitted that it is open to the Commissioner to find that the case of Ms Ropa, being the indictment containing the three charges in respect of which she was convicted⁷⁹⁸ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
453. The extent to which the case of Ms Ropa may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

454. Category 2A⁷⁹⁹ applies in that evidence relied upon by the prosecution in Ms Ropa's case,⁸⁰⁰ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁸⁰¹ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸⁰²
455. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

456. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸⁰³
- 456.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Ms Ropa
 - 456.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Ms Ropa, appropriate disclosure was made; or alternatively
 - 456.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
457. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [456.1] were taken, and accordingly there

⁷⁹⁸ Un-tendered Indictment, *DPP v Sharon Ropa*, 26 September 2012, RCMP1.0009.0002.0096.

⁷⁹⁹ See Legal Principles Submissions at [351], [374].

⁸⁰⁰ Such as the evidence referred to at [449] above.

⁸⁰¹ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁸⁰² As described in the Overview above at [57]-[58].

⁸⁰³ See Legal Principles Submissions at [384] and [452]-[457].

was the potential for the right of Ms Ropa to a fair trial to have been interfered with.

458. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Ms Ropa and/or her legal representatives.
459. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸⁰⁴
460. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸⁰⁵
461. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after her guilty plea.⁸⁰⁶
462. Category 4A⁸⁰⁷ applies in that, as noted at paragraph [454] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
463. Category 4B⁸⁰⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
464. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁸⁰⁴ See Legal Principles Submissions at [380]-[385].

⁸⁰⁵ See Legal Principles Submissions at [351], [362]-[373].

⁸⁰⁶ See Legal Principles Submissions at [351], [374].

⁸⁰⁷ See Legal Principles Submissions at [465].

⁸⁰⁸ See Legal Principles Submissions at [465].

CASE STUDY: GIOVANNI POLIMENI

Proceedings

465. Mr Giovanni Polimeni was arrested on 18 August 2008,⁸⁰⁹ and was charged with the conspired possession of a commercial quantity of cocaine between 26 June 2008 and 8 August 2008 (ie arising from *Operation Inca*);⁸¹⁰
466. Mr Polimeni pleaded not guilty and on 15 April 2013 he was sentenced to a term of 18 years' imprisonment, with a non-parole period of 12 years.⁸¹¹ He subsequently unsuccessfully sought leave to appeal against his conviction and sentence.⁸¹²

Material Considered by the Court

467. In sentencing Mr Polimeni, the Court accepted the prosecution's submission⁸¹³ that his "role within the conspiracy was at an elevated level of criminality" and included travelling with Mr Zirilli and involvement in meetings between co-conspirators.⁸¹⁴ At trial, the prosecution had relied on sources of evidence including:
- 467.1. numerous conversations and activity captured on the surveillance devices installed at the Carlton North townhouse;⁸¹⁵
 - 467.2. intercepted telephone communications between related accused⁸¹⁶ including Messrs Polimeni and Zirilli;⁸¹⁷ and
 - 467.3. Mr Polimeni's admissions in relation to covertly observed meetings between co-conspirators.⁸¹⁸

Ms Gobbo's Conduct in relation to Mr Polimeni's Case

Representation

468. There is no material before the Commission which suggests that Ms Gobbo represented Mr Polimeni at any stage.

⁸⁰⁹ See, eg, Un-tendered Prosecution Opening, *DPP v Polimeni*, undated, 16, RCMP1.0009.0001.0063 @.0016.

⁸¹⁰ Un-tendered Indictment, *R v Rob Karam & Ors*, 19 March 2012, RCMP1.0009.0001.0075.

⁸¹¹ Un-tendered Reasons for Sentence, *DPP v Polimeni* (County Court of Victoria, Judge Montgomery, 15 April 2013), 7 [26], RCMP1.0009.0001.0065 @.0007 [Restricted].

⁸¹² *Polimeni v The Queen* [2014] VSCA 72, [5], [25]; *Polimeni v The Queen* (Supreme Court of Victoria, Court of Appeal, Nettle JA, 16 October 2013), [55].

⁸¹³ Un-tendered Reasons for Sentence, *DPP v Polimeni* (County Court of Victoria, Judge Montgomery, 15 April 2013), 2 [3], RCMP1.0009.0001.0065 @.0002 [Restricted].

⁸¹⁴ Un-tendered Prosecution Submissions on Sentence, *DPP v Polimeni*, 11 April 2013, 2-5, RCMP1.0009.0001.0064 @.0002-.0005.

⁸¹⁵ See, eg, Un-tendered Prosecution Opening, *DPP v Polimeni*, undated, 13, 16, 39, RCMP1.0009.0001.0063 @.0013, .0016, .0039.

⁸¹⁶ See, eg, Un-tendered Prosecution Opening, *DPP v Polimeni*, undated, 10, 23, RCMP1.0009.0001.0063 @.0010, .0023.

⁸¹⁷ See, eg, Un-tendered Prosecution Opening, *DPP v Polimeni*, undated, 40, RCMP1.0009.0001.0063 @.0040.

⁸¹⁸ See, eg, Un-tendered Prosecution Opening, *DPP v Polimeni*, undated, 29, RCMP1.0009.0001.0063 @.0029.

Informing or Assisting Police

469. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Polimeni. However, it appears that her informing or assistance in relation to:
- 469.1. the bill of lading
 - 469.2. the Pacific International Apartments
 - 469.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Polimeni,⁸¹⁹ and ultimately to his conviction.

Submissions to the Commission

470. In a submission to the Commission, Mr Polimeni's lawyers suggest that Ms Gobbo provided information to Victoria Police in relation to Operation Inca, and did so in breach of duties to her clients.⁸²⁰ Material before the Commission supports the general effect of those assertions, as is outlined above and summarised below.

Submissions under the Terms of Reference in relation to Mr Polimeni

471. It is submitted that it is open to the Commissioner to find that the case of Mr Polimeni, being the indictment containing the charge in respect of which he was convicted⁸²¹ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
472. The extent to which the case of Mr Polimeni may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

473. Category 2A⁸²² applies in that evidence relied upon by the prosecution in Mr Polimeni's case,⁸²³ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁸²⁴ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸²⁵
474. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a

⁸¹⁹ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁸²⁰ Submission 128, Giovanni Polimeni, in support of his Application for Leave to Appear at the Public Hearings of the Royal Commission, 14 February 2019, [4]-[5], SUB.0128.0001.0001

⁸²¹ Un-tendered Indictment, *R v Rob Karam & Ors*, 19 March 2012, RCMP1.0009.0001.0075.

⁸²² See Legal Principles Submissions at [249].

⁸²³ Such as the evidence referred to at [467] above.

⁸²⁴ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁸²⁵ As described in the Overview above at [57]-[58].

matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁸²⁶ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁸²⁷

475. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

476. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸²⁸
- 476.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Polimeni;
 - 476.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Polimeni, appropriate disclosure was made; or alternatively
 - 476.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
477. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [476.1] were taken, and accordingly there was the potential for the right of Mr Polimeni to a fair trial to have been interfered with.
478. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Polimeni and/or his legal representatives.
479. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸²⁹
480. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸³⁰

⁸²⁶ See Legal Principles Submissions at [210].

⁸²⁷ See Legal Principles Submissions at [212]-[213].

⁸²⁸ See Legal Principles Submissions at [384] and [452]-[457].

⁸²⁹ See Legal Principles Submissions at [380]-[385].

⁸³⁰ See Legal Principles Submissions at [351], [362]-[373].

481. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁸³¹
482. Category 4A⁸³² applies in that, as noted at paragraph [473] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
483. Category 4B⁸³³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
484. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁸³¹ See Legal Principles Submissions at [351], [374].

⁸³² See Legal Principles Submissions at [465].

⁸³³ See Legal Principles Submissions at [465].

CASE STUDY: FRANCESCO MADAFFERI

Proceedings

485. Mr Francesco Madafferi was arrested on 8 August 2008,⁸³⁴ and was charged with trafficking a commercial quantity of MDMA between 12 February 2008 and 7 August 2008 (ie arising from *Operation Inca*);⁸³⁵
486. Mr Madafferi pleaded not guilty and had his bail revoked during trial on 22 August 2014.⁸³⁶ He was convicted on 26 August 2014⁸³⁷ and sentenced on 17 December 2014 to a term of 10 years' imprisonment, with a non-parole period of seven years.⁸³⁸ He subsequently twice sought leave to extend time to appeal his conviction both of which were separately refused on 20 April⁸³⁹ and 20 October 2017.⁸⁴⁰

Material Considered by the Court

487. In sentencing Mr Madafferi, the Court found that his "role was as a high-level recipient in the distribution chain" of the "Pasquale Barbaro syndicate" which "included Pasquale Barbaro, Zirilli, DiPietro, Sharon Ropa, Karam, Molluso, Varallo, Pasquale Sergi and others."⁸⁴¹ It noted that the "evidence against [Madafferi]... formed part of a wide circumstantial case" supported by recorded telephone communications and police surveillance,⁸⁴² and that evidence of detailed business records kept by Barbaro and Ropa formed "a significant part of the case."⁸⁴³ Evidence relied upon by the prosecution included:
- 487.1. numerous conversations and activity captured on the surveillance devices installed at the Carlton North townhouse;⁸⁴⁴
 - 487.2. intercepted telephone communications between related accused;⁸⁴⁵

⁸³⁴ Un-tendered Prosecution Opening, *DPP v Madafferi*, 14 July 2014, 1 [3], RCMP.0009.0001.0050 @.0001.

⁸³⁵ Un-tendered Indictment, *R v Francesco Madafferi*, 2 December 2013, RCMP.0009.0001.0048.

⁸³⁶ Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 22 August 2014), RCMP.0009.0001.0057 @.0022 [Restricted].

⁸³⁷ Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 26 August 2014), [1], RCMP.0009.0001.0046 @.0002 [Restricted].

⁸³⁸ Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 26 August 2014), 12 [41]-[42], RCMP.0009.0001.0046 @.0012 [Restricted].

⁸³⁹ See *Madafferi v The Queen* [2017] VSCA 302, [3].

⁸⁴⁰ *Madafferi v The Queen* [2017] VSCA 302, [5], [40].

⁸⁴¹ Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 26 August 2014), 2 [6], RCMP.0009.0001.0046 @.0002 [Restricted].

⁸⁴² Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 26 August 2014), 2 [7], RCMP.0009.0001.0046 @.0002 [Restricted].

⁸⁴³ Un-tendered Transcript of Proceedings, *DPP v Madafferi* (County Court of Victoria, Judge Mason, 26 August 2014), 2-3 [7]-[8], RCMP.0009.0001.0046 @.0002-.0003 [Restricted].

⁸⁴⁴ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferi*, 14 July 2014, 18 [163]-[164], 20 [169]-[170], 28 [270]-[271], 36 [341], RCMP.0009.0001.0050 @.0018, .0020, .0028, .0036.

⁸⁴⁵ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferi*, 14 July 2014, 2 [14], 3 [20], 11 [98], 37 [349], RCMP.0009.0001.0050 @.0002, .0003, .0011, .0037.

487.3. covertly observed and meetings between, related accused,⁸⁴⁶ including Mr Barbaro⁸⁴⁷ and Ms Ropa;⁸⁴⁸ and

487.4. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.⁸⁴⁹

Ms Gobbo's Conduct in relation to Mr Madafferri's Case

Representation

488. In a submission to the Commission, Mr Madafferri's lawyers assert that Ms Gobbo visited him at the custody centre on the date of his arrest, and obtained bail for him on the same day.⁸⁵⁰ They further assert that Ms Gobbo was present at subsequent conferences with Mr Madafferri and his solicitor, and "would take an active role in the conference by questioning Mr Madafferri about the evidence, challenging his answers and providing legal advice."⁸⁵¹

489. There is no other reviewed material before the Commission which suggests that Ms Gobbo represented Mr Madafferri at any stage. Accordingly, the veracity or extent of the assertion that Ms Gobbo "purported to act as counsel for Mr Madafferri...[and] provided legal advice"⁸⁵² remains uncorroborated.

Informing or Assisting Police

490. Material before the Commission indicates that Ms Gobbo provided police with information in relation to Mr Madafferri on two occasions, both after his arrest, as to his association with Mr Gatto⁸⁵³ and earlier matters.⁸⁵⁴ This information does not appear to have been related to the Operations or this case.

491. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Madafferri's case. However, it appears that her informing or assistance in relation to:

491.1. the bill of lading

491.2. the Pacific International Apartments

491.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Madafferri,⁸⁵⁵ and ultimately to his conviction. Ms

⁸⁴⁶ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferri*, 14 July 2014, 2 [11], 7 [55], 10 [88], 10 [93], 17 [159], 21 [202], 21 [210], 26 [253], 31 [285], 32 [300], 34 [315], RCMP1.0009.0001.0050 @.0002, .0007, .0010, .0017, .0021, .0026, .0031, .0032, .0034.

⁸⁴⁷ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferri*, 14 July 2014, 26 [253]-[254], RCMP1.0009.0001.0050 @.0026.

⁸⁴⁸ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferri*, 14 July 2014, 39 [367]-[368], RCMP1.0009.0001.0050 @.0039.

⁸⁴⁹ See, eg, Un-tendered Prosecution Opening, *DPP v Madafferri*, 14 July 2014, 2 [19]-[20], 4 [29], 27 [257]-[260], 30 [281], RCMP1.0009.0001.0050 @.0002, .0004, .0027, .0030.

⁸⁵⁰ Submission 085, Francesco Madafferri, 1 [7], SUB.0085.0001.0001.

⁸⁵¹ Submission 085, Francesco Madafferri, 1 [9], SUB.0085.0001.0001.

⁸⁵² Submission 085, Francesco Madafferri, 2 [13], SUB.0085.0001.0001 @.0002.

⁸⁵³ Exhibit RC0281 ICR2958 (040), 23 September 2008, 629-630, VPL.2000.0003.1369-VPL.2000.0003.1370.

⁸⁵⁴ Exhibit RC0281 ICR2958 (035), 26 August 2008, 569, VPL.2000.0003.1309.

⁸⁵⁵ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁸⁵⁶

Submissions to the Commission

492. In a submission to the Commission, Mr Madafferi's lawyers assert that his case may have been affected because he has cause to believe that Ms Gobbo passed on his instructions and defence strategies to investigating officials, and provided him with legal advice which was misleading and contrary to his interests.⁸⁵⁷
493. While material before the Commission supports the assertion that his case may have been affected by Ms Gobbo's conduct, the material reviewed does not corroborate the assertion that Ms Gobbo represented Mr Madafferi (as noted at paragraph [489] above) or that she passed on any information concerning his case.
494. If Ms Gobbo did in fact represent Mr Madafferi at any stage, and did not disclose to him that she had provided information to the police that was likely to have led to his arrest and charge, any effect of her conduct on his case would likely be exacerbated.

Submissions under the Terms of Reference in relation to Mr Madafferi

495. It is submitted that it is open to the Commissioner to find that the case of Mr Madafferi, being the indictment containing the charge in respect of which he was convicted⁸⁵⁸ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
496. The extent to which the case of Mr Madafferi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

497. Category 2A⁸⁵⁹ applies in that evidence relied upon by the prosecution in Mr Madafferi's case,⁸⁶⁰ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁸⁶¹ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸⁶²
498. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members

⁸⁵⁶ See the Overview at [35]-[36].

⁸⁵⁷ Submission 085, Francesco Madafferi, 2 [16], SUB.0085.0001.0001 @.0002.

⁸⁵⁸ Un-tendered Indictment, *R v Francesco Madafferi*, 2 December 2013, RCMPPI.0009.0001.0048.

⁸⁵⁹ See Legal Principles Submissions at [249].

⁸⁶⁰ Such as the evidence referred to at [487] above.

⁸⁶¹ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁸⁶² As described in the Overview above at [57]-[58].

and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

499. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁸⁶³
- 499.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Madafferi;
 - 499.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Madafferi, appropriate disclosure was made; or alternatively
 - 499.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
500. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [499.1] were taken, and accordingly there was the potential for the right of Mr Madafferi to a fair trial to have been interfered with.
501. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Madafferi and/or his legal representatives.
502. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁸⁶⁴
503. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁸⁶⁵
504. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.⁸⁶⁶
505. Category 4A⁸⁶⁷ applies in that, as noted at paragraph [497] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

⁸⁶³ See Legal Principles Submissions at [384] and [452]-[457].

⁸⁶⁴ See Legal Principles Submissions at [380]-[385].

⁸⁶⁵ See Legal Principles Submissions at [351], [362]-[373].

⁸⁶⁶ See Legal Principles Submissions at [351], [374].

⁸⁶⁷ See Legal Principles Submissions at [465].

506. Category 4B⁸⁶⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
507. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁸⁶⁸ See Legal Principles Submissions at [465].

CASE STUDY: ANTONINO DI PIETRO

Proceedings

508. Mr Antonino Di Pietro was arrested on 8 August 2008,⁸⁶⁹ and was charged with trafficking a commercial quantity of MDMA between 24 January 2008 and 26 June 2008 (ie arising from *Operation Inca*).⁸⁷⁰ He pleaded guilty on 30 June 2014⁸⁷¹ and was sentenced on 1 August 2014 to a term of seven years' imprisonment, with a non-parole period of four years and six months.⁸⁷²

Material Considered by the Court

509. In sentencing Mr Di Pietro, the Court found that he was involved in the Barbaro MDMA trafficking syndicate and referred to circumstances of the offending as detailed in the sentencing remarks made in relation to Messrs Barbaro and Zirilli.⁸⁷³ Evidence relied upon by the prosecution included:

- 509.1. communications between related accused which appear to have been intercepted or recorded;⁸⁷⁴ and
- 509.2. meetings between Mr Di Pietro and related accused, including Messrs Barbaro⁸⁷⁵ and Zirilli, which appear to have been covertly observed;⁸⁷⁶ and
- 509.3. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.⁸⁷⁷

Ms Gobbo's Conduct in relation to Mr Di Pietro's Case

Representation

510. Material before the Commission records that Ms Gobbo told police that she visited Mr Di Pietro at the custody centre on the date of his arrest, and was asked to help him.⁸⁷⁸ That visit does not appear to be corroborated by Corrections Victoria records, however, on the basis of material before the

⁸⁶⁹ Un-tendered Reasons for Sentence, *DPP v AD* (County Court of Victoria, Judge Wischusen, 1 August 2014), 3 [5], RCMP1.0033.0001.0035 @.0003. [Restricted/Suppression Order]

⁸⁷⁰ Un-tendered Indictment, *R v Antonino Di Pietro*, 2 December 2013, RCMP1.0033.0001.00432 @.0001.

⁸⁷¹ Un-tendered Reasons for Sentence, *DPP v AD* (County Court of Victoria, Judge Wischusen, 1 August 2014), 3 [5], RCMP1.0033.0001.0035 @.0003. [Restricted/Suppression Order]

⁸⁷² Un-tendered Reasons for Sentence, *DPP v AD* (County Court of Victoria, Judge Wischusen, 1 August 2014), 8-9 [30]-[31], RCMP1.0033.0001.0035 @.0008-.0009. [Restricted/Suppression Order]

⁸⁷³ Un-tendered Reasons for Sentence, *DPP v AD* (County Court of Victoria, Judge Wischusen, 1 August 2014), 2 [3], RCMP1.0033.0001.0035 @.0002. [Restricted/Suppression Order]

⁸⁷⁴ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonino Di Pietro*, 4 [15], 6-8 [22(e)], [28], [32], [34]-[35], RCMP1.0033.0001.0033 @.0004, .0006-.0008.

⁸⁷⁵ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonino Di Pietro*, 4, 7-8, [15], [26], [33], RCMP1.0033.0001.0033 @.0004, .0007-.0008.

⁸⁷⁶ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonino Di Pietro*, 8 [29], RCMP1.0033.0001.003 @3.0008.

⁸⁷⁷ See, eg, Un-tendered Prosecution Plea Hearing Summary, *R v Antonino Di Pietro*, undated, 4 [18], 11 [46], RCMP1.0033.0001.0033 @.0004, @.0011.

⁸⁷⁸ Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

Commission produced by Ms Gobbo⁸⁷⁹ and the CDPP,⁸⁸⁰ it appears that Ms Gobbo ultimately represented Mr Di Pietro at a bail application in August 2008, and informed her handler that she was doing so.⁸⁸¹ While she did not appear on his behalf at trial, the duration and extent of her representation of Mr Di Pietro remains unclear.

Informing or Assisting Police

511. Material before the Commission indicates that Ms Gobbo provided police with information in relation to Mr Di Pietro on a number of occasions after his arrest. For example, police records show that shortly after informing her handler, Mr Green, that she had met with Mr Di Pietro at the custody centre,⁸⁸² she told police about Mr Gatto's interest in Mr Di Pietro's proceeding,⁸⁸³ of her plans to have lunch with him,⁸⁸⁴ and of his enquiries about co-accused and restraining orders against him.⁸⁸⁵
512. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any other information directly concerning Di Pietro's case. However, it appears that her informing or assistance in relation to:
- 512.1. the bill of lading
 - 512.2. the Pacific International Apartments
 - 512.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Di Pietro,⁸⁸⁶ and ultimately to his conviction. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁸⁸⁷
513. Ms Gobbo appears to have failed to disclose to Mr Di Pietro that she had provided police with information in relation to Operation Inca and his co-accused, or that she continued to provide information to the police of possible adverse consequence to him or his case while representing him.

Submissions under the Terms of Reference in relation to Mr Di Pietro

514. It is submitted that it is open to the Commissioner to find that the case of Mr Di Pietro, being the indictment containing the charge in respect of which he was convicted⁸⁸⁸ may have been affected by the conduct of Ms Gobbo as a human

⁸⁷⁹ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 1 September 2008, 21, MIN.5000.7000.0103 @.0123.

⁸⁸⁰ Exhibit RC1920 List of persons for whom informant 3838 acted as legal representative in proceedings prosecuted by the CDPP between 1/01/1995 and 12/01/2009, 29 August 2008, CDP.0002.0001.0009.

⁸⁸¹ Exhibit RC0281 ICR2958 (033), 9 August 2008, 549, VPL.2000.0003.1289.

⁸⁸² Exhibit RC0281 ICR2958 (033), 8 August 2008, 547, VPL.2000.0003.1287.

⁸⁸³ Exhibit RC0281 ICR2958 (033), 8 August 2008, 548, VPL.2000.0003.1288; Exhibit RC0281 ICR2958 (033), 9 August 2008, 550, VPL.2000.0003.1290; Exhibit RC0281 ICR2958 (033), 11 August 2008, 552, VPL.2000.0003.1292.

⁸⁸⁴ Exhibit RC0281 ICR2958 (045), 6 November 2008, 699, VPL.2000.0003.1439.

⁸⁸⁵ Exhibit RC0281 ICR2958 (049), 15 December 2008, 772, VPL.2000.0003.1512.

⁸⁸⁶ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁸⁸⁷ See the Overview at [35]-[36].

⁸⁸⁸ Un-tendered Indictment, *R v Antonino Di Pietro*, 2 December 2013, RCMPI.0033.0001.00432 @_0001.

source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

515. The extent to which the case of Mr Di Pietro may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

516. First, Category 1A⁸⁸⁹ applies in that, in August 2008⁸⁹⁰ Ms Gobbo acted for Mr Di Pietro while she was a human source,⁸⁹¹ and did not disclose same to him.⁸⁹²

517. Secondly, Category 1B⁸⁹³ applies in that, before and during the period that Ms Gobbo acted for Mr Di Pietro in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.⁸⁹⁴

518. Thirdly, Category 2A⁸⁹⁵ applies in that evidence relied upon by the prosecution in Mr Di Pietro's case,⁸⁹⁶ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁸⁹⁷ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁸⁹⁸

519. Fourthly, Category 2B⁸⁹⁹ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [518] above and failed to disclose same to her client, Mr Di Pietro, thereby depriving him of the ability to object to the admission of that evidence.

520. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁹⁰⁰ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁹⁰¹

521. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.⁹⁰²

⁸⁸⁹ See Legal Principles Submissions at [249].

⁸⁹⁰ See above at [510].

⁸⁹¹ See Legal Principles Submissions at [20].

⁸⁹² See Legal Principles Submissions at [239].

⁸⁹³ See Legal Principles Submissions at [249].

⁸⁹⁴ See above at [511]-[512].

⁸⁹⁵ See Legal Principles Submissions at [249].

⁸⁹⁶ Such as the evidence referred to at [509] above.

⁸⁹⁷ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁸⁹⁸ As described in the Overview above at [57]-[58].

⁸⁹⁹ See Legal Principles Submissions at [249].

⁹⁰⁰ See Legal Principles Submissions at [210].

⁹⁰¹ See Legal Principles Submissions at [212]-[213].

⁹⁰² See Legal Principles Submissions at [320]-[329] and [307]-[309].

522. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

523. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁰³

523.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Di Pietro;

523.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Di Pietro, appropriate disclosure was made; or alternatively

523.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

524. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [523.1] were taken, and accordingly there was the potential for the right of Mr Di Pietro to a fair trial to have been interfered with.

525. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Di Pietro and/or his legal representatives.

526. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹⁰⁴

527. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹⁰⁵

⁹⁰³ See Legal Principles Submissions at [384] and [452]-[457].

⁹⁰⁴ See Legal Principles Submissions at [380]-[385].

⁹⁰⁵ See Legal Principles Submissions at [351], [362]-[373].

528. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹⁰⁶
529. Category 3A⁹⁰⁷ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
530. Category 3B⁹⁰⁸ applies in that, before and during the period that Ms Gobbo acted for Mr Di Pietro in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,⁹⁰⁹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
531. Category 4A⁹¹⁰ applies in that, as noted at paragraph [518] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
532. Category 4B⁹¹¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
533. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁰⁶ See Legal Principles Submissions at [351], [374].

⁹⁰⁷ See Legal Principles Submissions at [465].

⁹⁰⁸ See Legal Principles Submissions at [465].

⁹⁰⁹ See above at [511]-[512].

⁹¹⁰ See Legal Principles Submissions at [465].

⁹¹¹ See Legal Principles Submissions at [465].

CASE STUDY: PAUL PSAILA

Proceedings

534. Mr Paul Psaila was arrested on 7 April 2009.⁹¹² He was charged with trafficking a marketable quantity of MDMA between 18 June and 7 August 2008 (ie arising from *Operation Inca*).⁹¹³
535. Mr Psaila initially pleaded not guilty, but changed his plea to guilty in April 2012 following an adverse preliminary ruling on evidence.⁹¹⁴ He was sentenced on 6 July 2012 to a term of imprisonment of four years and nine months with a non-parole period of two years and nine months.⁹¹⁵

Material Considered by the Court

536. In sentencing Mr Psaila, the Court found the details of the offending to be as set out in the prosecution's summary of facts.⁹¹⁶ Evidence relied upon by the prosecution included:
- 536.1. communications between syndicate members,⁹¹⁷ including Messrs Psaila, Barbaro⁹¹⁸ and Ms Ropa⁹¹⁹ which may have been intercepted⁹²⁰
 - 536.2. at least one covertly observed meeting between Messrs Psaila and Barbaro⁹²¹
 - 536.3. covertly recorded conversations between syndicate members concerning Mr Psaila in the Carlton North townhouse⁹²²
537. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.⁹²³

⁹¹² Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 5 [24], RCMP.0033.0002.0100 @.0005.

⁹¹³ See Un-tendered Indictment, *R v Paul Psaila*, 16 December 2011, RCMP.0033.0002.0096.

⁹¹⁴ Un-tendered Prosecution Submissions on Sentence, *R v Paul Psaila*, 2, RCMP.0033.0002.0097 @.0002.

⁹¹⁵ Un-tendered Reasons for Sentence, *DPP v PP*, (County Court of Victoria, Judge Montgomery, 6 July 2012), 6 [28], RCMP.0033.0002.0098 @.0006 [Restricted].

⁹¹⁶ Un-tendered Reasons for Sentence, *DPP v PP*, (County Court of Victoria, Judge Montgomery, 6 July 2012), 2 [2], RCMP.0033.0002.0098 @.0002 [Restricted].

⁹¹⁷ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 3 [9], RCMP.0033.0002.0100 @.0003.

⁹¹⁸ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 2 [2], [5], [7], 4 [16], RCMP.0033.0002.0100 @.0002, .0004.

⁹¹⁹ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 4 [13], RCMP.0033.0002.0100 @.0004.

⁹²⁰ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 6 [24], RCMP.0033.0002.0100 @.0006.

⁹²¹ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 2 [8], RCMP.0033.0002.0100 @.0002.

⁹²² See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 5 [18], RCMP.0033.0002.0100 @.0005.

⁹²³ See, eg, Un-tendered Prosecution Summary of Facts, *R v Paul Psaila*, 20 June 2012, 3 [11], RCMP.0033.0002.0100 @.0003.

Ms Gobbo's Conduct in relation to Mr Psaila's Case

Representation

538. There is no material before the Commission to suggest that Ms Gobbo represented Mr Psaila at any stage.

Informing or Assisting Police

539. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Psaila's case. However, it appears that her informing or assistance in relation to:

539.1. the bill of lading

539.2. the Pacific International Apartments

539.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Psaila,⁹²⁴ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Psaila

540. It is submitted that it is open to the Commissioner to find that the case of Mr Psaila, being the indictment containing the charge in respect of which he was convicted⁹²⁵ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

541. The extent to which the case of Mr Psaila may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

542. Category 2A⁹²⁶ applies in that evidence relied upon by the prosecution in Mr Psaila's case,⁹²⁷ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁹²⁸ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹²⁹

543. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁹³⁰ where the causal link is

⁹²⁴ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁹²⁵ See Un-tendered Indictment, *R v Paul Psaila*, 16 December 2011, RCMPI.0033.0002.0096.

⁹²⁶ See Legal Principles Submissions at [249].

⁹²⁷ Such as the evidence referred to at [536] above.

⁹²⁸ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁹²⁹ As described in the Overview above at [57]-[58].

⁹³⁰ See Legal Principles Submissions at [210].

“tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁹³¹

544. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

545. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹³²

545.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Psaila;

545.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Psaila, appropriate disclosure was made; or alternatively

545.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

546. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [545.1] were taken, and accordingly there was the potential for the right of Mr Psaila to a fair trial to have been interfered with.

547. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Psaila and/or his legal representatives.

548. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹³³

549. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹³⁴

550. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹³⁵

⁹³¹ See Legal Principles Submissions at [212]-[213].

⁹³² See Legal Principles Submissions at [384] and [452]-[457].

⁹³³ See Legal Principles Submissions at [380]-[385].

⁹³⁴ See Legal Principles Submissions at [351], [362]-[373].

⁹³⁵ See Legal Principles Submissions at [351], [374].

551. Category 4A⁹³⁶ applies in that, as noted at paragraph [542] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
552. Category 4B⁹³⁷ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
553. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹³⁶ See Legal Principles Submissions at [465].

⁹³⁷ See Legal Principles Submissions at [465].

CASE STUDY: PASQUALE ROCCO SERGI

Proceedings

554. Mr Pasquale Rocco Sergi was arrested on 23 April 2009.⁹³⁸ He was charged with trafficking a commercial quantity of MDMA between 24 January and 8 May 2008 (ie arising from *Operation Inca*).⁹³⁹
555. Mr Sergi pleaded guilty on 14 June 2013.⁹⁴⁰ He was sentenced on 11 April 2014 to a term of imprisonment of 12 months, to be served by way of Intensive Corrections Order, to commence on 22 April 2014.⁹⁴¹

Material Considered by the Court

556. Evidence relied upon by the prosecution in Mr Sergi's case included records kept by Mr Barbaro, Ms Ropa, Messrs Zirilli, Agresta and other related accused,⁹⁴² and covertly observed telephone calls and meetings with and between related accused such as Messrs Barbaro and Zirilli.⁹⁴³

Ms Gobbo's Conduct in relation to Mr Sergi's Case

Representation

557. There is no material before the Commission to suggest that Ms Gobbo represented Mr Sergi at any stage.

Informing or Assisting Police

558. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Sergi's case. However, it appears that her informing or assistance in relation to:
- 558.1. the bill of lading
 - 558.2. the Pacific International Apartments
 - 558.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Sergi,⁹⁴⁴ and ultimately to his conviction.

⁹³⁸ See Un-tendered Prosecution Facts Sheet, *R v Pasquale Sergi*, undated, 1 [4], CDP.0036.0001.0004 @.0001.

⁹³⁹ See Un-tendered Prosecution Facts Sheet, *R v Pasquale Sergi*, undated, 5 [38], CDP.0036.0001.0004 @.0005.

⁹⁴⁰ See Un-tendered Prosecution Facts Sheet, *R v Pasquale Sergi*, undated, 5 [38], CDP.0036.0001.0004 @.0005.

⁹⁴¹ See Un-tendered Reasons for Sentence, *R v Pasquale Sergi* (District Court of New South Wales, Judge Hock, 11 April 2014), 1, CDP.0036.0001.0008 @.0001.

⁹⁴² See Un-tendered Prosecution Facts Sheet, *R v Pasquale Sergi*, undated, 2 [9]-[10], CDP.0036.0001.0004 @.0002.

⁹⁴³ See Un-tendered Prosecution Facts Sheet, *R v Pasquale Sergi*, undated, 2-3, [12]-[13], CDP.0036.0001.0004 @.0002-0003.

⁹⁴⁴ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

Submissions under the Terms of Reference in relation to Mr Sergi

559. It is submitted that it is open to the Commissioner to find that the case of Mr Sergi, being the charge in respect of which he was convicted may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.
560. The extent to which the case of Mr Sergi may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

561. Category 2A⁹⁴⁵ applies in that evidence relied upon by the prosecution in Mr Sergi's case,⁹⁴⁶ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁹⁴⁷ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹⁴⁸
562. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁹⁴⁹ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁹⁵⁰
563. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

564. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁵¹
- 564.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Sergi;

⁹⁴⁵ See Legal Principles Submissions at [249].

⁹⁴⁶ Such as the evidence referred to at [556]-[561] above.

⁹⁴⁷ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁹⁴⁸ As described in the Overview above at [57]-[58].

⁹⁴⁹ See Legal Principles Submissions at [210].

⁹⁵⁰ See Legal Principles Submissions at [212]-[213].

⁹⁵¹ See Legal Principles Submissions at [384] and [452]-[457].

- 564.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Sergi, appropriate disclosure was made; or alternatively
- 564.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
565. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [564.1] were taken, and accordingly there was the potential for the right of Mr Sergi to a fair trial to have been interfered with.
566. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Sergi and/or his legal representatives.
567. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹⁵²
568. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹⁵³
569. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹⁵⁴
570. Category 4A⁹⁵⁵ applies in that, as noted at paragraph [561] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
571. Category 4B⁹⁵⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
572. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁵² See Legal Principles Submissions at [380]-[385].

⁹⁵³ See Legal Principles Submissions at [351], [362]-[373].

⁹⁵⁴ See Legal Principles Submissions at [351], [374].

⁹⁵⁵ See Legal Principles Submissions at [249].

⁹⁵⁶ See Legal Principles Submissions at [249].

CASE STUDY: GRATIAN BRAN

Proceedings

573. Mr Gratian Bran was arrested on 8 August 2008⁹⁵⁷ and was charged with:
- 573.1. trafficking a commercial quantity of MDMA between 24 January and 18 March 2008 (ie arising from Operation Inca); and
 - 573.2. dealing with money of a value of \$1 million or more which was proceeds of crime between 24 February and 24 July 2008 (ie arising from Operation Inca).⁹⁵⁸
574. Mr Bran pleaded guilty in April 2013⁹⁵⁹ and was sentenced on 24 June 2013 in respect of both charges to a total effective sentence of seven years' imprisonment with a non-parole period of five years.⁹⁶⁰

Material Considered by the Court

575. In sentencing Mr Bran, the Court found the details of the offending to be as set out in the prosecution's summary of facts.⁹⁶¹ Evidence relied upon by the prosecution included:
- 575.1. telephone communications between Mr Bran and syndicate members including Mr Barbaro⁹⁶² and Ms Ropa⁹⁶³ which may have been intercepted;
 - 575.2. covertly observed meetings and activities involving Mr Bran and syndicate members;⁹⁶⁴
 - 575.3. covertly recorded conversations between syndicate members involving Mr Bran in the Carlton North townhouse,⁹⁶⁵ and
 - 575.4. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.⁹⁶⁶

⁹⁵⁷ See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 25 [15], RCMP.I.0033.0002.0052 @.0025.

⁹⁵⁸ See Un-tendered Indictment, *R v Gratian Bran*, 15 March 2013, RCMP.I.0033.0002.0055.

⁹⁵⁹ See, eg, Un-tendered Reasons for Sentence, *DPP v Gratian Bran* (County Court of Victoria, Judge Montgomery, 24 June 2013), 2 [1], RCMP.I.0033.0002.0054 @.0002 [Restricted].

⁹⁶⁰ See, eg, Un-tendered Reasons for Sentence, *DPP v Gratian Bran* (County Court of Victoria, Judge Montgomery, 24 June 2013), 5 [21]-[23], RCMP.I.0033.0002.0054 @.0005 [Restricted].

⁹⁶¹ Un-tendered Reasons for Sentence, *DPP v Gratian Bran* (County Court of Victoria, Judge Montgomery, 24 June 2013), 1 [2], RCMP.I.0033.0002.0054 @.0001 [Restricted].

⁹⁶² See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 19 [11], RCMP.I.0033.0002.0052 @.0019.

⁹⁶³ See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 23 [14], RCMP.I.0033.0002.0052 @.0023.

⁹⁶⁴ See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 9 [4], 15 [7], 20 [11], RCMP.I.0033.0002.0052 @.0009, .0015, .0020.

⁹⁶⁵ See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 11 [4], 14 [6], 22 [12]-[13], RCMP.I.0033.0002.0052 @.0011, .0014, .0022.

⁹⁶⁶ See, eg, Un-tendered Prosecution Summary of Facts, *R v Gratian Bran*, 20 June 2013, 2 [1], 14 [6], 24 [14], RCMP.I.0033.0002.0052 @.0002, .0014, .0024.

Ms Gobbo's Conduct in relation to Mr Bran's Case

Representation

576. There is no material before the Commission to suggest that Ms Gobbo represented Bran at any stage.

Informing or Assisting Police

577. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Bran's case. However, it appears that her informing or assistance in relation to:

577.1. the bill of lading

577.2. the Pacific International Apartments

577.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Bran,⁹⁶⁷ and ultimately to his convictions. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁹⁶⁸

Submissions under the Terms of Reference in relation to Mr Bran

578. It is submitted that it is open to the Commissioner to find that the case of Mr Bran, being the indictment containing the two charges in respect of which he was convicted⁹⁶⁹ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

579. The extent to which the case of Mr Bran may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

580. Category 2A⁹⁷⁰ applies in that evidence relied upon by the prosecution in Mr Bran's case,⁹⁷¹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁹⁷² may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹⁷³

581. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a

⁹⁶⁷ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁹⁶⁸ See the Overview at [35]-[36].

⁹⁶⁹ See Un-tendered Indictment, *R v Gratian Bran*, 15 March 2013, RCMPI.0033.0002.0055.

⁹⁷⁰ See Legal Principles Submissions at [249].

⁹⁷¹ Such as the evidence referred to at [575] above.

⁹⁷² Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁹⁷³ As described in the Overview above at [57]-[58].

matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,⁹⁷⁴ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.⁹⁷⁵

582. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

583. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:⁹⁷⁶

583.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Bran;

583.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Bran, appropriate disclosure was made; or alternatively

583.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

584. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [583.1] were taken, and accordingly there was the potential for the right of Mr Bran to a fair trial to have been interfered with.

585. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Bran and/or his legal representatives.

586. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.⁹⁷⁷

587. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.⁹⁷⁸

⁹⁷⁴ See Legal Principles Submissions at [210].

⁹⁷⁵ See Legal Principles Submissions at [212]-[213].

⁹⁷⁶ See Legal Principles Submissions at [384] and [452]-[457].

⁹⁷⁷ See Legal Principles Submissions at [380]-[385].

⁹⁷⁸ See Legal Principles Submissions at [351], [362]-[373].

588. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.⁹⁷⁹
589. Category 4A⁹⁸⁰ applies in that, as noted at paragraph [580] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
590. Category 4B⁹⁸¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
591. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

⁹⁷⁹ See Legal Principles Submissions at [351], [374].

⁹⁸⁰ See Legal Principles Submissions at [465].

⁹⁸¹ See Legal Principles Submissions at [465].

CASE STUDY: ALAN SARIC

Proceedings

592. Mr Alan Saric was arrested on 8 August 2008.⁹⁸² He was charged with trafficking a commercial quantity of MDMA between 27 May and 7 August 2008 (ie arising from Operation Inca).⁹⁸³
593. Mr Saric pleaded guilty in November 2011,⁹⁸⁴ and was sentenced on 11 April 2012 to six years' imprisonment with a non-parole period of three and half years.⁹⁸⁵ He subsequently sought to appeal his sentence and was refused leave to do so on 14 August 2012.⁹⁸⁶

Material Considered by the Court

594. In sentencing Mr Saric, the Court found the details of the offending to be as set out in the prosecution's summary of facts.⁹⁸⁷ Evidence relied upon by the prosecution included:
- 594.1. telephone communications between Mr Saric and Ms Ropa⁹⁸⁸ which may have been intercepted;
 - 594.2. covertly observed activities of Ms Ropa in connection with Mr Saric;⁹⁸⁹
 - 594.3. covertly recorded conversations between syndicate members concerning Mr Saric in the Carlton North townhouse,⁹⁹⁰ and
 - 594.4. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.⁹⁹¹

⁹⁸² See, eg, Un-tendered Prosecution Summary of Facts, *R v Alan Saric*, 2 [9], RCMPPI.0033.0002.0106 @.0002.

⁹⁸³ Un-tendered Indictment, *R v Alan Saric*, 29 November 2011, RCMPPI.0033.0002.0102.

⁹⁸⁴ See, eg, Un-tendered Prosecution Summary of Facts, *R v Alan Saric*, 10 [74], RCMPPI.0033.0002.0106 @.0010.

⁹⁸⁵ See, eg, Un-tendered Reasons for Sentence, *DPP v Alan Saric* [2012] VCC, 5 [31], RCMPPI.0033.0002.0105 @.0005 [Restricted].

⁹⁸⁶ See, eg, Un-tendered Appeal Judgment, *Alan Saric v The Queen* (Supreme Court of Victoria, Court of Appeal, Harper JA, 14 June 2012), 5 [31], RCMPPI.0033.0002.0105 @.0005 [Restricted].

⁹⁸⁷ See, eg, Un-tendered Reasons for Sentence, *DPP v Alan Saric* [2012] VCC, 2 [2], RCMPPI.0033.0002.0105 @.0002 [Restricted].

⁹⁸⁸ See, eg, Un-tendered Reasons for Sentence, *DPP v Alan Saric* [2012] VCC, 3 [13], 6 [16], 8 [35]-[36], RCMPPI.0033.0002.0105 @.0003, @.0006, @.0008 [Restricted].

⁹⁸⁹ See, eg, Un-tendered Reasons for Sentence, *DPP v Alan Saric* [2012] VCC, 2 [8], RCMPPI.0033.0002.0105 @.0002 [Restricted].

⁹⁹⁰ See, eg, Un-tendered Reasons for Sentence, *DPP v Alan Saric* [2012] VCC, 2 [21], 6-7 [38]-[43], 8 [53], RCMPPI.0033.0002.0105 @.0002, @.0005-.0007, @.0008 [Restricted].

⁹⁹¹ See, eg, Un-tendered Reasons for Sentence, *R v Alan Saric* (County Court of Victoria, Judge Montgomery, 11 April 2011), 11 April 2011, 4-5 [21]-[25], RCMPPI.0033.0002.0105 @.0004-.0005 [Restricted].

Ms Gobbo's Conduct in relation to Mr Saric's Case

Representation

595. There is no material before the Commission to suggest that Ms Gobbo represented Mr Saric at any stage.

Informing or Assisting Police

596. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Saric's case. However, it appears that her informing or assistance in relation to:

596.1. the bill of lading

596.2. the Pacific International Apartments

596.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Saric,⁹⁹² and ultimately to his conviction. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.⁹⁹³

Submissions under the Terms of Reference in relation to Mr Saric

597. It is submitted that it is open to the Commissioner to find that the case of Mr Saric, being the indictment containing the charge in respect of which he was convicted⁹⁹⁴ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

598. The extent to which the case of Mr Saric may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

599. Category 2A⁹⁹⁵ applies in that evidence relied upon by the prosecution in Mr Saric's case,⁹⁹⁶ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,⁹⁹⁷ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.⁹⁹⁸

600. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise

⁹⁹² See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

⁹⁹³ See the Overview at [35]-[36].

⁹⁹⁴ Un-tendered Indictment, *R v Alan Saric*, 29 November 2011, RCMPPI.0033.0002.0102.

⁹⁹⁵ See Legal Principles Submissions at [249].

⁹⁹⁶ Such as the evidence referred to at [594] above.

⁹⁹⁷ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

⁹⁹⁸ As described in the Overview above at [57]-[58].

through various steps and still enliven section 138,⁹⁹⁹ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁰⁰⁰

601. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

602. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁰⁰¹

602.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Saric;

602.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Saric, appropriate disclosure was made; or alternatively

602.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

603. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [602.1] were taken, and accordingly there was the potential for the right of Mr Saric to a fair trial to have been interfered with.

604. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Saric and/or his legal representatives.

605. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁰⁰²

606. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁰⁰³

607. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁰⁰⁴

⁹⁹⁹ See Legal Principles Submissions at [210].

¹⁰⁰⁰ See Legal Principles Submissions at [212]-[213].

¹⁰⁰¹ See Legal Principles Submissions at [384] and [452]-[457].

¹⁰⁰² See Legal Principles Submissions at [380]-[385].

¹⁰⁰³ See Legal Principles Submissions at [351], [362]-[373].

¹⁰⁰⁴ See Legal Principles Submissions at [351], [374].

608. Category 4A¹⁰⁰⁵ applies in that, as noted at paragraph [599] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
609. Category 4B¹⁰⁰⁶ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
610. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁰⁰⁵ See Legal Principles Submissions at [465].

¹⁰⁰⁶ See Legal Principles Submissions at [465].

CASE STUDY: FRANK MOLLUSO

Proceedings

611. Mr Frank Molluso was arrested on 7 April 2009.¹⁰⁰⁷ He was charged with trafficking a commercial quantity of MDMA between 5 February and 7 August 2008 (ie arising from *Operation Inca*).¹⁰⁰⁸
612. Mr Molluso ultimately pleaded guilty in February 2013,¹⁰⁰⁹ and was sentenced on 8 April 2013 to eight and a half years' imprisonment with a non-parole period of six years.¹⁰¹⁰

Material Considered by the Court

613. In sentencing Mr Molluso, the Court found the details of the offending to be as set out in the prosecution's summary of facts.¹⁰¹¹ Evidence relied upon by the prosecution included:
- 613.1. telephone communications between syndicate members concerning¹⁰¹² or involving Mr Molluso¹⁰¹³ which may have been intercepted;
 - 613.2. apparently observed activities of syndicate members under surveillance in connection with Mr Molluso's business;¹⁰¹⁴
 - 613.3. covertly recorded conversations between syndicate members in the Carlton North townhouse,¹⁰¹⁵ and
 - 613.4. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.¹⁰¹⁶
614. It is to be noted that the prosecution relied (in part) on the purity and weight of MDMA tablets seized in the tomato tins shipment (ie Operation Bootham Moko) and following the arrests of syndicate members in 2008 in calculating the minimum commercial quantity for the purpose of the charge.¹⁰¹⁷ This may be of some significance to the extent to which Ms Gobbo's conduct in relation to

¹⁰⁰⁷ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 15 [21], RCMP.I.0033.0002.0082 @.0015.

¹⁰⁰⁸ Un-tendered Indictment, *R v Frank Molluso*, 8 February 2013, RCMP.I.0033.0002.0081.

¹⁰⁰⁹ See, eg, Un-tendered Prosecution Submissions on Sentence, *R v Frank Molluso*, 7 April 2013, 5, RCMP.I.0033.0002.0083 @.0005.

¹⁰¹⁰ Un-tendered Reasons for Sentence, *DPP v Frank Molluso* (County Court of Victoria, Judge Montgomery, 8 April 2013), 5 [29], RCMP.I.0033.0002.0084 @.0005 [Restricted].

¹⁰¹¹ Un-tendered Reasons for Sentence, *DPP v Frank Molluso* (County Court of Victoria, Judge Montgomery, 8 April 2013), 2 [2], RCMP.I.0033.0002.0084 @.0002 [Restricted].

¹⁰¹² See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 9,10, [11], [12], RCMP.I.0033.0002.0082 @.0009,.0010.

¹⁰¹³ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 10 [12], 12 [17], RCMP.I.0033.0002.0082 @.0010, .0013.

¹⁰¹⁴ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 11 [14], 12 [16], RCMP.I.0033.0002.0082 @.0011, .0012.

¹⁰¹⁵ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 11-12 [15], 15 [18]-[19], RCMP.I.0033.0002.0082 @.0011-.0012,.0015..

¹⁰¹⁶ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 6 [8], 13 [16], 15 [19], RCMP.I.0033.0002.0082 @.0006, @.0013, .0015.

¹⁰¹⁷ See, eg, Un-tendered Prosecution Summary of Facts, *R v Frank Molluso*, 4 April 2013, 6,7,13, [8], [13], RCMP.I.0033.0002.0082 @.0006, @.0007, .0013.

Operation Bootham Moko may have infected the prosecution of Mr Molluso's Operation Inca charge.

Ms Gobbo's Conduct in relation to Mr Molluso's Case

Representation

615. There is no material before the Commission to suggest that Ms Gobbo represented Mr Molluso at any stage.

Informing or Assisting Police

616. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Molluso's case. However, it appears that her informing or assistance in relation to:

616.1. the bill of lading

616.2. the Pacific International Apartments

616.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Molluso,¹⁰¹⁸ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Molluso

617. It is submitted that it is open to the Commissioner to find that the case of Mr Molluso, being the indictment containing the charge in respect of which he was convicted¹⁰¹⁹ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

618. The extent to which the case of Mr Molluso may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

619. Category 2A¹⁰²⁰ applies in that evidence relied upon by the prosecution in Mr Molluso's case,¹⁰²¹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹⁰²² may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁰²³

620. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise

¹⁰¹⁸ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹⁰¹⁹ Un-tendered Indictment, *R v Frank Molluso*, 8 February 2013, RCMP1.0033.0002.0081.

¹⁰²⁰ See Legal Principles Submissions at [249].

¹⁰²¹ Such as the evidence referred to at [613]-[614] above.

¹⁰²² Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹⁰²³ As described in the Overview above at [57]-[58].

through various steps and still enliven section 138,¹⁰²⁴ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁰²⁵

621. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

622. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁰²⁶

622.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Molluso;

622.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Molluso, appropriate disclosure was made; or alternatively

622.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

623. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [622.1] were taken, and accordingly there was the potential for the right of Mr Molluso to a fair trial to have been interfered with.

624. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Molluso and/or his legal representatives.

625. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁰²⁷

626. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹⁰²⁸

627. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹⁰²⁹

¹⁰²⁴ See Legal Principles Submissions at [210].

¹⁰²⁵ See Legal Principles Submissions at [212]-[213].

¹⁰²⁶ See Legal Principles Submissions at [384] and [452]-[457].

¹⁰²⁷ See Legal Principles Submissions at [380]-[385].

¹⁰²⁸ See Legal Principles Submissions at [351], [362]-[373].

¹⁰²⁹ See Legal Principles Submissions at [351], [374].

628. Category 4A¹⁰³⁰ applies in that, as noted at paragraph [619] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
629. Category 4B¹⁰³¹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
630. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁰³⁰ See Legal Principles Submissions at [465].

¹⁰³¹ See Legal Principles Submissions at [465].

CASE STUDY: MR MADDOX (A PSEUDONYM)

Proceedings

631. There are two relevant cases of Mr Maddox. He was first arrested on 6 February 2008 and charged with dealing in property suspected of being proceeds of crime, after police intercepted and searched his car, acting on information received from the AFP,¹⁰³² and discovered a cash amount of \$119,950.¹⁰³³ He was sentenced in the Magistrates' Court to nine month's imprisonment partially suspended with an effective term of five months.¹⁰³⁴ (the Proceeds of Crime case).
632. Mr Maddox was arrested again on 23 April 2008 and charged with trafficking a marketable quantity of MDMA between 1 and 6 February 2008 (ie arising from *Operation Inca*)¹⁰³⁵ He pleaded guilty on 30 April 2012 following an adverse preliminary ruling on evidence¹⁰³⁶ (the Inca case).
633. Mr Maddox subsequently appealed the sentence imposed in relation to the Proceeds of Crime case which appeal was dealt with by the Court on 7 June 2012 simultaneously with his sentencing in relation to the Inca case.¹⁰³⁷ The County Court allowed his appeal, setting aside the order of the Magistrates' Court,¹⁰³⁸ and sentenced him to three months' imprisonment, served concurrently¹⁰³⁹ with the sentence imposed in relation to the Inca case, being 14 months' imprisonment, and that he be released after a period of 6 months on a recognisance of \$250 to be of good behaviour for two years.¹⁰⁴⁰

Material Considered by the Court

634. Given the manner in which Mr Maddox's Proceeds of Crime case proceeded, there is little material before the Commission through which the Court's considerations may be ascertained.¹⁰⁴¹

¹⁰³² See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 21 [51], RCMPI.0033.0002.0071 @.0021.

¹⁰³³ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 22 [55], RCMPI.0033.0002.0071 @.0022.

¹⁰³⁴ See, eg, Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 2 [4], RCMPI.0033.0002.0073 @.0002.

¹⁰³⁵ See Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 1-2, RCMPI.0033.0002.0071 @.0001-.0002; Un-tendered Indictment, *R v Mr Maddox*, 14 February 2012, RCMPI.0033.0002.0069.

¹⁰³⁶ See, eg, Un-tendered Prosecution Submissions on Sentence, *R v Mr Maddox*, 1 June 2012, 2, RCMPI.0033.0002.0072 @.0002.

¹⁰³⁷ See, eg, Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 2 [3], RCMPI.0033.0002.0073 @.0002.

¹⁰³⁸ Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 2 [5], RCMPI.0033.0002.0073 @.0002.

¹⁰³⁹ Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 7 [38], RCMPI.0033.0002.0073 @.0007.

¹⁰⁴⁰ Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 6 [31], RCMPI.0033.0002.0073 @.0006.

¹⁰⁴¹ See Legal Principles Submissions at [21].

635. In sentencing Mr Maddox in relation to the Inca case, the Court found the details of the offending to be as set out in the prosecution's opening.¹⁰⁴² It was the prosecution's case that Mr Maddox's trafficking consisted of transporting MDMA tablets by road on 4 and 5 February 2008 in joint criminal enterprise with Mr Barbaro and others.¹⁰⁴³ The prosecution also contended that the offending the subject of the first charge was integral to the offending the subject of the second,¹⁰⁴⁴ in that Operation Inca investigators observed related conduct of Mr Maddox and co-accused including Messrs Barbaro, Potter and Zirilli,¹⁰⁴⁵ and that the interception and search of Mr Maddox's car, and the resultant charge was due to information provided by the AFP.¹⁰⁴⁶ The amount seized from Mr Maddox's car corroborated further intercepted communications between co-accused including Messrs Barbaro and Zirilli.¹⁰⁴⁷
636. Evidence relied upon by the prosecution included:
- 636.1. telephone communications between syndicate members concerning¹⁰⁴⁸ or involving Mr Maddox¹⁰⁴⁹ which may have been intercepted;
 - 636.2. covertly observed meetings between Mr Maddox and other members of the syndicate, including Mr Barbaro;¹⁰⁵⁰
 - 636.3. covertly observed activities¹⁰⁵¹ and recorded conversations¹⁰⁵² involving Mr Maddox and others under surveillance including Messrs Barbaro and Zirilli; and
 - 636.4. detailed financial records of drug trafficking maintained by Mr Barbaro which were seized from the Carlton North townhouse following his arrest.¹⁰⁵³

Ms Gobbo's Conduct in relation to Mr Maddox's Cases

Representation

637. While there are no formal records of Ms Gobbo's representation of Mr Maddox in relation to either the Proceeds of Crime or the Inca cases, other material

¹⁰⁴² Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 2 [2], RCMP.I.0033.0002.0073 @.0002.

¹⁰⁴³ See Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, RCMP.I.0033.0002.0071.

¹⁰⁴⁴ See, eg, Un-tendered Reasons for Sentence, *R v Mr Maddox*, (County Court of Victoria, Judge Montgomery, 7 June 2012), 7 June 2012, 6 [26], RCMP.I.0033.0002.0073 @.0006.

¹⁰⁴⁵ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 20-21 [47]-[51], RCMP.I.0033.0002.0071 @.0020-.0021.

¹⁰⁴⁶ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 21 [51], RCMP.I.0033.0002.0071 @.0021.

¹⁰⁴⁷ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 22 [56]-[57], RCMP.I.0033.0002.0071 @.0022.

¹⁰⁴⁸ See eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 5 [12]-[13], RCMP.I.0033.0002.0071 @.0005, @.0007.

¹⁰⁴⁹ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 17 [30], 19 [44]-[46], 20-22 [58], RCMP.I.0033.0002.0071 @.0017, .0019, .0020, .0022.

¹⁰⁵⁰ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 3 [10], 12 [20], 22 [61], RCMP.I.0033.0002.0071 @.0003, .0012, .0022.

¹⁰⁵¹ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 5 [12(d)], 10-11 [15], 16 [28], 21 [50], RCMP.I.0033.0002.0071 @.0005, .0010-.0011, .0016, .0021.

¹⁰⁵² See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 10-11 [15], RCMP.I.0033.0002.0071 @.0010-.0011.

¹⁰⁵³ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 23-24 [63], RCMP.I.0033.0002.0071 @.0023-.0024.

before the Commission as described in paragraph [638] below, indicates that Ms Gobbo had familiarity with Mr Maddox's matters and was in communication with him about his cases between March and September 2008, which period traversed both cases.

Informing or Assisting Police

638. Police records produced to the Commission record that following Mr Maddox's first arrest and charge in February 2008, Ms Gobbo informed police that Mr Karam had told her that Mr Maddox was a "runner" for Karam and the people from Griffith, and had asked her to represent Mr Maddox in relation to the first charge,¹⁰⁵⁴ which defence Mr Karam appears to have funded.¹⁰⁵⁵ She told police that she had access to Mr Maddox's brief¹⁰⁵⁶ had listened to his record of interview,¹⁰⁵⁷ and provided police with Mr Maddox's version of events the day he was arrested,¹⁰⁵⁸ including his alleged admissions to her,¹⁰⁵⁹ and the "holes" she could see in Mr Maddox's brief.¹⁰⁶⁰ She continued to provide further updates, including upcoming court dates.¹⁰⁶¹ She also provided updates as to defence strategy and considerations, including the prosecutor's public interest immunity concerns with subpoenas Ms Gobbo wished to issue,¹⁰⁶² and her thoughts on suggested alibis in Mr Maddox's defence.¹⁰⁶³

639. In addition, on the basis of material before the Commission, it appears that her informing or assistance in relation to:

639.1. the bill of lading

639.2. the Pacific International Apartments

639.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Maddox,¹⁰⁶⁴ and ultimately to his conviction in relation to, at least, the Inca case, and possibly to his identification by the AFP for his interception by Victoria Police in relation to the Proceeds of Crime case.¹⁰⁶⁵

Submissions under the Terms of Reference in relation to Mr Maddox

640. It is submitted that it is open to the Commissioner to find that both the Proceeds of Crime and Inca cases of Mr Maddox may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria

¹⁰⁵⁴ Exhibit RC0281 ICR2958 (010), 21 March 2008, 115, VPL.2000.0003.0855.

¹⁰⁵⁵ Exhibit RC0281 ICR2958 (021), 29 May 2008, 368, VPL.2000.0003.1108; Exhibit RC0281 ICR2958 (023), 12 June 2008, 425, VPL.2000.0003.1165.

¹⁰⁵⁶ See, eg, Exhibit RC0281 ICR2958 (021), 28 May 2008, 366, VPL.2000.0003.1106; Exhibit RC0281 ICR2958 (037), 6 September 2008, 588, VPL.2000.0003.1328.

¹⁰⁵⁷ Exhibit RC0281 ICR2958 (010), 21 March 2008, 116, VPL.2000.0003.0856.

¹⁰⁵⁸ See, eg, Exhibit RC0281 ICR2958 (021), 28 May 2008, 368, VPL.2000.0003.1108.

¹⁰⁵⁹ Exhibit RC0281 ICR2958 (037), 6 September 2008, 588, VPL.2000.0003.1328.

¹⁰⁶⁰ Exhibit RC0281 ICR2958 (021), 28 May 2008, 366, VPL.2000.0003.1106.

¹⁰⁶¹ Exhibit RC0281 ICR2958 (023), 12 June 2008, 425, VPL.2000.0003.1165.

¹⁰⁶² Exhibit RC0281 ICR2958 (021), 29 May 2008, 368, VPL.2000.0003.1108.

¹⁰⁶³ Exhibit RC0281 ICR2958 (021), 29 May 2008, 368, VPL.2000.0003.1108; See also Exhibit RC0281 ICR2958 (010), 21 March 2008, 115, VPL.2000.0003.0855.

¹⁰⁶⁴ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹⁰⁶⁵ See, eg, Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 21, [51], RCMPI.0033.0002.0071 @.0021.

Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

641. The extent to which the cases of Mr Maddox may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

642. First, Category 1A¹⁰⁶⁶ applies in that, in March and September 2008¹⁰⁶⁷ Ms Gobbo appears to have acted for Mr Maddox while she was a human source,¹⁰⁶⁸ and did not disclose same to him.¹⁰⁶⁹
643. Secondly, Category 1B¹⁰⁷⁰ applies in that, before and during the period that Ms Gobbo acted for Mr Maddox in relation to the cases, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹⁰⁷¹
644. Thirdly, Category 2A¹⁰⁷² applies in that evidence relied upon by the prosecution in Mr Maddox's Inca case;¹⁰⁷³ and the interception and arrest of Mr Maddox by members of Victoria Police in relation to the Proceeds of Crime case, which was on account of information provided by the AFP, who were at the time actively monitoring his movements and interactions with members of the Barbaro syndicate,¹⁰⁷⁴ was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹⁰⁷⁵ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹⁰⁷⁶
645. Fourthly, Category 2B¹⁰⁷⁷ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [644] above and failed to disclose same to her client, Mr Maddox, thereby depriving him of the ability to object to the admission of that evidence.
646. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹⁰⁷⁸ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹⁰⁷⁹

¹⁰⁶⁶ See Legal Principles Submissions at [249].

¹⁰⁶⁷ See above at [637]-[638].

¹⁰⁶⁸ See Legal Principles Submissions at [20].

¹⁰⁶⁹ See Legal Principles Submissions at [239].

¹⁰⁷⁰ See Legal Principles Submissions at [249].

¹⁰⁷¹ See above at [638]-[639].

¹⁰⁷² See Legal Principles Submissions at [249].

¹⁰⁷³ Such as the evidence referred to at [635]-[636] above.

¹⁰⁷⁴ See above at [631]; See, also Un-tendered Crown Plea Opening, *R v Mr Maddox*, 14 February 2012, 21 [51], RCMPPI.0033.0002.0071 @.0021.

¹⁰⁷⁵ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹⁰⁷⁶ As described in the Overview above at [57]-[58].

¹⁰⁷⁷ See Legal Principles Submissions at [249].

¹⁰⁷⁸ See Legal Principles Submissions at [210].

¹⁰⁷⁹ See Legal Principles Submissions at [212]-[213].

647. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹⁰⁸⁰
648. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

649. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹⁰⁸¹
- 649.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Maddox;
 - 649.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Maddox, appropriate disclosure was made; or alternatively
 - 649.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
650. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [649.1] were taken, and accordingly there was the potential for the right of Mr Maddox to a fair trial to have been interfered with.
651. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Maddox and/or his legal representatives.
652. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹⁰⁸²
653. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court.

¹⁰⁸⁰ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹⁰⁸¹ See Legal Principles Submissions at [384] and [452]-[457].

¹⁰⁸² See Legal Principles Submissions at [380]-[385].

It does not matter whether the prosecutors were unaware of the relevant information.¹⁰⁸³

654. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial or guilty plea.¹⁰⁸⁴
655. Category 3A¹⁰⁸⁵ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
656. Category 3B¹⁰⁸⁶ applies in that, applies in that, before and during the period that Ms Gobbo acted for Mr Maddox in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,¹⁰⁸⁷ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
657. Category 4A¹⁰⁸⁸ applies in that, as noted at paragraph [644] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
658. Category 4B¹⁰⁸⁹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
659. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹⁰⁸³ See Legal Principles Submissions at [351], [362]-[373].

¹⁰⁸⁴ See Legal Principles Submissions at [351], [374].

¹⁰⁸⁵ See Legal Principles Submissions at [465].

¹⁰⁸⁶ See Legal Principles Submissions at [465].

¹⁰⁸⁷ See above at [638]-[639].

¹⁰⁸⁸ See Legal Principles Submissions at [465].

¹⁰⁸⁹ See Legal Principles Submissions at [465].

CASE STUDY: MR EDDINGTON (A PSEUDONYM)

Proceedings

660. Mr Eddington was arrested on 23 April 2009.¹⁰⁹⁰ He was charged with trafficking a marketable quantity of MDMA between 1 and 6 February 2008 (ie arising from Operation Inca).¹⁰⁹¹ Mr Eddington pleaded guilty¹⁰⁹² and was sentenced on 26 September 2011 to two and a half years' imprisonment, to be released after serving 15 months and a recognisance of \$250 to be of good behaviour for two years.¹⁰⁹³

Material Considered by the Court

661. In sentencing Mr Eddington, the Court found the details of the offending to be as set out in the prosecution's summary of facts,¹⁰⁹⁴ and noted that the prosecution's case was that he had aided and abetted Mr Maddox's offending.¹⁰⁹⁵ Evidence relied upon by the prosecution included:

- 661.1. communications between Mr Eddington and syndicate members including Messrs Barbaro¹⁰⁹⁶ and Zirilli¹⁰⁹⁷ which may have been intercepted; and
- 661.2. covertly observed activity including meetings between Mr Eddington and other syndicate members under surveillance such as Messrs Barbaro, Zirilli, Bran, Maddox, Pasquale Sergi,¹⁰⁹⁸ some of which were recorded.¹⁰⁹⁹

Ms Gobbo's Conduct in relation to Mr Eddington's Case

Representation

662. There is no material before the Commission to suggest that Ms Gobbo represented Mr Eddington at any stage.

¹⁰⁹⁰ Un-tendered Summary of Facts, *R v Mr Eddington*, undated, 17, RCMP.0033.0002.0059 @.0017.

¹⁰⁹¹ See Un-tendered Indictment, *R v Mr Eddington*, undated, RCMP.0033.0002.0057.

¹⁰⁹² Un-tendered Reasons for Sentence *DPP v Mr Eddington* (County Court of Victoria, Judge Parsons, 26 September 2011) 2, [1], RCMP.0033.0002.0061 @.0002.

¹⁰⁹³ Un-tendered Reasons for Sentence *DPP v Mr Eddington* (County Court of Victoria, Judge Parsons, 26 September 2011) 7, [25], RCMP.0033.0002.0061 @.0007.

¹⁰⁹⁴ Un-tendered Reasons for Sentence *DPP v Mr Eddington* (County Court of Victoria, Judge Parsons, 26 September 2011) 2, [3], RCMP.0033.0002.0061 @.0002.

¹⁰⁹⁵ Un-tendered Reasons for Sentence *DPP v Mr Eddington* (County Court of Victoria, Judge Parsons, 26 September 2011) 2, [2], RCMP.0033.0002.0061 @.0002.

¹⁰⁹⁶ See, eg, Un-tendered Summary of Facts, *R v Mr Eddington*, undated, 3,7, RCMP.0033.0002.0059 @.0003, .0007.

¹⁰⁹⁷ See, eg, Un-tendered Summary of Facts, *R v Mr Eddington*, undated, 3,7, RCMP.0033.0002.0059 @.0003, .0007.

¹⁰⁹⁸ See, eg, Un-tendered Summary of Facts, *R v Mr Eddington*, undated, 2,4-6, 11-12, 17, RCMP.0033.0002.0059 @.0002, .0004-.0006, .0011-.0012, .0017.

¹⁰⁹⁹ See, eg, Un-tendered Summary of Facts, *R v Mr Eddington*, undated, 9-10, RCMP.0033.0002.0059 @.0009-.0010.

Informing or Assisting Police

663. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Eddington's case. However, it appears that her informing or assistance in relation to:

663.1. the bill of lading

663.2. the Pacific International Apartments

663.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Eddington,¹¹⁰⁰ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Eddington

664. It is submitted that it is open to the Commissioner to find that the case of Mr Eddington, being the indictment containing the charge in respect of which he was convicted¹¹⁰¹ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

665. The extent to which the case of Mr Eddington may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

666. Category 2A¹¹⁰² applies in that evidence relied upon by the prosecution in Mr Eddington's case,¹¹⁰³ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹¹⁰⁴ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹¹⁰⁵

667. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹¹⁰⁶ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹¹⁰⁷

668. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members

¹¹⁰⁰ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹¹⁰¹ See Un-tendered Indictment, *R v Mr Eddington*, undated, RCMP1.0033.0002.0057.

¹¹⁰² See Legal Principles Submissions at [249].

¹¹⁰³ Such as the evidence referred to at [661] above

¹¹⁰⁴ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹¹⁰⁵ As described in the Overview above at [57]-[58].

¹¹⁰⁶ See Legal Principles Submissions at [210].

¹¹⁰⁷ See Legal Principles Submissions at [212]-[213].

and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

669. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹¹⁰⁸
- 669.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Eddington;
 - 669.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Eddington, appropriate disclosure was made; or alternatively
 - 669.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
670. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [669.1] were taken, and accordingly there was the potential for the right of Mr Eddington to a fair trial to have been interfered with.
671. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Eddington and/or his legal representatives.
672. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹¹⁰⁹
673. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹¹¹⁰
674. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹¹¹¹
675. Category 4A¹¹¹² applies in that, as noted at [666] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

¹¹⁰⁸ See Legal Principles Submissions at [384] and [452]-[457].

¹¹⁰⁹ See Legal Principles Submissions at [384] and [452]-[457].

¹¹¹⁰ See Legal Principles Submissions at [351], [362]-[373].

¹¹¹¹ See Legal Principles Submissions at [351], [374].

¹¹¹² See Legal Principles Submissions at [465].

676. Category 4B¹¹¹³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
677. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹¹¹³ See Legal Principles Submissions at [465].

CASE STUDY: FADL MAROUN

Proceedings

678. Mr Fadl Maroun was arrested on 13 August 2008.¹¹¹⁴ He was relevantly charged with trafficking in a commercial quantity of MDMA between 10 May and 6 August 2008 (ie arising from Operation Cardinia).¹¹¹⁵
679. Mr Maroun pleaded guilty¹¹¹⁶ and was sentenced on 25 June 2015 to five years and nine months' imprisonment, with a non-parole period of three years and three months.¹¹¹⁷ He unsuccessfully sought leave to appeal his sentence in November 2015.¹¹¹⁸

Material Considered by the Court

680. In sentencing Mr Maroun, the Court found the details of the offending to be as set out in the prosecution's summary.¹¹¹⁹ Evidence relied upon by the prosecution included:
- 680.1. intercepted telephone communications between Mr Maroun and other related-accused including Mr Karam;¹¹²⁰
 - 680.2. intercepted telephone communications between Mr Karam, undercover police officers,¹¹²¹ and Mr Barbaro¹¹²² in relation to Mr Maroun's trafficking activities;
 - 680.3. covertly observed activities of Mr Maroun in association with related accused such as Messrs Karam,¹¹²³ Barbaro (or a representative of him),¹¹²⁴ and Ms Ropa;¹¹²⁵ and

¹¹¹⁴ Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 23 [79]. RCMPI.0033.0002.0078 @.0023

¹¹¹⁵ See Un-tendered Indictment, *R v Rob Karam & Fadl Maroun*, undated, (RCMPI.0033.0002.0076. Note that Mr Maroun was initially also charged with conspiracy to import a border-controlled precursor, and was tried in relation to that charge together with Mr Karam. However the jury in that trial was discharged on 29 May 2015 after failing to reach a unanimous verdict, and that charge was subsequently discontinued: See, eg, Un-tendered Sworn Affidavit of Andrea Simone Pavleka, 23 April 2019, Annexure ASP002.2, 3. RCMPI.0009.0002.0109 @.0007.

¹¹¹⁶ *DPP v Fadl Maroun* [2015] VCC 871, [1].

¹¹¹⁷ *DPP v Fadl Maroun* [2015] VCC 871, [18].

¹¹¹⁸ Un-tendered Reasons for Sentence, *Fadl Maroun v The Queen* (Unreported, Supreme Court of Victoria, Court of Appeal, Priest JA, 5 November 2015), RCMPI.0033.0002.0074.

¹¹¹⁹ Un-tendered Reasons for Sentence, *CDPP v Fadl Maroun* (County Court of Victoria, Judge Montgomery, 25 June 2015), 2 [2], RCMPI.0033.0002.0080 @.0002.

¹¹²⁰ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 12-13, [37], [41]-[42], [47], RCMPI.0033.0002.0078 @.0012,.0013.

¹¹²¹ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 10 [27], 12 [37], 15 [37], [50]. RCMPI.0033.0002.0078 @.0010,.0012,.0015.

¹¹²² See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 11, [34]. RCMPI.0033.0002.0078 @.0011.

¹¹²³ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 11, 14 [33],[48]. RCMPI.0033.0002.0078 @.0011, .0014.

¹¹²⁴ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 11, [33]. RCMPI.0033.0002.0078 @.0011.

¹¹²⁵ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 14, [49]. RCMPI.0033.0002.0078 @.0014.

- 680.4. covertly observed and/or recorded communications and meetings involving Mr Maroun and undercover police officers.¹¹²⁶

Ms Gobbo's Conduct in relation to Mr Maroun's Case

Representation

681. Ms Gobbo's fee books indicate that she appeared for Mr Maroun at the Melbourne Magistrates' Court in late August 2008,¹¹²⁷ which aligns with the timing of his bail application on 25 August 2008.¹¹²⁸ It is not clear on the basis of material before the Commission as to the duration of her representation of Mr Maroun.

Informing or Assisting Police

682. Police records indicate that Ms Gobbo informed police of Mr Maroun's association with Mr Karam as early as January 2008,¹¹²⁹ and continued to provide information about Mr Karam's travels with Mr Maroun.¹¹³⁰ On one occasion, her handler, Mr Wolf recorded that he asked her who she thought would be travelling overseas with Mr Karam and she told them it would likely be Mr Maroun.¹¹³¹ Given the focussed subjects of Operation Cardinia, and the use of an undercover police officer [REDACTED], her informing is unlikely to have assisted police. However, the recorded direct question from Mr Wolf suggests that police required additional identification information and may have been assisted by it.
683. In addition, material before the Commission indicates that her informing or assistance in relation to:
- 683.1. the bill of lading
 - 683.2. the Pacific International Apartments
 - 683.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Maroun,¹¹³² and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Maroun

684. It is submitted that it is open to the Commissioner to find that the case of Mr Maroun, being the indictment containing the charge in respect of which he was convicted may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

¹¹²⁶ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadi Maroun*, 16 January 2015, 3 [10], 13 [43]-[46], 15 [52], 17 [57], 22 [74]. RCMP.0033.0002.0078 @.0003, .0013, .0013, .0015, .0017, .0022.

¹¹²⁷ Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 August 2008, 21. MIN.5000.7000.0103 @.0123.

¹¹²⁸ See, eg, Un-tendered Prosecution Submissions on Sentence, *DPP v Fadi Maroun*, 15 May 2015, 3, RCMP.0033.0002.0079 @.0003

¹¹²⁹ Exhibit RC0281 ICR3838 (118), 4 January 2008, 1551, VPL.2000.0003.3137.

¹¹³⁰ Exhibit RC0281 ICR2958 (007), 8 March 2008, 83, VPL.2000.0003.0823; Exhibit RC0281 ICR2958 (020), 19 May 2008, 320, VPL.2000.0003.1060.

¹¹³¹ Exhibit RC0281 ICR2958 (029), 22 July 2008, 505, VPL.2000.0003.1245.

¹¹³² See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

685. The extent to which the case of Mr Maroun may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

686. First, Category 1A¹¹³³ applies in that, in August 2008¹¹³⁴ Ms Gobbo acted for Mr Maroun while she was a human source,¹¹³⁵ and did not disclose same to him.¹¹³⁶

687. Secondly, Category 1B¹¹³⁷ applies in that, before the period that Ms Gobbo acted for Mr Maroun in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹¹³⁸

688. Thirdly, Category 2A¹¹³⁹ applies in that evidence relied upon by the prosecution in Mr Maroun's case,¹¹⁴⁰ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at [27] above, or the evidence obtained as a result thereof,¹¹⁴¹ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹¹⁴²

689. Fourthly, Category 2B¹¹⁴³ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [688] above and failed to disclose same to her client, Mr Maroun, thereby depriving him of the ability to object to the admission of that evidence.

690. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹¹⁴⁴

691. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases, the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the

¹¹³³ See Legal Principles Submissions at [249].

¹¹³⁴ See above at [681].

¹¹³⁵ See Legal Principles Submissions at [20].

¹¹³⁶ See Legal Principles Submissions at [239].

¹¹³⁷ See Legal Principles Submissions at [249].

¹¹³⁸ See above at [682]-[683].

¹¹³⁹ See Legal Principles Submissions at [249].

¹¹⁴⁰ Such as the evidence referred to at [680] above.

¹¹⁴¹ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹¹⁴² As described in the Overview above at [57]-[58].

¹¹⁴³ See Legal Principles Submissions at [249].

¹¹⁴⁴ See Legal Principles Submissions at [320]-[329] and [307]-[309].

conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

692. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹¹⁴⁵
- 692.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Maroun;
 - 692.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Maroun, appropriate disclosure was made; or alternatively
 - 692.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
693. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [692.1] were taken, and accordingly there was the potential for the right of Mr Maroun to a fair trial to have been interfered with.
694. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Maroun and/or his legal representatives.
695. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹¹⁴⁶
696. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹¹⁴⁷
697. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹¹⁴⁸
698. Category 3A¹¹⁴⁹ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

¹¹⁴⁵ See Legal Principles Submissions at [384] and [452]-[457].

¹¹⁴⁶ See Legal Principles Submissions at [384] and [452]-[457].

¹¹⁴⁷ See Legal Principles Submissions at [351], [362]-[373].

¹¹⁴⁸ See Legal Principles Submissions at [351], [374].

¹¹⁴⁹ See Legal Principles Submissions at [465].

699. Category 3B¹¹⁵⁰ applies in that, applies in that, before the period that Ms Gobbo acted for Mr Maroun in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,¹¹⁵¹ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
700. Category 4A¹¹⁵² applies in that, as noted at paragraph [688] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
701. Category 4B¹¹⁵³ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
702. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹¹⁵⁰ See Legal Principles Submissions at [465].

¹¹⁵¹ See above at [682]-[683].

¹¹⁵² See Legal Principles Submissions at [465].

¹¹⁵³ See Legal Principles Submissions at [465].

CASE STUDY: DANNY MOUSSA

Proceedings

703. Mr Danny Moussa was arrested on 13 August 2008 and charged with MDMA trafficking after a search of his property revealed a quantity of ecstasy tablets.¹¹⁵⁴ He pleaded guilty¹¹⁵⁵ and his case proceeded as a summary plea in the Melbourne Magistrates' Court¹¹⁵⁶ where he was sentenced to four months' imprisonment, fully suspended.¹¹⁵⁷

Material Considered by the Court

704. Given the manner in which Mr Moussa's case proceeded, there is little material before the Commission through which the Court's considerations may be ascertained.¹¹⁵⁸ However, in the Prosecution Plea Summary, the prosecution noted that Mr Moussa's charge was based upon an un rebutted statutory presumption¹¹⁵⁹ on the basis of Mr Moussa's possession of a trafficable quantity of MDMA at the time of arrest.¹¹⁶⁰ It also noted his association with "his close friend" Mr Maroun, who was also arrested in relation to Operation Cardinia on 13 August 2008,¹¹⁶¹ and the arrests of a "substantial number of persons ... in three States as part of the 'resolution phase' of the Australian Federal Police operation named 'Inca'".¹¹⁶²

705. In light of the foregoing, confidential correspondence between the CDPP and the Commission in which the CDPP has asserted that Mr Moussa's charge was "not specifically related to the Operation Cardinia Investigation",¹¹⁶³ does not stand in the way of a finding that it was related to the Operations generally.

706. Further, material before the Commission indicates that Mr Moussa's involvement was known to the AFP through, inter alia, surveillance and interception of related accused, specifically Mr Maroun, in relation to Operation

¹¹⁵⁴ See, eg, Un-tendered Moussa Plea Summary, *R v Moussa*, undated, 1. RCMP.0033.0002.0094 @.0001.

¹¹⁵⁵ See, eg, Un-tendered Moussa Plea Summary, *R v Moussa*, undated, 2. RCMP.0033.0002.0094 @.0002.

¹¹⁵⁶ see CDPP index to Moussa materials provided/email from Rachel Deane to Alana Giles on Friday 16 August 2019 at 3.39pm.

¹¹⁵⁷ See, eg, 'Thirty-two of Australia's drug gang criminals successfully prosecuted', CDPP (Media Release, 26 February 2010) <<https://www.cdpp.gov.au/news/thirty-two-australia-s-drug-gang-criminals-successfully-prosecuted>>.

¹¹⁵⁸ See Legal Principles Submissions at [21].

¹¹⁵⁹ Contained in section 302.5(1)(d) of the *Criminal Code Act 1995* (Cth).

¹¹⁶⁰ See, eg, Un-tendered Moussa Plea Summary, *R v Moussa*, undated, 2. RCMP.0033.0002.0094 @.0002.

¹¹⁶¹ See, eg, Un-tendered Moussa Plea Summary, *R v Moussa*, undated, 1. RCMP.0033.0002.0094 @.0001.

¹¹⁶² See, eg, Un-tendered Moussa Plea Summary, *R v Moussa*, undated, 1. RCMP.0033.0002.0094 @.0001.

¹¹⁶³ Exhibit RC1906 Letter from Australian Government Solicitor on behalf of the CDPP to Solicitors Assisting the Royal Commission, 5 June 2019, Attachment B, Summary of Operations Bootham/Moko, Inca and Cardinia, 3, CORRO.0001.0004.0002.

Cardinia,¹¹⁶⁴ reflecting the ‘investigative evolution’ described in the Overview section at [6]-[24] above.

Ms Gobbo’s Conduct in relation to Mr Moussa’s Case

Representation

707. There is no material before the Commission to suggest that Ms Gobbo represented Mr Moussa at any stage.

Informing or Assisting Police

708. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Moussa’s case. However, it appears that her informing or assistance in relation to:

708.1. the bill of lading

708.2. the Pacific International Apartments

708.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Moussa,¹¹⁶⁵ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Moussa

709. It is submitted that it is open to the Commissioner to find that the case of Mr Moussa, being the charge in respect of which he was convicted may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

710. The extent to which the case of Mr Moussa may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

711. Category 2A¹¹⁶⁶ applies in that evidence relied upon by the prosecution in Mr Moussa’s case,¹¹⁶⁷ which was likely derived from one or more of the “four pivotal aspects of the Operations” described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹¹⁶⁸ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹¹⁶⁹

712. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a

¹¹⁶⁴ See, eg, Un-tendered Prosecution Opening for Plea Hearing, *DPP v Fadl Maroun*, 16 January 2015, 11-12 [35], 23 [38]-[39], [77]. RCMP1.0033.0002.0078 @.0011-.0012, .0023.

¹¹⁶⁵ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹¹⁶⁶ See Legal Principles Submissions at [249].

¹¹⁶⁷ Such as the evidence referred to at [704] and [706] above

¹¹⁶⁸ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹¹⁶⁹ As described in the Overview above at [57]-[58].

matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹¹⁷⁰ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹¹⁷¹

713. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

714. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹¹⁷²

714.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Moussa;

714.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Moussa, appropriate disclosure was made; or alternatively

714.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

715. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [714.1] were taken, and accordingly there was the potential for the right of Mr Moussa to a fair trial to have been interfered with.

716. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Moussa and/or his legal representatives.

717. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹¹⁷³

718. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹¹⁷⁴

¹¹⁷⁰ See Legal Principles Submissions at [210].

¹¹⁷¹ See Legal Principles Submissions at [212]-[213].

¹¹⁷² See Legal Principles Submissions at [384] and [452]-[457].

¹¹⁷³ See Legal Principles Submissions at [384] and [452]-[457].

¹¹⁷⁴ See Legal Principles Submissions at [351], [362]-[373].

719. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹¹⁷⁵
720. Category 4A¹¹⁷⁶ applies in that, as noted at paragraph [711] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
721. Category 4B¹¹⁷⁷ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
722. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹¹⁷⁵ See Legal Principles Submissions at [351], [374].

¹¹⁷⁶ See Legal Principles Submissions at [465].

¹¹⁷⁷ See Legal Principles Submissions at [384] and [452]-[457].

CASE STUDY: PHILLIP BATTICCIOTTO

Proceedings

723. Mr Philip Batticiotto was arrested on 7 April 2009.¹¹⁷⁸ He was charged together with Mr Suri with conspiring to import a border-controlled precursor between 16 March and 7 August 2008 (ie arising from Operation Inca).¹¹⁷⁹ Messrs Barbaro, Zirilli, Karam and Mr Khan were listed as co-conspirators,¹¹⁸⁰ who had been arrested earlier on 8 August 2008.¹¹⁸¹ Suri had been arrested on 10 August 2008.¹¹⁸²
724. He pleaded not guilty and was tried together with Mr Suri.¹¹⁸³ He was convicted by a jury on 21 May 2013,¹¹⁸⁴ and sentenced on 8 July 2013 to 10 years' imprisonment with a non-parole period of seven years.¹¹⁸⁵

Material Considered by the Court

725. In sentencing Mr Batticiotto, the Court found the details of the offending to be as set out in the prosecution's summary of facts.¹¹⁸⁶ Evidence relied upon by the prosecution included:
- 725.1. intercepted telephone communications between Mr Batticiotto and others including Mr Khan¹¹⁸⁷ and Mr Barbaro.¹¹⁸⁸ The prosecution noted that while Mr Batticiotto's mobile phone was never the subject of an interception warrant, "the interception of his service was already incidental to the warranted interception of other named persons (Barbaro, Zirilli and later Mr Khan)"¹¹⁸⁹
- 725.2. covertly recorded conversations between co-conspirators concerning the conspiracy in the Carlton North townhouse;¹¹⁹⁰

¹¹⁷⁸ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹¹⁷⁹ Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, RCMP1.0033.0002.0040.

¹¹⁸⁰ Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 2, RCMP1.0033.0002.0040 @.0002.

¹¹⁸¹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹¹⁸² See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹¹⁸³ See, eg, Un-tendered Prosecution Outlines of Submissions Upon Plea, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 8 August 2013, 2, RCMP1.0033.0002.0018 @.0002.

¹¹⁸⁴ See, eg, Un-tendered Reasons for Sentence, *CDPP v Phillip Batticiotto* (County Court of Victoria, Judge Montgomery, 8 July 2013) 2 [1], RCMP1.0033.0002.0050 @.0002 [Restricted].

¹¹⁸⁵ See, eg, Un-tendered Reasons for Sentence, *CDPP v Phillip Batticiotto* (County Court of Victoria, Judge Montgomery, 8 July 2013) 2 [1], RCMP1.0033.0002.0050 @.0002 [Restricted].

¹¹⁸⁶ Un-tendered Reasons for Sentence, *CDPP v Phillip Batticiotto* (County Court of Victoria, Judge Montgomery, 8 July 2013) 2 [2], RCMP1.0033.0002.0050 @.0002 [Restricted].

¹¹⁸⁷ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 8-11, 369-371, RCMP1.0033.0002.0048 @.0008-.0011, .0369-.0371.

¹¹⁸⁸ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 40-41, 47, RCMP1.0033.0002.0048 @.0040-.0041, .0047.

¹¹⁸⁹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 10, 78-79, RCMP1.0033.0002.0048 @.0010, .0078-.0079.

¹¹⁹⁰ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 10, 78-79 RCMP1.0033.0002.0048 @.0010, @.0078-.0079.

725.3. covertly observed activities of co-conspirators under surveillance;¹¹⁹¹
and

725.4. material seized upon arrest of co-conspirators under surveillance,
including Mr Karam.¹¹⁹²

Ms Gobbo's Conduct in relation to Mr Batticiotto's Case

Representation

726. There is no material before the Commission to suggest that Ms Gobbo represented Mr Batticiotto at any stage.

Informing or Assisting Police

727. Police records indicate that in May 2008, Ms Gobbo said that Mr Karam may be involved in a "pseudo import".¹¹⁹³ Again in June 2008 she was recorded as reporting that Mr Karam was organising a pseudoephedrine import using a "furniture company",¹¹⁹⁴ and confirming in July 2008 that "there was another shipment coming".¹¹⁹⁵ Given the similarities between this information and the nature, mode and timing of the importation in relation to which Mr Batticiotto was charged, it is possible that this information was of use to police in Operation Inca.

728. In addition, material before the Commission indicates that Ms Gobbo's informing or assistance in relation to:

728.1. the bill of lading

728.2. the Pacific International Apartments

728.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Batticiotto,¹¹⁹⁶ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Batticiotto

729. It is submitted that it is open to the Commissioner to find that the case of Mr Batticiotto, being the indictment containing the charge in respect of which he was convicted¹¹⁹⁷ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

¹¹⁹¹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 2, 25-26, 71-72, RCMP.0033.0002.0048 @.0002, .0025-.0026, .0071-.0072.

¹¹⁹² Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 73, RCMP.0033.0002.0048 @.0073.

¹¹⁹³ Exhibit RC0281 ICR2958 (020), 19 May 2008, 317, VPL.2000.0003.1057; Exhibit RC0281 ICR2958 (020), 19 May 2008, 320, VPL.2000.0003.1060.

¹¹⁹⁴ Exhibit RC0281 ICR2958 (022), 6 June 2008, 395, VPL.2000.0003.1135.

¹¹⁹⁵ Exhibit RC0281 ICR2958 (022), 6 June 2008, 395, VPL.2000.0003.1135.

¹¹⁹⁶ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹¹⁹⁷ Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, RCMP.0033.0002.0040.

730. The extent to which the case of Mr Batticiotto may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

731. Category 2A¹¹⁹⁸ applies in that evidence relied upon by the prosecution in Mr Batticiotto's case,¹¹⁹⁹ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹²⁰⁰ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹²⁰¹

732. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹²⁰² where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹²⁰³

733. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

734. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²⁰⁴

734.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Batticiotto;

734.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Batticiotto, appropriate disclosure was made; or alternatively

734.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

735. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [734.1] were taken, and accordingly there was the potential for the right of Mr Batticiotto to a fair trial to have been interfered with.

¹¹⁹⁸ See Legal Principles Submissions at [249].

¹¹⁹⁹ Such as the evidence referred to at [725] above.

¹²⁰⁰ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹²⁰¹ As described in the Overview above at [57]-[58].

¹²⁰² See Legal Principles Submissions at [210].

¹²⁰³ See Legal Principles Submissions at [212]-[213].

¹²⁰⁴ See Legal Principles Submissions at [384] and [452]-[457].

736. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Batticiotto and/or his legal representatives.
737. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²⁰⁵
738. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²⁰⁶
739. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.¹²⁰⁷
740. Category 4A¹²⁰⁸ applies in that, as noted at paragraph[731] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
741. Category 4B¹²⁰⁹ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
742. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²⁰⁵ See Legal Principles Submissions at [384] and [452]-[457].

¹²⁰⁶ See Legal Principles Submissions at [351], [362]-[373].

¹²⁰⁷ See Legal Principles Submissions at [351], [374].

¹²⁰⁸ See Legal Principles Submissions at [465].

¹²⁰⁹ See Legal Principles Submissions at [465].

CASE STUDY: MR KHAN (A PSEUDONYM)

Proceedings

743. Mr Khan was arrested on 8 August 2008,¹²¹⁰ and was charged with three offences which appear to have arisen from Operation Inca, namely:¹²¹¹
- 743.1. conspiring (with Messrs Barbaro, Karam, Suri and Batticiotto) to import a border-controlled precursor, namely pseudoephedrine, between 16 March and 7 August 2008;
 - 743.2. trafficking a commercial quantity of MDMA between 1 May and 17 July 2008; and
 - 743.3. dealing with property (possessing money) reasonably suspected to be the proceeds of crime between 22 July and 30 August 2008.
744. Mr Khan pleaded guilty to all three charges in September 2012,¹²¹² and was sentenced on 27 March 2013 to a total effective sentence of nine years' imprisonment.¹²¹³

Material Considered by the Court

745. In sentencing Mr Khan, the Court found the details of the offending to be as set out in the prosecution's summary of facts.¹²¹⁴ Evidence relied upon¹²¹⁵ by the prosecution included:
- 745.1. intercepted telephone communications between Mr Khan and co-conspirators including Messrs Suri¹²¹⁶ and Barbaro¹²¹⁷ on one occasion made with the mobile phone of another co-conspirator, Mr Suri.¹²¹⁸ (Mr Khan's mobile phone was the subject of an intercept warrant from 16 May 2008¹²¹⁹);

¹²¹⁰ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP.0033.0002.0048 @.0005.

¹²¹¹ Un-tendered Indictment, *R v Mr Khan*, 25 July 2012, RCMP.0033.0002.0107.

¹²¹² Un-tendered Indictment, *R v Mr Khan*, 25 July 2012, RCMP.0033.0002.0107.

¹²¹⁵ Note that in relation to the precursor charge, the Prosecution relied upon the joint Prosecution Opening filed in relation to the proposed joint trial of Mr Khan, Karam, Suri and Batticiotto in relation to this conspiracy: Un-tendered Prosecution Summary of Facts, *R v Mr Khan*, 17 December 2012, 2, RCMP.0033.0002.0108 @.0002. That Opening is referred to as Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, RCMP.0033.0002.0048.

¹²¹⁶ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 230-233, RCMP.0033.0002.0048 @.0230-.0233.

¹²¹⁷ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 43, 45, 48, RCMP.0033.0002.0048 .0043, .0045, .0048.

¹²¹⁸ Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 43, RCMP.0033.0002.0048 @.0043.

¹²¹⁹ Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 48, RCMP.0033.0002.0048 @.0048.

- 745.2. covertly observed movements of an at first “unidentified” Mr Khan¹²²⁰ and later observed and sometimes photographed¹²²¹ meetings and activities involving Mr Khan and co-conspirators or syndicate members;¹²²²
- 745.3. covertly recorded conversations between syndicate members concerning¹²²³ and involving Mr Khan¹²²⁴ in the Carlton North townhouse;
- 745.4. detailed financial records of drug trafficking maintained by Mr Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest;¹²²⁵ and
- 745.5. material seized upon arrest of co-conspirators under surveillance, including Karam.¹²²⁶

Ms Gobbo’s Conduct in relation to Mr Khan’s Case

Representation

- 746. There is no material before the Commission to suggest that Ms Gobbo represented Mr Khan at any stage.

Informing or Assisting Police

- 747. Police records indicate that in May 2008, Ms Gobbo said that Mr Karam may be involved in a “pseudo import”.¹²²⁷ Again in June 2008 she was recorded as reporting that Mr Karam was organising a pseudoephedrine import using a [REDACTED],¹²²⁸ and confirming in July 2008 that “there was another shipment coming”.¹²²⁹ Given the similarities between this information and the nature, mode and timing of the importation in relation to which Mr Khan was charged, it is possible that this information was of use to police in Operation Inca.
- 748. In addition, material before the Commission indicates that Ms Gobbo’s informing or assistance in relation to:

- 748.1. the bill of lading

¹²²⁰ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 42, 77, 82, RCMP.0033.0002.0048 @.0042, .0077, .0082.

¹²²¹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 92, 101, RCMP.0033.0002.0048 @.0092, .0101.

¹²²² See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 44, 92, RCMP.0033.0002.0048 @.0044, .0092.

¹²²³ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 44, 92, RCMP.0033.0002.0048 @.0044, .0092.

¹²²⁴ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 10, 77-78, 90-91, 238, RCMP.0033.0002.0048 @.0010, .0077-.0078, .0090-.0091, .0238.

¹²²⁵ Un-tendered Prosecution Summary of Facts, *R v Mr Khan*, 17 December 2012, 8, 12, 15, RCMP.0033.0002.0108 @.0008, .0012, .0015.

¹²²⁶ Un-tendered Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, 73, RCMP.0033.0002.0048 @.0073.

¹²²⁷ Exhibit RC0281 ICR2958 (020), 19 May 2008, 317, VPL.2000.0003.1057; Exhibit RC0281 ICR2958 (020), 19 May 2008, 320, VPL.2000.0003.1060.

¹²²⁸ Exhibit RC0281 ICR2958 (020), 19 May 2008, 317, VPL.2000.0003.1057; Exhibit RC0281 ICR2958 (020), 19 May 2008, 320, VPL.2000.0003.1060.

¹²²⁹ Exhibit RC0281 ICR2958 (028), 15 July 2008, 491, VPL.2000.0003.1231.

748.2. the Pacific International Apartments

748.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Khan,¹²³⁰ and ultimately to his convictions. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.¹²³¹

Submissions under the Terms of Reference in relation to Mr Khan

749. It is submitted that it is open to the Commissioner to find that the case of Mr Khan, being the indictment containing the three charges in respect of which he was convicted¹²³² may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

750. The extent to which the case of Mr Khan may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

751. Category 2A¹²³³ applies in that evidence relied upon by the prosecution in Mr Khan's case,¹²³⁴ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹²³⁵ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹²³⁶

752. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹²³⁷ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹²³⁸

753. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²³⁰ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹²³¹ See the Overview at [35]-[36].

¹²³² Un-tendered Indictment, *R v Mr Khan*, 25 July 2012, RCMPI.0033.0002.0107.

¹²³³ See Legal Principles Submissions at [249].

¹²³⁴ Such as the evidence referred to at [745] above

¹²³⁵ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹²³⁶ As described in the Overview above at [57]-[58].

¹²³⁷ See Legal Principles Submissions at [210].

¹²³⁸ See Legal Principles Submissions at [212]-[213].

Conduct of Victoria Police

754. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²³⁹
- 754.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Khan;
 - 754.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Khan, appropriate disclosure was made; or alternatively
 - 754.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
755. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [754.1] were taken, and accordingly there was the potential for the right of Mr Khan to a fair trial to have been interfered with.
756. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Khan and/or his legal representatives.
757. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²⁴⁰
758. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²⁴¹
759. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹²⁴²
760. Category 4A¹²⁴³ applies in that, as noted above at [751], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
761. Category 4B¹²⁴⁴ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues

¹²³⁹ See Legal Principles Submissions at [384] and [452]-[457].

¹²⁴⁰ See Legal Principles Submissions at [384] and [452]-[457].

¹²⁴¹ See Legal Principles Submissions at [351], [362]-[373].

¹²⁴² See Legal Principles Submissions at [351], [374].

¹²⁴³ See Legal Principles Submissions at [465].

¹²⁴⁴ See Legal Principles Submissions at [465].

of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.

762. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

CASE STUDY: ANIL SURI

Proceedings

763. Mr Anil Suri was arrested on 10 August 2008.¹²⁴⁵ He was charged together with Mr Batticiotto with conspiring to import a border-controlled precursor between 16 March and 7 August 2008 (ie arising from Operation Inca).¹²⁴⁶ Messrs Barbaro, Zirilli, Karam and Khan were listed as co-conspirators,¹²⁴⁷ who had been arrested earlier on 8 August 2008.¹²⁴⁸ Mr Batticiotto was arrested on 7 April 2009.¹²⁴⁹
764. He pleaded not guilty and was tried together with Mr Batticiotto.¹²⁵⁰ He was convicted by a jury on 21 May 2013,¹²⁵¹ and sentenced on 28 March 2014 to 11 years' imprisonment with a non-parole period of nine years.¹²⁵² He was refused leave to appeal his conviction,¹²⁵³ however his appeal against sentence was allowed, and his non-parole period reduced to eight years.¹²⁵⁴

Material Considered by the Court

765. In sentencing Mr Suri, the Court referred to the prosecution's summary of facts¹²⁵⁵ and noted that he became involved in the conspiracy through his association with Mr Khan, who remained his "primary contact point with the co-conspirators".¹²⁵⁶ Evidence relied upon¹²⁵⁷ by the prosecution included:
- 765.1. intercepted telephone communications between Mr Suri and co-conspirators including Mr Khan¹²⁵⁸ and Mr Karam,¹²⁵⁹ and the use of Mr Suri's mobile phone in telephone communications between co-

¹²⁴⁵ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹²⁴⁶ See Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 40, RCMP1.0033.0002.0048 @.0040.

¹²⁴⁷ Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 2, RCMP1.0033.0002.0048 @.0002.

¹²⁴⁸ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹²⁴⁹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 5, RCMP1.0033.0002.0048 @.0005.

¹²⁵⁰ See, eg, Un-tendered Prosecution Outline of Submissions Upon Plea, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 8 August 2013, 2, RCMP1.0033.0002.0018 @.0002.

¹²⁵¹ See *DPP v Anil Suri* [2014] VCC 2321, [1].

¹²⁵² *DPP v Anil Suri* [2014] VCC 2321, [49].

¹²⁵³ Un-tendered Reasons for Sentence, *Anil Suri v DPP (Cth)* (Supreme Court of Victoria, Court of Appeal, Redlich, Priest and Coghlan JJA, 24 October 2014), 12 [27], RCMP1.0033.0002.0009 @.0012.

¹²⁵⁴ Un-tendered Reasons for Sentence, *Anil Suri v DPP (Cth)* (Supreme Court of Victoria, Court of Appeal, Redlich, Priest and Coghlan JJA, 24 October 2014), 16 [37], RCMP1.0033.0002.0009 @.0016.

¹²⁵⁵ *DPP v Anil Suri* [2014] VCC 2321, [4].

¹²⁵⁶ *DPP v Anil Suri* [2014] VCC 2321, [3].

¹²⁵⁷ Note that the Prosecution relied upon the joint Prosecution Opening filed in relation to the proposed joint trial of Mr Khan, Karam, Suri and Batticiotto: Un-tendered Prosecution Outline of Submissions Upon Plea, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, 8 August 2013, 2, RCMP1.0033.0002.0018 @.0002; That Opening is referred to as Prosecution Summary of Facts, see Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 48, RCMP1.0033.0002.0048 @.0048.

¹²⁵⁸ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 230-233, 368, RCMP1.0033.0002.0048 @.0230-.0233, .0368.

¹²⁵⁹ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticiotto*, undated, 367, RCMP1.0033.0002.0048 @.0367.

conspirators Mr Khan and Mr Barbaro¹²⁶⁰ (Mr Suri's mobile phone was the subject of an intercept warrant from 27 May 2008¹²⁶¹);

765.2. covertly observed activities involving Mr Suri and co-conspirators,¹²⁶²

765.3. covertly recorded conversations between co-conspirators concerning the conspiracy in the Carlton North townhouse;¹²⁶³

765.4. covertly observed activities of co-conspirators under surveillance;¹²⁶⁴ and

765.5. material seized upon arrest of co-conspirators under surveillance, including Mr Karam.¹²⁶⁵

Ms Gobbo's Conduct in relation to Mr Suri's Case

Representation

766. There is no material before the Commission to suggest that Ms Gobbo represented Mr Suri at any stage.

Informing or assisting police

767. Police records indicate that in May 2008, Ms Gobbo said that Mr Karam may be involved in a "pseudo import".¹²⁶⁶ Again in June 2008 she was recorded as reporting that Mr Karam was organising a pseudoephedrine import using a "furniture company",¹²⁶⁷ and confirming in July 2008 that "there was another shipment coming".¹²⁶⁸ Given the similarities between this information and the nature, mode and timing of the importation in relation to which Mr Suri was charged, it is possible that this information was of use to police in Operation Inca.

768. In addition, material before the Commission indicates that Ms Gobbo's informing or assistance in relation to:

768.1. the bill of lading

768.2. the Pacific International Apartments

¹²⁶⁰ Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 43, RCMP1.0033.0002.0048 @.0043.

¹²⁶¹ Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 48, RCMP1.0033.0002.0048 @.0048.

¹²⁶² See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 346, RCMP1.0033.0002.0048 @.0346.

¹²⁶³ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 10, 78-79, RCMP1.0033.0002.0048 @.0010,.0078-.0079.

¹²⁶⁴ See, eg, Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 2, 25-26, 71-72, RCMP1.0033.0002.0048 @.0002, .0025-.0026, .0072-.0073.

¹²⁶⁵ Un-tendered Prosecution Summary of Facts, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, 73, RCMP1.0033.0002.0048 @.0073.

¹²⁶⁶ Exhibit RC0281 ICR2958 (020), 19 May 2008, 317, VPL.2000.0003.1057; Exhibit RC0281 ICR2958 (020), 19 May 2008, 320, VPL.2000.0003.1060.

¹²⁶⁷ Exhibit RC0281 ICR2958 (022), 6 June 2008, 395, VPL.2000.0003.1135.

¹²⁶⁸ Exhibit RC0281 ICR2958 (028), 15 July 2008, 491, VPL.2000.0003.1231.

768.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Suri,¹²⁶⁹ and ultimately to his conviction.

Submissions under the Terms of Reference in relation to Mr Suri

769. It is submitted that it is open to the Commissioner to find that the case of Mr Suri, being the indictment containing the charge in respect of which he was convicted¹²⁷⁰ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

770. The extent to which the case of Mr Suri may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

771. Category 2A¹²⁷¹ applies in that evidence relied upon by the prosecution in Mr Suri's case,¹²⁷² which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹²⁷³ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹²⁷⁴

772. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹²⁷⁵ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹²⁷⁶

773. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

774. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹²⁷⁷

¹²⁶⁹ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹²⁷⁰ Un-tendered Indictment, *CDPP v Rob Karam, Mr Khan, Anil Suri & Phillip Batticciotto*, undated, RCMP1.0033.0002.0040.

¹²⁷¹ See Legal Principles Submissions at [249].

¹²⁷² Such as the evidence referred to at [765] above.

¹²⁷³ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹²⁷⁴ As described in the Overview above at [57]-[58].

¹²⁷⁵ See Legal Principles Submissions at [210].

¹²⁷⁶ See Legal Principles Submissions at [212]-[213].

¹²⁷⁷ See Legal Principles Submissions at [384] and [452]-[457].

- 774.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Suri;
- 774.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Suri, appropriate disclosure was made; or alternatively
- 774.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
775. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [774.1] were taken, and accordingly there was the potential for the right of Mr Suri to a fair trial to have been interfered with.
776. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Suri and/or his legal representatives.
777. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹²⁷⁸
778. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹²⁷⁹
779. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his conviction upon trial.¹²⁸⁰
780. Category 4A¹²⁸¹ applies in that, as noted at paragraph [771] above, evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
781. Category 4B¹²⁸² applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
782. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹²⁷⁸ See Legal Principles Submissions at [384] and [452]-[457].

¹²⁷⁹ See Legal Principles Submissions at [351], [362]-[373].

¹²⁸⁰ See Legal Principles Submissions at [351], [374].

¹²⁸¹ See Legal Principles Submissions at [465].

¹²⁸² See Legal Principles Submissions at [465].

CASE STUDY: MR WINTERS (A PSEUDONYM)

Proceedings

783. Mr Winters was arrested in relation to Operation Inca on 8 August 2008.¹²⁸³ He was charged with trafficking a commercial quantity of MDMA between 22 February and 7 August 2008.¹²⁸⁴
784. Mr Winters ultimately pleaded guilty,¹²⁸⁵ and was sentenced on 27 January 2012 to seven years' imprisonment with a non-parole period of five years.¹²⁸⁶

Material Considered by the Court

785. In sentencing Mr Winters, the Court found the details of the offending to be as set out in the "agreed short facts" document.¹²⁸⁷ Evidence relied upon in that document included:
- 785.1. numerous intercepted telephone communications between Messrs Winters and Pasquale Barbaro;¹²⁸⁸
 - 785.2. apparently observed activities of syndicate members under surveillance;¹²⁸⁹
 - 785.3. covertly recorded conversations between syndicate members including Mr Winters in the Carlton North townhouse;¹²⁹⁰ and
 - 785.4. detailed financial records of drug trafficking maintained by Mr Pasquale Barbaro and Ms Ropa which were seized from the Carlton North townhouse following their arrest.¹²⁹¹

Ms Gobbo's Conduct in relation to Mr Winters's Case

Representation

786. It appears that Ms Gobbo represented Mr Winters on at least one occasion. Her fee books record that she appeared for Mr Winters at a Magistrates' Court

¹²⁸³ See, eg, Un-tendered Agreed Short Facts, *R v Mr Winters*, 24 January 2012, 11, RCMP1.0033.0002.0031 @.0011.

¹²⁸⁴ Un-tendered Indictment, *DPP v Mr Winters*, 1 December 2011, RCMP1.0033.0002.0035.

¹²⁸⁵ Un-tendered Reasons for Sentence, *DPP v Mr Winters* (County Court of Victoria, Judge Parsons, 27 January 2012), 2 [1], RCMP1.0033.0002.0033 @.0002.

¹²⁸⁶ Un-tendered Reasons for Sentence, *DPP v Mr Winters* (County Court of Victoria, Judge Parsons, 27 January 2012), 9 [36], RCMP1.0033.0002.0033 @.0009.

¹²⁸⁷ Un-tendered Reasons for Sentence, *DPP v Mr Winters* (County Court of Victoria, Judge Parsons, 27 January 2012), 2 [1], RCMP1.0033.0002.0033 @.0002.

¹²⁸⁸ See, eg, Un-tendered Agreed Short Facts, *R v Mr Winters*, 24 January 2012, 10, RCMP1.0033.0002.0031 @.0010.

¹²⁸⁹ See, eg, Un-tendered Agreed Short Facts, *R v Mr Winters*, 24 January 2012, 4-5, RCMP1.0033.0002.0031 @.0004-.0005.

¹²⁹⁰ See, eg, Un-tendered Agreed Short Facts, *R v Mr Winters*, 3-8, RCMP1.0033.0002.0031 @.0003-0008.

¹²⁹¹ See, eg, Un-tendered Agreed Short Facts, *R v Mr Winters*, 24 January 2012, 2-3, 11, RCMP1.0033.0002.0031 @.0002-.0003, 0011.

hearing in around August 2008.¹²⁹² However, in the absence of further information, the duration of her representation of Mr Winters remains unclear.

Informing or Assisting Police

787. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning Mr Winters's case. However, it appears that Ms Gobbo's informing or assistance in relation to:

787.1. the bill of lading

787.2. the Pacific International Apartments

787.3. telephone contact numbers, may have been critical to the success of the investigation of Mr Winters,¹²⁹³ and ultimately to his conviction. Ms Gobbo's assistance to police in this regard may be supported by her own actual or implied admissions.¹²⁹⁴

788. Ms Gobbo does not appear to have disclosed to him that she had provided information to the police that was likely to have led to his arrest and charge.

Submissions under the Terms of Reference in relation to Mr Winters

789. It is submitted that it is open to the Commissioner to find that the case of Mr Winters, being the indictment containing the charge in respect of which he was convicted¹²⁹⁵ may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

790. The extent to which the case of Mr Winters may have been affected may be measured by virtue of the following matters.

Conduct of Ms Gobbo

791. First, Category 1A¹²⁹⁶ applies in that, in August 2008¹²⁹⁷ Ms Gobbo acted for Mr Winters while she was a human source,¹²⁹⁸ and did not disclose same to him.¹²⁹⁹

792. Secondly, Category 1B¹³⁰⁰ applies in that, before the period that Ms Gobbo acted for Mr Winters in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police, and did not disclose same to him.¹³⁰¹

¹²⁹² Exhibit RC1568 Ms Nicola Gobbo fee book 02, 25 August 2008, 21. MIN.5000.7000.0103 @.0123.

¹²⁹³ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

¹²⁹⁴ See the Overview at [35]-[36].

¹²⁹⁵ Un-tendered Indictment, *R v Mr Winters*, 1 December 2011, RCMPPI.0033.0002.0035.

¹²⁹⁶ See Legal Principles Submissions at [249].

¹²⁹⁷ See above at [786].

¹²⁹⁸ See Legal Principles Submissions at [20].

¹²⁹⁹ See Legal Principles Submissions at [239].

¹³⁰⁰ See Legal Principles Submissions at [249].

¹³⁰¹ See above at [787].

793. Thirdly, Category 2A¹³⁰² applies in that evidence relied upon by the prosecution in Mr Winters's case,¹³⁰³ which was likely derived from one or more of the "four pivotal aspects of the Operations" described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹³⁰⁴ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹³⁰⁵
794. Fourthly, Category 2B¹³⁰⁶ applies in that Ms Gobbo had knowledge of the circumstances founding the matters set out at paragraph [793] above and failed to disclose same to her client, Mr Winters, thereby depriving him of the ability to object to the admission of that evidence.
795. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹³⁰⁷ where the causal link is "tenuous", this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹³⁰⁸
796. The above conduct by Ms Gobbo under Categories 1A and 1B, together with conduct under Categories 2A and 2B, evinces a conflict of interest and may constitute breaches of her duty to the administration of justice, her duty to the court, her duty to her client, and her fiduciary duties.¹³⁰⁹
797. It should be noted, as set out at [254] of the Legal Principles Submissions, that the Categories may apply even in circumstances where Ms Gobbo appeared at preliminary stages of proceedings (such as in mention hearings, bail applications and committals), and did not appear at trial. In some cases she was led at trial. In other cases she provided advice in relation to, but did not appear in, criminal proceedings. In some cases the information Ms Gobbo passed on to Victoria Police was relatively innocuous and/or based on the evidence reviewed by Counsel Assisting there is no suggestion that the information materially advanced the prosecution of her client. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

798. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹³¹⁰

¹³⁰² See Legal Principles Submissions at [249].

¹³⁰³ Such as the evidence referred to at [785] above.

¹³⁰⁴ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹³⁰⁵ As described in the Overview above at [57]-[58].

¹³⁰⁶ See Legal Principles Submissions at [249].

¹³⁰⁷ See Legal Principles Submissions at [210].

¹³⁰⁸ See Legal Principles Submissions at [212]-[213].

¹³⁰⁹ See Legal Principles Submissions at [320]-[329] and [307]-[309].

¹³¹⁰ See Legal Principles Submissions at [384] and [452]-[457].

- 798.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including Mr Winters;
- 798.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including Mr Winters, appropriate disclosure was made; or alternatively
- 798.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
799. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [798.1] were taken, and accordingly there was the potential for the right of Mr Winters to a fair trial to have been interfered with.
800. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to Mr Winters and/or his legal representatives.
801. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹³¹¹
802. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹³¹²
803. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to the accused even after his guilty plea.¹³¹³
804. Category 3A¹³¹⁴ applies in that there was non-disclosure of Ms Gobbo's status as a human source, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
805. Category 3B¹³¹⁵ applies in that, applies in that, before the period that Ms Gobbo acted for Mr Winters in relation to the case, Ms Gobbo provided information in relation to him to members of Victoria Police,¹³¹⁶ and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
806. Category 4A¹³¹⁷ applies in that, as noted at paragraph[793] above, evidence relied upon by the prosecution may have been obtained in consequence of an

¹³¹¹ See Legal Principles Submissions at [384] and [452]-[457].

¹³¹² See Legal Principles Submissions at [351], [362]-[373].

¹³¹³ See Legal Principles Submissions at [351], [374].

¹³¹⁴ See Legal Principles Submissions at [465].

¹³¹⁵ See Legal Principles Submissions at [465].

¹³¹⁶ See above at [787].

¹³¹⁷ See Legal Principles Submissions at [465].

impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.

807. Category 4B¹³¹⁸ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
808. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹³¹⁸ See Legal Principles Submissions at [465].

CASE STUDY: THE CASH DEALERS

Proceedings

809. Between 8 August 2008 and 5 September 2010, five individuals were arrested and ultimately charged with offences related to dealing with the proceeds of the Barbaro syndicate's MDMA trafficking, namely:

809.1. Mr Anvardeen Abdul Jabbar;

809.2. Mr Emerson;

809.3. Mr Huntley;

809.4. Mr Seyed Moulana; and

809.5. Mr Mohammed Nasfan Abdul Nazzer.

(together, the Cash Dealers).

810. The five individuals were each charged with offences relating to possessing or dealing with money being (or suspected of being) proceeds of crime.¹³¹⁹ Each pleaded guilty¹³²⁰ with the exception of Mr Moulana who was found guilty,¹³²¹ and all were sentenced to terms of imprisonment,¹³²² which they have since served and completed.

Material Considered by the Court

810.1. In each case, the prosecution of the above five Cash Dealers relied upon evidence of:

810.2. Intercepted telephone communications, for example:

¹³¹⁹ Un-tendered Indictment, *R v Abdul Jabbar and Mr Emerson*, 9 August 2010, RCMP.0033.0002.0020; Un-tendered Indictment, *R v Abdul Jabbar and Mr Emerson*, 9 August 2010, RCMP.0033.0002.0062; Un-tendered Indictment, *R v Mr Huntley*, 20 February 2012, RCMP.0033.0002.0027; Un-tendered Indictment, *R v Seyed Moulana*, 14 March 2012, RCMP.0033.0002.0086; Un-tendered Indictment, *R v Mohamed Nasfan Abdul Nazeer*, 28 February 2012, RCMP.0033.0003.0021.

¹³²⁰ See Un-tendered Reasons for Sentence, *R v Abdul Jabbar and Mr Emerson* [2010] VCC 1608, 2 [1]-[2], RCMP.0033.0002.0026 @.0002; See Un-tendered Reasons for Sentence, *CDPP v Mr Huntley* (County Court of Victoria, Judge Montgomery, 11 April 2012) 2 [1], RCMP.0033.0002.0030.0002 [Restricted]; See Un-tendered Reasons for Sentence, *CDPP v Mohamed Abdul-Nazeer* (County Court of Victoria, Judge Montgomery, 2 April 2012), 2 [1], RCMP.0033.0003.0020 @.0002.

¹³²¹ Un-tendered Reasons for Sentence, *DPP (Cth) v Seyed Moulana* [2013] VCC 935, [1], RCMP.0033.0002.0087 @.0001.

¹³²² Un-tendered Reasons for Sentence, *R v Abdul Jabbar and Mr Emerson* [2010] VCC 1608, [84], [87], RCMP.0033.0002.0026 @.0022 [Restricted]; Un-tendered Reasons for Sentence, *CDPP v Mr Huntley* (County Court of Victoria, Judge Montgomery, 11 April 2012), [23], RCMP.0033.0002.0030 @.0006; Un-tendered Reasons for Sentence, *DPP (Cth) v Seyed Moulana* [2013] VCC 935, 14-15 [56], RCMP.0033.0002.0087 @.0014-.0015; Un-tendered Reasons for Sentence, *CDPP v Mohamed Abdul-Nazeer* (County Court of Victoria, Judge Montgomery, 2 April 2012), 8 [49]-[50], RCMP.0033.0003.0020 @.0008.

- 810.3. between Mr Jabbar and Mr Winters,¹³²³ Ms Ropa,¹³²⁴ and between Mr Barbaro and syndicate members including Ms Ropa¹³²⁵ and Mr Zirilli¹³²⁶.
- 810.4. between Mr Emerson and syndicate members including Ms Ropa and Mr Barbaro,¹³²⁷
- 810.5. between Cash Dealers including Messrs Emerson and Nazeer,¹³²⁸ Nazeer and Emerson¹³²⁹, Huntley,¹³³⁰ Moulana.¹³³¹ and between Huntley and Emerson.¹³³²
- 811. meetings or association with co-accused under surveillance, including:
 - 811.1. between Mr Jabbar and Ms Ropa,¹³³³
 - 811.2. Mr Emerson and other members of the Barbaro syndicate¹³³⁴ including Mr Bran,¹³³⁵ and Ms Ropa,¹³³⁶ and
- 812. acts and utterances of syndicate members under surveillance.¹³³⁷
 - 812.1. Moulana captured by surveillance of, and association with, Ropa¹³³⁸
 - 812.2. records maintained by related-accused and seized upon arrest, including:

¹³²³ See, eg, Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 3, 6, RCMP.0033.0002.0023 @.0003, .0006.

¹³²⁴ See, eg, Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 6, 10, RCMP.0033.0002.0023 @.0006, .0010..

¹³²⁵ See, eg, Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 6, 9, RCMP.0033.0002.0023 @.0006-.0009.

¹³²⁶ See, eg, Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 6-7, RCMP.0033.0002.0023 @.0006-.0007.

¹³²⁷ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8, 13-25, RCMP.0033.0002.0065 @.0008,.0013-.0025.

¹³²⁸ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8, RCMP.0033.0002.0065 @.0008.

¹³²⁹ See, eg, Un-tendered Summary of Prosecution Opening, *R v Mohamed Nasfan Abdul Nazeer*, 28 March 2012, 14, [25], [31], RCMP.0033.0003.0022 @.0014.

¹³³⁰ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8, RCMP.0033.0002.0065 @.0008.

¹³³¹ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 37, RCMP.0033.0002.0065 @.0037.

¹³³² Un-tendered Summary of Prosecution Opening, *R v Mr Huntley*, [6], 2, RCMP.0033.0002.0029 @.0002; Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8, 16, RCMP.0033.0002.0065 @.0008,.0016.

¹³³³ Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 6, 10-12, RCMP.0033.0002.0023 @.0010-0012.

¹³³⁴ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8, RCMP.0033.0002.0065 @.0008.

¹³³⁵ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 17, RCMP.0033.0002.0065 @.0017.

¹³³⁶ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 18-19, 22-24, RCMP.0033.0002.0065 @.0018-.0019, .0022-.0024.

¹³³⁷ See, eg, Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 9, RCMP.0033.0002.0065 @.0009.

¹³³⁸ Un-tendered Prosecution Opening, *R v Seyed Moulana*, [1] 1-2, 6 [8]-[9], RCMP.0033.0002.0087 @.0001-.0002.

812.3. Ropa records re Jabbar¹³³⁹ and Emerson¹³⁴⁰

812.4. Emerson records re Jabbar¹³⁴¹ and Emerson.¹³⁴²

Ms Gobbo's Conduct in relation to the Cash Dealers' Cases

Representation

813. There is no material before the Commission to suggest that Ms Gobbo represented any of the Cash Dealers at any stage.

Informing or Assisting Police

814. On the basis of material before the Commission, it does not appear that Ms Gobbo provided police with any information directly concerning the 'Cash Dealers' cases. However, it appears that her informing or assistance in relation to:

814.1. the bill of lading

814.2. the Pacific International Apartments

814.3. telephone contact numbers, may have been critical to the success of the investigation of the Cash Dealers,¹³⁴³ and ultimately to their convictions.

815. This is further supported by the reference to the "investigative evolution" involved in the investigation of the Cash Dealers in the prosecution's submissions in relation to Ms Ropa as noted in the Overview at paragraph [14] above.

Submissions under the Terms of Reference in relation to the Cash Dealers

816. It is submitted that it is open to the Commissioner to find that the five cases of each of the Cash Dealers, being referable to the indictments containing the charges in respect of which they were each convicted, may have been affected by the conduct of Ms Gobbo as a human source as well as members of Victoria Police in their recruitment, management, handling of, and disclosures about, Ms Gobbo as a human source.

817. The extent to which the cases of the Cash Dealers may have been affected may be measured by virtue of the following matters.

¹³³⁹ Un-tendered Summary of Facts, *R v Anvardeen Abdul Jabbar & Mr Emerson*, undated, 6-8, RCMP.0033.0002.0023 @.0006-.0008.

¹³⁴⁰ Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8-9, 12-15, 17-22, 25, RCMP.0033.0002.0065 @.0008-.0009, .0012-.0015, .0017-.0022, .0025; For comprehensive list of seized items see Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 36-38, RCMP.0033.0002.0065 @.0036-.0038.

¹³⁴¹ Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 6-8, RCMP.0033.0002.0065 @.0006-.0008.

¹³⁴² Un-tendered Summary of Facts, *R v Mr Emerson*, 29 September 2010, 8-9, 12-15, 17-22, 25, RCMP.0033.0002.0065 @.0008-.0009, .0012-.0015, .0017-.0022, .0025; For comprehensive list of seized items see Un-tendered Summary of Facts, *R v Mr Emerson* [2010] VCC 1608, 29 September 2010, 36-38, RCMP.0033.0002.0065 @.0036-.0038.

¹³⁴³ See the Overview at [26]-[49], in light of the investigative evolution outlined in the Overview at [6]-[24].

Conduct of Ms Gobbo

818. Category 2A¹³⁴⁴ applies in that evidence relied upon by the prosecution in the case of each of the Cash Dealers,¹³⁴⁵ which was likely derived from one or more of the “four pivotal aspects of the Operations” described in the Overview at paragraph [27] above, or the evidence obtained as a result thereof,¹³⁴⁶ may have been obtained in consequence of illegality or impropriety in connection with the use of Ms Gobbo as a human source by Victoria Police.¹³⁴⁷
819. It is important to recognise that, as noted in the Legal Principles Submissions at [222], the assessment of the requisite causal connection, as part of the broader considerations under section 138 of the *Evidence Act 2008* (Vic), is a matter for the courts. While the chain of causation may be indirect or arise through various steps and still enliven section 138,¹³⁴⁸ where the causal link is “tenuous”, this may affect the balancing exercise under section 138(3) and the decision as to whether the evidence should be admitted or excluded.¹³⁴⁹
820. Cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused’s plea of guilty, to potentially result in a substantial miscarriage of justice.

Conduct of Victoria Police

821. There was an obligation upon all members of Victoria Police, in particular those with management and oversight responsibilities, who had knowledge of the recruitment, handling and management of Ms Gobbo as a human source, to take all steps necessary to ensure that:¹³⁵⁰
- 821.1. the same was lawful and not improper, and did not interfere with the right to a fair trial of any person charged with a criminal offence, including the Cash Dealers;
 - 821.2. in the event that the same had the potential to interfere with the right to a fair trial of any person including the Cash Dealers, appropriate disclosure was made; or alternatively
 - 821.3. if such disclosure was not to be made, to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
822. In circumstances set out in this case study, it is submitted that not all necessary steps referred to in sub-paragraph [821.1] were taken, and accordingly there was the potential for the right of each of the Cash Dealers to a fair trial to have been interfered with.

¹³⁴⁴ See Legal Principles Submissions at [249].

¹³⁴⁵ Such as the evidence referred to at [810.1] above.

¹³⁴⁶ Given the investigative evolution of the Operations described in the Overview section at [6]-[24] above.

¹³⁴⁷ As described in the Overview above at [57]-[58].

¹³⁴⁸ See Legal Principles Submissions at [210].

¹³⁴⁹ See Legal Principles Submissions at [212]-[213].

¹³⁵⁰ See Legal Principles Submissions at [384] and [452]-[457].

823. Further, it is submitted that there was a failure by members of Victoria Police to make appropriate disclosure to each of the Cash Dealers and/or their legal representatives.
824. In the alternative, if such disclosure was not to be made by members of Victoria Police, there was a failure to take steps to have matters of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.¹³⁵¹
825. Victoria Police is a part of the prosecution for the purposes of disclosure. If the prosecution of the accused was to continue, this was a duty owed to the Court. It does not matter whether the prosecutors were unaware of the relevant information.¹³⁵²
826. Further, the duty of disclosure is ongoing, and the involvement of Ms Gobbo as a human source should have been disclosed to each accused even after their guilty plea.¹³⁵³
827. Category 4A¹³⁵⁴ applies in that, as noted above at paragraph [818], evidence relied upon by the prosecution may have been obtained in consequence of an impropriety or illegality in connection with the use of Ms Gobbo as a human source by Victoria Police.
828. Category 4B¹³⁵⁵ applies in that there was the above conduct, and there was non-disclosure of same, and a failure to take any steps to have potential issues of public interest immunity or matters of state considered by the DPP or the VGSO and then possibly a court.
829. As noted above, cases will inevitably turn on their facts as to whether there was a sufficient connection between the conduct of Ms Gobbo and Victoria Police members and the conviction upon trial of the accused, or the accused's plea of guilty, to potentially result in a substantial miscarriage of justice.

¹³⁵¹ See Legal Principles Submissions at [384] and [452]-[457].

¹³⁵² See Legal Principles Submissions at [351], [362]-[373].

¹³⁵³ See Legal Principles Submissions at [351], [374].

¹³⁵⁴ See Legal Principles Submissions at [465].

¹³⁵⁵ See Legal Principles Submissions at [465].

ANNEXURE A: USE OF PSEUDONYMS

The following names used in these submissions are pseudonyms which have been applied for safety and security reasons or due to court orders in place.

- Barrister 1
- Co-accused 1
- Co-accused 2
- Co-accused 3
- Co-accused 4
- Law Firm 1
- Member 1
- Member 2
- Mr Adams
- Mr Agrum
- Mr Andrews
- Mr Arnold
- Mr Bickley
- Mr Boyd
- Ms Brooke
- Mr Carlson
- Mr Cooper
- Mr Cooper's relative
- Mr Daniels
- Mr Dawes
- Mr Dunlop
- Mr Eddington
- Mr Elk
- Mr Ellsworth
- Mr Emerson
- Mr Goldman
- Mr Gregory
- Mr Gregory's relative
- Mr Hamilton
- Mr Hastings
- Mr Huntley
- Mr Irons
- Mr Joyce
- Mr Kearney
- Mr Keene
- Mr Kelvin
- Mr Ketch
- Mr Khan
- Mr King
- Mr Kruger
- Mr Linley
- Mr Luxmore
- Mr Maddox
- Mr McGrath
- Mr Newton
- Mr Parrish
- Mr Saturn
- Mr Shannon
- Mr Snyder
- Mr Summers
- Mr Thomas
- Mr Thomas' personal partner
- Mr Winchester
- Mr Winters
- Ms Brooke
- Ms Kline
- Ms Myers
- Officer 4
- Officer Alley
- Officer Anderson
- Officer Black
- Officer Cruze
- Officer Esplanade
- Officer Fox
- Officer Gardener
- Officer Graham Evans
- Officer Green
- Officer Haven
- Officer Highway
- Officer Hotham
- Officer John Brown
- Officer Lloyd
- Officer Malachite
- Officer Pearce
- Officer Peter Smith
- Officer Preston
- Officer Richards
- Officer Sandy White
- Officer Terrasse
- Officer Wolf
- Operation 1
- Operation 2
- Person 2
- Person 3
- Person 5
- Person 16
- Police Officer 1
- Riley Stevenson
- Solicitor 1
- Solicitor 2

Pseudonyms have been applied:

- where court orders require it
- where the Commission has determined it is appropriate based upon requests for reputational, privacy or safety reasons
- where the Commission has determined it appropriate in relation to case studies it was unable to serve on individuals.