

**REPUTATIONAL IMPACT ON AN INDIVIDUAL BEING ADVERSELY
NAMED IN THE ICAC'S INVESTIGATIONS**

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PARLIAMENTARY COMMITTEE ON THE ICAC

Submission by Greg Wyllie on Reputational Damage (with reference to "Operation Hale")

On Wednesday 30th July, 2014, while returning home after taking a 7am class, I received a call from my son, Stephen. He informed me that ICAC officers were at his home demanding that he and his girlfriend hand over their phones. They had never been public servants.

Upon entry to my house at [REDACTED] that same day at 8.30am I noticed two strangers standing in one corner of the dining room while my wife, Margaret Cunneen SC, (who was then a Crown Prosecutor with 38 years' unblemished service to our State) was sitting, dressed only in a dressing gown, at the table. Margaret informed me that these people are from ICAC and they want my phone. At that point one of the officers handed me a Notice to Produce document (but not a warrant) and demanded my phone too. I noted that the document was signed by the ICAC Commissioner, Megan Latham. This was a surprise because I had known Megan since the mid-1980s through my wife's work. I had taught her son at Cammeray Public School in the 1990's. I had spoken to Megan at many social functions over the years including one only six months before. It is beyond debate that Ms Latham had an egregious conflict of interest in this matter in relation to my family and even the former commissioner, Mr Ipp, usually outspoken in the defence of ICAC, described ICAC's pursuit of my family as an "error of judgment". To put it another way, it would not have happened under his watch. The then Inspector of ICAC, Mr Levine AO QC, was to find in his Report on the attempted investigation of my family that the phone seizure was illegal. Ms Latham later explained to the Parliamentary Committee on 18 March 2016 the means by which these property seizures from our homes took place as follows:

"Essentially the point I am trying to make is that the notice to produce was a very low-key, unobtrusive way of obtaining the phones and making sure we had access to the content of the phones and when we had access to the content of the phones, we could determine whether there was anything that we needed to pursue".

We were not told what the subject of the inquiry was and we could not fathom what connected all four of us with anything that could be in ICAC's purview. We were not allowed to speak to each other or anyone else. My son and I had to give a Taekwondo lesson to a class of 95 at Mosman High School straight after, gravely distracted and terrified about what may happen next.

Only when Mr Levine's report was delivered to the Parliamentary Committee did we know that all four of us had been under surveillance by ICAC for days before their raids on us. Mr Levine also queried why I was a part of this surveillance procedure when I was not a person of interest.

My phone was kept for some time. ICAC came to my home again on 7th August '14 with my wife's phone to re-enact the seizure with a search warrant. They entered our home, filming my wife and our home on the strength of a warrant gained by an abuse of process. No law enforcement officer is permitted to introduce the one item on a search warrant into the premises just so they can commit the grievous breach of privacy that the execution of the search warrant authorises. They did the same to my son at his home, an apartment, in front of the concierge and other residents. His lease was terminated shortly after and he had to go to the expense of moving.

On the same day, ICAC attended the workplace of my son's girlfriend, Ms Sophia Tilley, and served a summons on her for a private hearing. Her employer made some remarks about her getting herself in trouble and she lost that employment shortly after because ICAC officers told her she was not permitted to make any explanation to her employer.

On the same day, ICAC attended my workplace, camera aloft, and served me with a summons in front of the mothers of then pre-school children to whom I was teaching taekwondo. My business, reputation and livelihood suffered because of this and the adverse effects continue to this day.

On 14th August my wife, our son, his girlfriend and I were summonsed to attend a private hearing at ICAC. By this time we had been informed that ICAC was investigating whether Margaret and Sophia had perverted the course of justice by Margaret somehow advising Sophia to fake chest pain to avoid a breath test after a car crash. We were all required to obtain separate legal representation. It was apparent to me at the hearing that ICAC had no idea that my son's girlfriend had been duly blood tested after the major car crash, which was not her fault. I recall querying the counsel assisting what was the problem because Sophia hadn't been charged with anything. I questioned that doesn't a blood test put it beyond doubt? I continued by stating, "everyone knows that compulsory blood tests are conducted after a serious accident". The counsel assisting shuffled papers on his table and didn't answer.

It was apparent that the entire investigation was misconceived. Ms Tilley had been alone in the car when, while stationary at an intersection, another car (whose driver was later charged with negligent driving) T-boned the car she was driving (a car belonging to my family). She was rescued from the wreck and placed straight into an ambulance while her bag including phone were left in the wreck of the car, which was towed away. Neither my wife nor my son was present at the crash. Ms Tilley, who had been returning from work at about 6pm, was blood-tested at hospital with a 0.00 result. There was no evidence whatsoever of any communication between my wife and Ms Tilley.

Having explained to ICAC precisely what occurred on the evening, we were all confident that IT WAS NOW OVER.

However, some days after the private hearing I received a phone call from ICAC Officer Fox requesting that I email him records for a "government E-tag" in the car in the collision. I informed him that Margaret had never had a government E-tag and that, in any event, a driver does not incur a toll driving north on the Harbour Bridge. Surprised at this, he then

said “we have to extend inquiries to see if there is anything that needs to go further down the food chain”.

On 30th October, 2014 ICAC served subpoenas to my wife, my son, his girlfriend and me to appear in a public hearing. It also announced to the press that there would be a public hearing into an allegation that my son, his girlfriend and my wife had attempted to pervert the course of justice. I believe that ICAC also advised the media of our home address at Willoughby. When one of my younger sons left for work at 7am the following morning, he ran back to tell us that there were photographers coming out of black vans and journalists camped along the front fence of our house. We were prisoners in our house all day, while journalists knocked on the door periodically. The following day many members of the press were still outside our home.

Regardless of the easily established facts that Ms Tilley was completely sober (the police report of the crash is available should you require it) and that there was no possibility of my wife having had any contact with her, direct or indirect, before she was placed in the ambulance suffering genuine chest pain (she had been suspended by the seat-belt when the car was pushed up on its side on impact) my family suffered an enormous amount of publicity in the media suggesting that Margaret had somehow told Sophia to fake chest pain to avoid a breath test.

Because our son and his girlfriend had been caught up in this parallel system of justice where they had no right to silence and no presumption of innocence, Margaret and I decided that we would apply our financial resources to stop them (they were only in their early 20s) being the subject of some intrusive spectacle for which ICAC had become infamous. Margaret was deeply distressed that Stephen and Sophia were being subjected to this shocking invasion of their privacy, and the risk of gaol if any part of their evidence was found to have been wrong, because someone had determined to try to find something to destroy her reputation.

It is apparent now that this ICAC investigation into my family was commenced on the misapprehension that Ms Tilley was never tested for her blood alcohol level (perhaps because in the circumstances of the seriousness of the crash, it was a blood test rather than a breath test). Having commenced its relentless persecution of my family, it was as though ICAC had to press on to find something, anything, to justify their massive overreach and avoid having to make an apology.

Even after the New South Wales Court of Appeal determined, on 5 December 2014, that ICAC had no jurisdiction to conduct this Inquiry, ICAC dragged my wife, son and Ms Tilley to the High Court (which forced us to incur further legal expenses which reached the hundreds of thousands, most, but not all of which, we later recovered when costs were awarded against ICAC) only to be told by the High Court, on 15 April 2015, that ICAC had been incapable of understanding its own Act and was not permitted to do what it had purported to do.

Then followed the most unseemly spectacle of an ICAC Commissioner publicly lobbying the Government for legislation which would retrospectively make legal anything and everything

it had previously done which was illegal. The then ICAC Inspector warned the Government not to give in to the Commissioner's petulant demands to, in effect, obliterate the effect of the High Court decision in *ICAC v Cunneen and Others* (the others being my son and his girlfriend).

After the Government inexplicably caved in and passed the *ICAC Amendment (Validation) Act 2015*, Ms Latham called on the Director of Public Prosecutions, for whom my wife worked, and who had been a friend of many years, and spoke to him about preferring criminal charges against my wife, my son and his girlfriend. The Report of the then Inspector about the inquiry into my family, dated 4 December 2015, reveals that Latham also gave to the DPP thousands of text messages and all her photos dating back to 2005. One of the texts was somewhat critical of the way he had conducted an appeal in relation to one of Margaret's trials. Although there are, extraordinarily, no notes of that meeting between two people extremely well-known to Margaret, whose offices are bastions of independence, the inference that the DPP was shown the critical text message (which was later leaked by ICAC to its favoured media outlet) in order to engineer a bias is irresistible.

On 27 May 2015 ICAC issued then issued a 622 word press release saying it had referred my wife, son and his girlfriend to the DPP for consideration of criminal charges. Knowing, now, that ICAC had absolutely no evidence whatsoever against them, this was deplorable. The Inspector, Mr Levine, said of the press release:

"My conclusion in relation to this media release is that it is another example of unreasonable, unjust, oppressive maladministration on the part of the ICAC. It was a last ditch stance of defiance and the tenor of the publication reflects a concluded view on the part of the ICAC that reflects poorly on its standing and objectivity. It is an abuse of the powers reposed in it".

Many members of the press, who had also been in force at the time of the court hearings, were camped outside our home yet again, harassing us and our other children as well.

Although the DPP decided to refer the matter for determination interstate, wife was suspended from duty in the middle of her appearance for the Crown in a murder trial. There was no support extended to her or to our family from her workplace.

A month later the NSW Solicitor General, after consultation with the Victorian Senior Crown Prosecutor, announced that there was no evidence of any wrongdoing and there would be no charges preferred against any of my family.

The Levine Report included, in its conclusions at page 62, that what was alleged against Margaret: *"finds no support in reliable, credible or cogent material, let alone material elevated to constitute evidence, of any conduct on her part, let alone of her son or his girlfriend, warranting the intervention and intrusive exploration of one of the most powerful agencies of this State".*

Because of the enormous media interest in this matter, which should never have commenced:

- The reputations of good character my wife, son, Ms Tilley and myself have always enjoyed have been irreparably damaged;
- Our household security has been severely compromised because everyone in the media knows our address, which could only have been leaked by ICAC and the public, including, presumably, numerous criminal offenders prosecuted over the years by my wife, have seen our house on media reports;
- Our mental health has been affected by the post-traumatic stress of always expecting some new attack on our family and homes;
- Our financial resources, and our earning capacity, have been diminished. We are still out of pocket in relation to numerous legal expenses connected with this witch hunt.

I respectfully ask you to keep in mind the history of the nightmare which ICAC relentlessly inflicted on my family over several years when you are considering whether ICAC should continue to be able to blacken the reputations of targets even before there is a single piece of evidence tested and adduced in a proper court.

I would also ask that you recommend that everyone whose reputation has been adversely affected by ICAC's habit of publicly humiliating people in advance of any adverse finding should receive the benefit of an unqualified public exoneration and, if appropriate, an apology.

It is also essential that anyone who has suffered financial loss due to ICAC's excesses of jurisdiction or errors of judgment be fully compensated from its own budget. This may have the effect of ensuring that ICAC ceases to pursue entirely innocent people, as it has demonstrably done so many times in the past.

