

“Lawyer X” cover-up starts to unravel

Australian police used multiple lawyers as informants

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What began in 2010 as a scandal reportedly involving an individual lawyer providing information on her clients to police in the Australian state of Victoria has become a crisis engulfing the entire legal system.

From the High Court down, judges, lawyers, politicians and media commentators have warned that the affair could undermine “public confidence” in the police and what is euphemistically called the “criminal justice system.”

In other words, the carefully-cultivated illusion that the legal system ensures “fair trials” with a right to genuine and independent legal representation is being called into question before the eyes of millions of people.

Two revelations this week struck a blow to the attempts of successive state governments, including the current Labor Party administration in Victoria, to keep covering up the fact that the police use defence lawyers as informers, in violation of lawyer-client confidentiality, to secure the conviction of their own clients.

First, Victorian Police had to admit that the female criminal lawyer, still identified only as “lawyer X” or “informant 3838,” became a registered police informant in 1995, not 2005 as it had previously testified.

It was further revealed that two years earlier, while she was still a law student, police dropped serious drug trafficking charges against her, after raiding her share house and finding \$82,000 worth of amphetamines. This suggests that her recruitment as an informer began before she was even admitted to the legal profession.

Second, the government and the police conceded that, far from being a “unique” case, as they had previously claimed, multiple lawyers have fed information to police and helped to convict the very people they were supposed to be defending. There was media speculation that six other lawyers are involved, but the true number remains unknown. All names, including that of “lawyer X,” are being suppressed by court orders.

Even if the figure is only six, that still constitutes a

significant proportion of the criminal lawyers appearing before the courts in the state of Victoria. Moreover, it indicates that the practice must have been known to prosecutors and condoned at the highest levels of the police.

Taken together, these two revelations throw into disarray the efforts of the government and the police to insist that “lawyer X” is a one-off instance of a lawyer who decided to conspire against her clients between 2005 to 2009. Initially, her motives were presented as helping to end what the media and the authorities dubbed “gangland” killings. Now, what is evident is that she has been a police informant throughout her entire career.

While the media has fixated on the fact that hundreds of criminal convictions, including those of alleged “drug lords” and crime bosses, now face challenge in the courts because of tainted trials, the implications go far wider and deeper.

How many innocent people have been convicted, or others wrongly convicted, on the basis of confidential information supplied to police by lawyers? In a 2015 letter to the assistant police commissioner Stephen Fontana, “lawyer X” said the evidence she had provided had led to the arrest of at least 386 people.

The police and government admissions point to the systemic, and ongoing, use of lawyers as informants to entrap or frame-up people. This modus operandi will not be confined to “gangland” activities. Other police operations, including against alleged terrorists, must be suspected of having involved similar conspiracies.

Moreover, these are police-state methods, overturning longstanding legal principles, and establishing precedents for use against other targeted victims, such as political activists.

Lawyer-client confidentiality is a centuries-old protection against authoritarian rule. It is also central to the democratic principles of independent legal representation and “innocent until proven guilty.”

As a result of this week’s revelations, Premier Daniel Andrews’ Labor government was forced to amend the terms

of reference of a royal commission that it announced last December into the “lawyer X scandal.” One of the commissioners, a former South Australian state police chief, also had to stand aside because he was a senior Victoria Police officer in 1995. This leaves a single former judge to conduct the inquiry.

Officially, the inquiry will examine “the adequacy and effectiveness of Victoria Police’s processes for recruiting, handling and managing human sources who are subject to legal obligations of confidentiality or privilege.”

In truth, this inquiry has the same purpose as previous ones conducted into the affair by the police in 2012 and the state’s anti-corruption commission in 2014. It is to provide a whitewash by depicting the practice of recruiting lawyers as an aberration, while legitimising the wider use of secret “human sources”—i.e., informers and infiltrators.

Even as he announced the royal commission, Andrews effectively pre-empted its findings. He told reporters he still had faith in Victoria’s police chief commissioner, Graham Ashton, but that a royal commission was necessary to ensure the “integrity” of the criminal justice system in the future.

Andrews made this statement despite Ashton continuing to justify the recruitment of “lawyer X” as a “desperate measure” during a “dangerous time” of gangland crime. Ashton also defended the fact that the police opposed allowing her past clients to know that their lawyer may have been informing on them, insisting that it was necessary to prevent her from being murdered. The High Court, however, ruled that the woman could be shielded by entering a witness protection program.

There is no doubt that the latest revelations have caused outrage in the legal profession, as well as the public. Victorian Bar Council president Matthew Collins told Australian Broadcasting Corporation (ABC) radio on Thursday that the conduct “is recognised universally as being so egregious, so beyond what is acceptable, that it has come as a shock.”

Collins stated: “The culture of the legal profession is and has always been that the fundamental duty is a duty of confidentiality towards one’s client. Where that is breached that is as egregious as it gets. You lose your ticket for this kind of thing.”

Yet it is inconceivable that the recruitment of lawyers as informants was not known throughout the police, intelligence, legal and political establishment. The conduct of “lawyer X” has been discussed in these circles since at least 2010, when she was called to testify in a murder trial involving an alleged corrupt police officer and was publicly named in the media. After refusing to testify, she then sued the police for endangering her anonymity and safety. That case was settled behind closed doors.

Media reports in 2014 also identified the lawyer, triggering a four-and-a-half year coverup. This featured a Victorian Independent Broad-Based Anti-Corruption Commission (IBAC) finding in February 2015 that criticised police “negligence,” followed by litigation by “lawyer X” and Victoria Police chief Ashton to block the release of any material from the IBAC investigation, even to those imprisoned on the basis of her collaboration with the police.

That coverup partially ended last December. Following a month’s delay until after the Victorian state election, a unanimous High Court judgment was published that dismissed a final appeal in those “public interest immunity” proceedings and authorised the release of some limited information about the “lawyer X” case.

In a joint judgment, all seven judges of Australia’s highest court branded the police conduct as “corrupt,” “atrocious” and “reprehensible,” involving “fundamental and appalling breaches of EF’s [lawyer X] obligations as counsel to her clients and of EF’s duties to the court.” The judges’ primary concern, however was “ensuring that the court’s processes are used fairly and of preserving public confidence in the court.”

Obvious questions are raised about the likelihood of similar methods being employed by the police in other Australian states, as well as by the Australian Federal Police and their intelligence agency partners, such as the Australian Security Intelligence Organisation.

Legal profession bodies have demanded assurances from the New South Wales (NSW) state police that it was not engaged in similar conduct. Interviewed on ABC radio, Law Council of Australia president Arthur Moses hinted at a problem in that state. Asked whether he had heard “on the grapevine” about lawyers being used as police informants in NSW, he stated: “I am not at liberty to disclose matters that I may have come into possession of through some other means.”



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