

More lawyers could be police informants in Australia

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Further revelations over the past week about the police recruitment of lawyers in Australia to inform on their clients, in violation of the fundamental principle of legal confidentiality, point to the full extent of the abuse being as yet unknown, but certainly systemic.

The affair has thrown a question mark over the entire legal system, undermining the very notion that defendants are guaranteed “fair trials” with the right to independent legal representation. Dozens, if not hundreds, of cases may have to be retried.

The legal and political implications are even broader. The methods involved could be used against anyone targeted by the police and intelligence agencies, particularly political activists.

Far from being confined to a few dozen convictions of “crime bosses” and “drug lords” in the state of Victoria, as the media and government figures have insisted, the use of police informants, including members of the legal profession, to frame up people or orchestrate incriminating information, is clearly much more widespread.

Eight years of efforts by the police and successive governments to cover up the recruitment of lawyers as informants on their clients began to collapse late last year, forcing the current Labor Party government to finally announce a royal commission into the scandal.

When the inquiry held a preliminary hearing last Friday, it was told that police had used or considered using at least eight lawyers or law clerks to provide information on their clients, and the true number could be higher.

The counsel assisting the inquiry, Chris Winneke, told the commissioner, Margaret McMurdo, a former judge: “Subsequent and ongoing investigations by the State and Commonwealth Offices of Public Prosecutions with the assistance of Victoria Police has

identified further cases. There may be more.”

Court orders continue to prevent the identification of any of the eight informers. They include informant 3838 or Lawyer X, whom the inquiry will refer to as EF. The seven others are a court clerk, two legal secretaries, a solicitor, a former solicitor, a “self-proclaimed legal adviser” and a lawyer who has since died.

They all acted either as police informants or “community sources,” even as the police fought in the courts for nearly four years to prevent any details being reported of the role of the first-known informant, dubbed by the media as Lawyer X.

Judging by the informing performed by Lawyer X, the scale of the practice is massive. In a now-released letter to the police, written in 2015, she wrote: “[T]here are literally thousands of hours of recorded conversations and debriefings as well as many thousands of documents proving without doubt, the immense assistance I provided over a number of years...

“To try to encompass my actual value, reliability and work for Victoria Police in any summary is immensely difficult because from September 16, 2005, I spoke to my handlers on a daily basis, often seven days a week for a couple of years.

“Again, the media has informed me that there are approximately 5,500 information reports generated from information I provided to police.

“There were a total of 386 people arrested and charged that I am specifically aware of based upon information I provided to Victoria Police, but there are probably more because as you would know, I did not always know the value or use of some of the intelligence that I was providing.”

Claiming her life was in danger because her treatment as a police source had been botched, Lawyer X sued

Victoria Police in 2010 and received a compensation payout of almost \$3 million. The backroom settlement of her case began eight years of desperate cover up.

Victoria Police had three chief commissioners during Lawyer X's time as a registered informant—Simon Overland, Christine Nixon and Neil Comrie—further underscoring the institutional character of the abuse. Yet, Premier Daniel Andrews has repeatedly expressed his full confidence in the current police chief, Graham Ashton, who has been continuing the practice, and covering up for his predecessors, since 2015.

Andrews' Labor government instigated the royal commission for the purpose of continuing the smokescreen. It is seeking to head off public outrage over the affair, depict informing lawyers as an aberration and minimise the damage to the credibility of the legal system.

The government was compelled to broaden the scope of the royal commission this month when the police admitted that Lawyer X was first registered as a police informant in 1995, not 2005 as originally reported. She was officially recruited two years after the police dropped serious drug trafficking charges against her, while she was still a law student.

In her opening statement, McMurdo, a former president of the Queensland Court of Appeal, voiced revealing concern for the impact of the widening scandal in eroding public trust in the police and courts.

“The police use of lawyers to inform on their clients has obvious potential to undermine the criminal justice system and the public's confidence in it,” she said. If that happened, “the criminal justice system would regress into a dysfunctional, far more costly, clogged quagmire of universal distrust.”

McMurdo indicated deeper political anxiety, stating: “When those whom the community entrusts to uphold and enforce the law themselves breach fundamental legal principles, confidence in our justice system and indeed our democracy is seriously diminished.”

The judge pointedly ruled out any suggestion of a wider inquiry into the police, not even into the use of other informers apart from lawyers. “It is important to keep in mind that the scope of the Commission's work is tightly defined by those terms of reference,” she said. “This is not an open-ended, broad inquiry into Victoria Police or even into Victoria Police's management of police informers generally.”

In addition, the inquiry has no power to quash the convictions of the victims, reduce sentences or order retrials. Nor can it instigate prosecutions of the lawyers and police officers responsible.

Winneke, the prominent barrister assisting McMurdo, also confirmed that while some hearings will be held in public, other sessions will be closed in order to protect the informants, thus shielding the operations of the police. “The matters being investigated by the Commission involve sensitive information about criminal activities and police operations,” he said.

Winneke further noted that prosecutors, judges and officials of Victoria's anti-corruption body, IBAC, cannot be compelled to testify or provide documents to the inquiry. This means that the prosecutors who ran cases in which lawyers informed on their own clients, and the judges who presided over those cases, as well as the officials who kept secret the true scope of the affair, cannot be questioned, let alone brought to account.

IBAC conducted an investigation into the Lawyer X affair in 2015, essentially continuing a whitewash begun by earlier police inquiries.

Questions are obviously raised about similar police operations in other states, as well as by the Australian Federal Police and its partner agency, the Australian Security Intelligence Organisation.

In an effort to protect the police in Western Australia, that state's Labor Party Attorney-General John Quigley formally wrote this week to his colleague, Police Minister Michelle Roberts, asking her to “seek assurances” from the state's police chief that lawyers have never acted as police informants.

In South Australia, the police issued an evasive statement that it had “no recollection or record” of such practices in that state since 2000.



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