Royal Commission
Into the Management of Police Informants

SUBMISSIONS - OFFICER RICHARDS

1. Mr. Richards does not accept Counsel Assisting's proposed finding that based on the evidence, it is open to the Commissioner to find that, given what Mr. Richards knew in April 2011, that he should have:-

   (a) Ensured that Ms. Gobbo and Victoria Police's conduct in relation to Mr. Cooper's decision to assist Police was disclosed to the Prosecutor in Mr Cvetanovski's trial; or

   (b) Ensured that the relevant conduct was otherwise disclosed to the Court so that a claim of public interest immunity could have been heard and determined.

2. It is submitted that the evidence does not bear out the proposed finding insofar as Mr. Richards is concerned.

3. The state of the evidence from Messrs Flynn, O'Connor, Hayes, Sheridan, Pearce and Richards is such that it is reasonable for the Commissioner to conclude that Mr. Pearce called Mr. Richards on 12 April 2011 and the following day Mr. Richards made contact with his superior officer Mr. John O'Connor. The evidence also shows that Mr Pearce, on 12 April 2011 at 2:03pm, emailed Mr. O'Connor indicating the issues surrounding Ms. Gobbo that had been raised at Cvetanovski's trial[1]. Mr. O'Connor in turn referred that email message to Mr. Sheridan for discussion. Mr. O'Connor and Mr. Sheridan discussed the matter but neither gentleman could assist the Commission on what they discussed or did about that information. Mr. O'Connor's diary records the meeting but not what was discussed[2].

4. The evidence also discloses that Mr. O'Connor was Ms. Gobbo's handler and that fact was known to Mr. Richards. Although Mr. Richards does not have a note in his diary to this effect, it is reasonable to conclude that in his conversation with Mr Pearce of the SDU, Mr. Richards told him to contact Mr O'Connor about the issue. Mr Pearce was

[1] Exhibit RC0853
[2] Exhibit RC0808

tasked with attending the meeting with Mr Champion SC and reporting back to Mr O'Connor which he did by email setting out all of the issues that arose and were discussed in the conference with Mr Champion SC.

5. The chronology of how this unfolded is as follow [3]:-

1. Thursday 7 April 2011
    - Cooper was cross-examined and an issue was raisedconcerning Ms. Gobbo, Police and Mr. Cooper.
    - *Voir dire* – This issue is discussed.
    - Lunch de-brief in Mr. Champion's chambers with Mr. Hayes about what Mr Cventanovski's counsel Penna-Rees was suggesting
2. Friday 8 April 2011
    - Mr. Hayes spoke to Mr. Evans about the issues raised. Mr. Evans says he will speak with Mr. White or Mr. Richards of the SDU.
    - Mr. Hayes is contacted by Mr. Smith of the SDU and Mr. Hayes tells him about the issues.
    - Mr. Smith says he will contact Mr. Richards.
    - Mr. Pearce and Mr. Hayes then speak.
3. Sunday 10 April 2011
    - Mr. Flynn speaks to Mr. Hayes and tells him to attend a meeting with Mr. Champion.
4. Monday 11 April 2011
    - Afternoon conference with Mr. Champion, Mr. Hayes, Mr. Flynn and Mr. Pearce who is from the SDU.
5. Tuesday 12 April 2011
    - 12:09pm Mr. Pearce speaks to Mr. Richards refers to Ms. Gobbo conspiring with Mr. Cooper and Police. Ms. Gobbo may be called as a witness.
    - At 2:03pm Mr. Pearce emails Mr. O'Connor.
    - At 3:39pm Mr. O'Connor emails Mr. Sheridan with acopy of Mr. Pearce's email to Mr. O'Connor.
    - 4:00pm Mr. O'Connor meets with Mr. Sheridan regardng the fact that Ms. Gobbo may be called.

[3] Taken from Counsel Assisting's draft submissions 4 172-4190 pages 972 – 975 and the references in the footnotes therein.

- 4:02pm Mr. Pearce sent a further email to Mr. O'Connor that no allegation was put to Mr. Cooper and that Mr. Cooper had finished his evidence. Would see if it was put to Mr. Flynn or Mr. Hayes.

6. Monday 9 May 2011
   - Trial concluded when jury discharged without verdict.

6. It is reasonable for the Commissioner to infer that Mr Pearce, attended the meeting with Mr Champion SC on behalf of the SDU so that hecould report back to Ms Gobbo's handler, Mr O'Connor the discussion held and the implications that followed. The process appears to have been that the informant in the Cvetanovski matter, Mr Hayes reports the issue to his superior Mr Evans. Mr Evans says he will contact Mr White or Mr Richards of the SDU. It is unlikely he spoke with Mr White because Mr White was on temporary duties at Operation Briars, so it is likely he spoke to Mr Richards. What next happens is the Mr Smith of the SDU and Mr Hayes talk. Mr Smith says he will report back to Mr Richards. On that same day Mr Pearce of the SDU then speaks with Mr Hayes. Mr Pearce then attends the meeting with Messrs Champion SC, Hayes and Flynn. The evidence shows that a plan was put in train to refer the issues to the higher ranked officers for decisions to be made about what was to be done in relation to the issues that had been raised about Ms Gobbo and the potential of her becoming a witness in the Cvetanovski trial. Mr. Richards played a part in putting that plan in train.

7. It could not be part of Mr. Richards' duty or responsibility to, of his own motion, contact Mr. Champion and disclose the full extent of Ms. Gobbo's assistance to Police without obtaining that direction from a superior officer. At this time, Mr. Richards knew that SDU's operating procedures required him to keep Ms. Gobbo role as human source confidential. He had assisted in the preparation of the SWOT analysis as part of the process in responding to the Petra Taskforce's request for Ms. Gobbo to be a witness in the Dale matter. That SWOT analysis was provided by Mr Biggin (Mr Richard's superior officer) to Command on 5 January 2009. That analysis raised Gobbo's role as a lawyer and concerns that she may have affected cases which could lead to an inquiry of some type. Mr Richard's knew that a directive did not come to him to make any disclosure of Ms Gobbo's role as a human source He had also been involved in providing assistance regarding the civil claim Ms. Gobbo had issued against Victoria Police. He was therefore aware that ranks superior to his had been involved in the discussion around the management of Ms. Gobbo and the tension between her being a human source and a witness in a criminal proceeding.

8. To place a requirement on Mr. Richards to ensure that Ms. Gobbo and Victoria Police's conduct in relation to Mr. Cooper should be disclosed to the Prosecutor (presumably including Ms. Gobbo's role as a human source) or to reveal all of that conduct to a Court in a claim for public interest immunity, ignores the chain of command that exists within all Police organisations. For Mr. Richards to take that responsibility on his own would likely result in him facing a criminal charge under the relevant legislation at the time which was section 127A of the *Police Regulation Act* which provided:

> *"A person who is a member of police personnel must not access, make use of or disclose any information that has come into his or her knowledge or possession, by virtue of his or her office or by virtue of performing his or her functions as a member of police personnel, if it is the member's duty not to access, make use of or disclose the information.*
> *The penalty was 240 penalty units or imprisonment for two years or both".*[4]

9. This is particularly so in the face of the Force Command's unwillingness to allow Ms Gobbo's role as a human source to be revealed. As far back as 2009 according to the statement of Gerard Maguire of Counsel, he had conversations with, among others Mr Waddell, Mr Biggin, and Mr Cornelious in relation to document disclosure and Public Interest Immunity claims. At paragraph 51 of his statement he says:

> *"During that period in 2009, Waddell and I discussed the change in status of Gobbo from registered human source to witness and the implications which flowed from that change. We were both concerned to ensure proper disclosure of material to the Court and the parties and properly based PII Claims. We were also concerned about the risk to Gobbo's safety if her role as an informer was revealed. We were concerned about the potential conflict which existed between her role as an informer and registered human source and her role and duties as a lawyer. We were also concerned about the potential impact on the Briars investigation".*[5]

10. Additionally, in response to a question asked by Counsel Assisting about the responsibility to disclose Ms Gobbo's role to prosecuting authorities, Mr Richards gave evidence that it was, from the SDU's point of view, the investigators who are responsible for the briefs of evidence, whether it be Petra or Purana or whoever it was

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[4] Section 127A of the Police Regulation Act 1958. Au thorised version No. 133 as at 1 January 2011.
[5] Statement of Gerard Joseph Maguire dated 8 August 2019, paragraph 51 COM.0063.0001.0001_0021

and those particular units should have been or could have been seeking a review or advice in relation to the presentation of that evidence. The extract from Mr. Maguire's statement is evidence of that occurring in practice. Mr. Richards saw it as the investigator's role and not the SDU's role to consider whether unfair convictions were obtained using Ms. Gobbo.[6]

11. There is further evidence of this at paragraph 55 of the Maguire Statement wherein he stated:-

> *"I do not recall the specific matters that I was asked to advise on the advice that I gave. However, I believe my advice was provided in conference with Waddell and perhaps others. It appears to have dealt with PII Claims which had either arisen or were likely to arise as a result of Subpoenas issued in R v Mokbel, which was a Supreme Court Trial before the Honourable Justice Kaye. However, the reference to witness 3838 confirmed that the matter dealt with Gobbo, that I was a ware that she was a witness and had been or was a registered informer."*[7]

12. We submit that it is plain from the evidence that Victoria Police did not want Ms Gobbo's role as an informer to become publicly known. Their conduct in subsequently withdrawing her as a witness in the Dale ACC prosecution following the independent advice from Mr. Maguire of Counsel is clear evidence of this as is including in the settlement agreement reached in relation to Ms Gobbo's civil claim that they would not call her as a witness in any matter. This position from Victoria Police would make it difficult from Mr Richards to 'go it alone' as Counsel Assisting's proposed findings suggest he should have done.

13. We submit there was nothing more that Mr. Richards could do other than refer the matter to his superior officers to be dealt with which is what he did. It is the inaction of Mr. Sheridan and Mr. O'Connor that goes to the very root of the proposed finding and their inaction should not be visited upon a subordinate officer, Mr. Richards who, in his role at SDU, was to protect the identity of registered informers on the basis that it was the investigators responsibility to comply with disclosure and PII obligations when dealing with registered sources.

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[6] Transcript of Mr Richards' evidence, 21 October 20 19, 7903.
[7] Statement of Gerard Joseph Maguire dated 8 August 2019, paragraph 55 COM.0063.0001.0001_0023

Dated 6 August 2020

Kenna Teasdale Lawyers

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