Submission No 2

INQUIRY INTO PROGRESS OF THE OMBUDSMAN'S INVESTIGATION 'OPERATION PROSPECT'

Name: Mr John Giorgiutti

Date received: 15/06/2015

The Hon Robert Borsak MLC
Chair
General Purpose Standing Committee No. 4
Legislative Council
New South Wales Parliament
Parliament House
Macquarie Street
SYDNEY NSW 2000

14 June 2015

Dear Sir

Submissions – Inquiry into Operation Prospect

By email dated 4 June 2014, on behalf of the Committee, you invited me to make a submission to the Inquiry. The email concludes with your indication that the Committee would greatly appreciate my contribution to the Inquiry. I note from the Committee's media release that I am not due to give evidence to the Inquiry.

Notwithstanding that the making of submissions is contrary to my interests (in declaring myself as a confidential source of information), I believe that it is in the public interest that I make submissions.

Accordingly, I make the following submissions.

I have no objection to the submissions and attachments being made public.

CAVEAT
The events about which I make submissions largely occurred some three (3) years ago. I make these submissions based on my present recollections.

Whilst I cannot guarantee a complete recollection, the submissions should nevertheless be sufficiently accurate for the purpose of this Inquiry.

TERMS OF REFERENCE
I note that the terms of reference for the Inquiry are to inquire into and report on the progress of the Ombudsman's Operation Prospect Inquiry into police bugging and in particular (inter alia):

"The delay in finalizing the report on the Operation Prospect inquiry into police bugging" and *"The circumstances in which the potential and/or proposed prosecution of a Deputy Police Commissioner arising from the Operation Prospect was divulged to the media".*

These submissions go to these particular terms of reference for the Inquiry and otherwise relate to the progress of the Ombudsman's Inquiry."

SMH – 17 April 2015

On 17 April 2015 an article appeared in The Sydney Morning Herald. The heading for the article was ***NSW Deputy Commissioner Nick Kaldas may face charges from Ombudsman inquiry***. The by line named the journalists as Nick McKenzie and Richard Baker.

I do not have a copy of the newspaper article and rely on an on line version recently retrieved by me.

The article reports in part:

"The NSW Ombudsman is considering referring Deputy Commissioner Nick Kaldas to the Director of Public Prosecutions to face criminal charges for allegedly misleading the inquiry into the NSW police bugging scandal.

...

Legal sources have confirmed that advice has been sought by Ombudsman Bruce Barbour, who believes there is a prima facie case that Mr Kaldas intentionally misled the ombudsman's office.

...

Mr Kaldas is alleged to have misled the Ombudsman about the source of documents leaked to him in 2012 by former senior NSW crime commission official John Giorgiutti.

...

Mr Kaldas is also a whistleblower who helped to expose the improper surveillance.

...

Earlier this year, Mr Kaldas' lawyers wrote to the parliamentary committee conceding that he had given a ***"partial, incomplete and incorrect account"*** *to the Ombudsman of who had leaked him the files after he was* ***"ambushed"*** *by ombudsman investigators.*

"These tactics and this line of inquiry had the effect that Deputy Commissioner Kaldas found it impossible to cope with examination of the Ombudsman – particularly in the afternoon and early evening."

Mr Kaldas' lawyers also stated that, after further intense questioning, Mr Kaldas later corrected his earlier account and named the source of the documents leaked to him."

(Bolding is my emphasis).

I did give evidence to the Ombudsman that I disclosed and released information to Deputy Commissioner Nick Kaldas (Kaldas).

At the time that I released information to Kaldas I did so in the context of his and my understanding that I was releasing information to him as "an informer" and a "whistleblower". Kaldas was both a member of staff of the New South Wales Crime Commission (the Commission) and a police officer. Kaldas said to me *"Don't worry, I won't ever give you up. I've never given up an informer and I would never give up an informer"* or words very much to like effect.

On reflection, and now having regard to the correspondence (dated 2 February 2015) referred to in the above article, from Kaldas' lawyers to the earlier Inquiry (a copy of which I attach), I fear that in giving evidence to the Ombudsman, Kaldas may have unnecessarily and mistakenly been concerned with protecting me as a confidential source to him as a police officer of information relating to the enforcement or administration of a law of the State.

The *Evidence Act 1995* (*Evidence Act*) provides that if the public interest in admitting into evidence information or a document that relates to matters of state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information or document, the court may direct that the information or document not be adduced as evidence.

The *Evidence Act* further provides that information or a document is taken to relate to matters of state if adducing it as evidence would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement of a law of the Commonwealth or a State.

I say unnecessarily above because, at the time that Kaldas gave evidence to the Ombudsman, he was unaware that I had already given evidence to the Ombudsman that I had disclosed and released information to him.

I say mistakenly above because, whilst it is well understood in law enforcement that the *Evidence Act* provides that there is a public interest immunity privilege against disclosing, or even enabling a person to ascertain, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the State, it is less understood that the rules of evidence that may be applicable in a court of law are not applicable in a hearing held pursuant to the *Ombudsman Act 1974* (the *Ombudsman Act*). Further, it is less understood that if the Ombudsman requires any person to answer a question which, in proceedings in a court of law, might justify an objection to answer on the grounds of public interest immunity privilege (such as disclosing, or enabling a person to ascertain, the existence of a confidential source of information relating to the enforcement of a law of the state) the *Ombudsman Act* purports (because it does not say so in terms) to remove the privilege.

2012 – MY CONCERNS

As I indicated to the earlier Inquiry into the progress of Operation Prospect, in June 2012 when Inspector Levine wanted production of Commission documents I was given the responsibility of collating the documents by Peter Singleton, the then Commissioner of the Commission.

By 2012 the vast majority of the Commission's files had been in storage for very many years. By searching the Commission's document management system and electronic documents I identified files for retrieval. I retrieved about 100 files of about 20,000.

The then Special Investigation and Litigation Team (SILT) of the Commission undertook the collation of the documents and I reported to Singleton.

It did not take long for me to have concerns, which I detail below. My simple task of collation turned into an inquiry under the now repealed *Crime Commission Act 1985* (the *1985 CC Act*).

Warrant 266

In September 2000 Mark Standen then Assistant Director Investigations told me that the warrants for listening devices had on them a very large number of names because Human Source code named "SEA" could "bump into" (my words) a lot of people.

The Commission sought and was granted a New reference codenamed MASCOT II, on 5 October 2000. The Commission relied on a Warrant Affidavit deposed to on 5 October 2000 in support of the new Reference. It must be presumed that my then Commissioner was satisfied with the content of the Affidavit if he used it as a basis to ground a new Reference.

When reviewed by Mervyn Finlay QC the then Inspector of the Police Integrity Commission in 2000-2001, he reported, *"Investigators tended to include all persons likely to speak in the presence of the device".*

The consistent Commission position was that there was no choice, the law required it, and that it should not be taken that a person named on a warrant was suspected of any criminal activity.

In 2003 I became aware of the memo dated 13 April 2002 of Cath Burn, now Deputy Commissioner and the attachment thereto. Taken together (the memo and the attachment) it seemed that only two were not suspects. I raised this with my then Commissioner and he was unresponsive. He appeared surprised.

In 2003 the Commission's copy of the Affidavit for Warrant 266 could not be found, and to my knowledge has never been found.

In 2012, following an application to a Duty Judge, the Commission obtain a copy of the Affidavit. I read it. If it was meant to include the names of persons "SEA" would "bump into" then it was no doubt very clumsily drafted.

Nevertheless, in 2012 I was concerned that both my previous Commissioner and I had been misled in 2000 as to why persons were named on the Warrant.

"SEA" debrief

In 2012 I ascertained that the original debrief of "SEA" was five days of typed questions and answers. During the debrief, "SEA" did not provide information of corrupt activity on the part of Kaldas. In fact, "SEA" was specifically asked whether he knew of any corrupt activity on the part of Kaldas. "SEA" responded in the negative.

In 2012 I was concerned that I had previously been misled when I had been told in 2001 that "SEA" had provided information of corrupt activity on the part of Kaldas.

Schedule of Debrief

The Debrief of "SEA" formed the basis of a Schedule of Debrief (SOD). When I looked at the SOD in 2012 there were three matters on the SOD for Kaldas. Two of the matters on the SOD for Kaldas had the letter "A" after the number. Further, the number on the SOD was a low number. These two matters on the SOD had been added later but not given the next sequential number.

In 2012 I was concerned that the two matters on the SOD for Kaldas had been added to the SOD with the letter "A" as suffix to make it appear that the two matters on the SOD were part of the original debrief.

District Court files

In 2012 I retrieved the District Court files that related to the arrests that gave rise to two matters on the SOD for Kaldas. There was no evidence that the files had been previously retrieved. At least one (if not both) of the complaints had been raised and disposed of in the court proceedings.

In 2012 I was concerned that the files had not been retrieved to ascertain whether the allegations had been raised in the criminal litigation.

The Reference code named MASCOT

In 2012 I ascertained that the material that grounded the Reference codenamed MASCOT contained only 19 persons being persons who were associates of Sea and who were named by him as involved in, or having knowledge of, corruption. Those 19 names did not include Kaldas.

I was concerned that having been told that "SEA" had provided information of corrupt activity on the part of Kaldas, Kaldas was not one of the 19 names.

Warrant - March 1999

In 2012 I ascertained that on 12 March 1999 a Warrant had been granted which contained 119 names. This was well before "SEA" would have been "bumping into" people in 2000. Further, and more importantly, the names went beyond the 19 names in the reference code named MASCOT.

I was concerned such that I doubted that the Warrant could have been lawfully obtained.

Hard copy list of code names

In 2012 I came across a hard copy list of names of police officers. Each police officer on the list had been given a code name. I undertook some searches and became satisfied that the list was not a Commission document.

I was concerned as to the existence of the list amongst the papers of Reference code named MASCOT.

Integrity testing by Mascot Police

In the weeks prior to May 2001, "SEA" was on leave. Whilst "SEA" was on leave, a list of names was prepared of persons "SEA" could be "pushed into" on his return from leave and prior to public hearings at the Police Integrity Commission. In 2012 I thought that the "pushing" of "SEA" into Kaldas (which occurred in May 2001) might have been an integrity test of Kaldas.

There was an issue between the Commission and the Mascot police about the Mascot police undertaking Integrity testing.

I was further concerned that the "investigation" of Kaldas was not part of the matters referred for investigation by the Management Committee under Reference code named MASCOT.

Strike Force Sibutu

In 2012 I became aware of the findings of Strike Force Sibutu. The Strike Force found that affidavits for warrants deposed to by police officers from Special Crime and Internal Affairs (SCIA) in 1997-98 allegedly contained false information.

I was concerned that there were findings by a Strike Force of alleged criminality by police officers from SCIA at a similar time especially as the Mascot police were a part of SCIA. Moreover, the alleged criminality involved the swearing of affidavits containing false information.

Task Force Tumens

In 2012 I became aware of the findings of Strike Force Tumens. The Strike Force found evidence of improper conduct on the part of SCIA police officers between 1999-2000.

I was concerned that there were findings by a Strike force of alleged misconduct by police officers from SCIA at a similar time and again especially as the Mascot police were a part of SCIA.

"SEA"

In 2012 I became aware that a Forensic Psychiatrist engaged by the New Wales Police Force to assess a Hurt on Duty application by "SEA" (also known as M5) reported the following:

"M5 described further difficulties which arose from the fact that at times he knew that what he was doing was settling old scores which related to ***his supervising superintendent***". (Bolding is my emphasis).

I was concerned that "SEA" had given this evidence because "SEA" knew precisely what information he had provided about police corruption and therefore knew the bounds of the investigation being undertaken under the Reference code named MASCOT.

Affidavit accompanying Warrant

By 2012 Kaldas had been aware for some years that a warrant had been obtained to intercept the telecommunications service of XXXXXX XXXXXX XXXXXX. Kaldas had complained that given that XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX the warrant could not have been lawfully sought.

Having the above concerns, I disclosed the affidavit to Kaldas who then told me that the affidavit contained materially false information.

I was then concerned that an affidavit had been sworn containing false information and that the affidavit had been used to obtain a warrant to intercept the telecommunications service of XXXXXX XXXXXX XXXXXX.

PUBLIC INTEREST DISCLOSURE ACT 1994

In August 2012, I honestly believed, on the basis of the matters forming my concerns as set out above that I had information showing corrupt conduct by police officers assisting the Commission in Reference code named MASCOT in relation to the Affidavit used to obtain a warrant to intercept the telecommunications service of XXXXXX XXXXXX XXXXXX and, tending to show corrupt conduct in relation to other activities by police assisting the Commission in Reference code named MASCOT.

Having such a belief I was in a position to make a protected disclosure pursuant to the provisions of the *Public Interest Disclosures Act 1994.*

SUPREME COURT OF NEW SOUTH WALES

I was also mindful that when a lawyer is admitted to practice in New South Wales the lawyer swears or declares and affirms that he/she will truly and honestly conduct himself/herself in the practice of a Lawyer of the Supreme Court of New South Wales and that he/she will faithfully serve as such in the administration of the laws and usages of the State of New South Wales according to the best of the Lawyer's knowledge, skill and ability.

NEW SOUTH WALES SOLICITORS' RULES

I was further mindful that the New South Wales Solicitors' Rules provide that a solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

CRIMES ACT 1900

Moreover, the *Crimes Act 1900* provides that if a person has committed a serious indictable offence and **another person** who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it **fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.**

When I disclosed and released information to Kaldas in 2012, I believed that the information might be of material assistance in securing the apprehension of offenders or the prosecution or conviction of offenders for misconduct in public office.

Absent a reasonable excuse, the obligation to bring information to the attention of a member of the Police Force is positive obligation.

I believed (and believe) that I did not have a reasonable excuse not to bring the information to the attention of a police officer. Kaldas is a police officer.

PETER SINGLETON

On 29 May 2012 The Honorable Adam Searle asked the following question without notice:

"My question is directed to the Minister for Police and Emergency services. I refer to comments made by ***the Premier*** *last night on Channel 7 news in relation to the Emblems report, when he* ***said, "The best way to deal with a cover-up is to put documents out publicly"*** *and* ***"We need to be up-front with the public; we need to tell them what this was about and we need, if possible, to release the report in its entirety so whatever concerns exist can be put to bed."*** (Bolding is my emphasis).

In the context of the above public statement by the Premier I told Singleton who was my Commissioner in 2012 that the "matter" would never go away. I suggested to Singleton that the Commission should disseminate to whomever was named on the Warrants a copy of the warrant together with a copy of the Affidavit (redacted as to persons other than the particular person. That suggestion was rejected on the basis that the persons would get together and then would have a copy of the whole of the Affidavit. By August 2012 Singleton was well aware of my above concerns. He did nothing about my above concerns.

Following the Patten report in November 2011, I became de facto in charge of Governance. My last Employment Agreement with the Commission commenced on 1 July 2012. My occupation was Lawyer and my position title was Director (Governance, Special Investigations and Technical Operations). No position description was ever prepared for the position. As a Lawyer I was also the Solicitor for the Commission.

In May/August 2012 I had raised with Singleton very serious governance concerns in relation to the Commission's Human Source Management Team and in relation to other matters. In relation to the Human Source Management Team (in the context of certain activities/in activities of the Team) I was unable to tell whether the Team was incompetent, negligent or corrupt. All measures I proposed were opposed by Singleton and indeed Singleton wanted to lessen the checks and balances on the Human Source Management Team. Singleton took me out of the governance role, though nothing was ever formalized. Ultimately, I gave myself the title of Director (Special Activities Division).

In 2012 Singleton expected to become the permanent Commissioner of the Commission and intended to promote the three Directors to Assistant Commissioners. Whilst Singleton purported to support and implement the Patten recommendations, it was to have ended as a Clayton's implementation as regards the Assistant Commissioners (and more).

By August 2012 I had become aware that in a memo Singleton described me as a "bomb chucker" meaning in the context of the memo that I would make known whatever was uncovered by my inquiry in 2012 even if it was found to be adverse to the Commission.

My present recollection is that the note was addressed to Andrew Scipione, Commissioner of Police.

The memo went on to state that he (Singleton) could control me (which is ultimately what happened. When the Commission was served in October 2012 by the Ombudsman with a Notice requiring production of documents, in the ordinary course, I should have been given responsibility to produce the sought after material. I said to Singleton that I should at least speak with the Ombudsman and indicate the methodology used in my inquiry and what I had uncovered to date in my inquiry. By then a memo of some 150 pages was already in draft and many attachments had been prepared. That request was also refused by Singleton. By my not being involved in producing documents to the Ombudsman and by my not being allowed to speak with the Ombudsman the Ombudsman was never going to be provided with all of the Commission's documents and his investigation would take longer to get going (and therefore finish).

In August 2012 I was of the firm belief that Singleton was in "cover up" mode in relation to any improper conduct, misconduct or criminality I found within the Commission. It was beyond doubt that all of my concerns were not going to be acted on by Singleton. His self-interest was ahead of the public interest.

When I first gave evidence to the Ombudsman in August 2014 I gave evidence that I doubted that the Commission had produced all of its documents. I further indicated particular documents that would not have been produced (e.g. emails). Following that evidence I presume that the Ombudsman served another Notice on the Commission to produce documents. In August 2014 the Commission had a new Commissioner but Singleton had the responsibility of dealing with the

production of documents to the Ombudsman. I received information from a confidential source within the Commission that Singleton was "going to stand the Ombudsman up", i.e. not acknowledge that all documents had not been produced and not produce further documents. I contacted the Ombudsman and sought to give evidence about this at a hearing, which I did. Further, I identified to the Ombudsman the person who was the source of the information to me. In the result, the Ombudsman gained access to documents (including emails and the draft report that had been prepared as part of my inquiry) that for nearly two years he did not have access to and to which he would never have gotten access but for my evidence to him.

Prima facie, the person who was the source of the information to me acted in breach of the secrecy of the *Crime Commission Act 2012*. The beneficiary of the "leaked" information to me was, ironically, the Ombudsman. In giving evidence to the Ombudsman about the information and identity of the person who was the source of the "leaked' information to me I have exposed that person to prosecution. It is indeed ironic that the Ombudsman is investigating "leaks" and that he has to now turn his mind to whether a person who "leaked" information in breach of a secrecy provision should be prosecuted because the person did not, in lieu, make a protected disclosure to the Ombudsman.

CONTROL OF MASCOT POLICE

The *CC Act 1985* provided that the Management Committee of the Commission could make arrangement with the Commissioner of Police for a task force to assist the Commission to carry out an investigation. The SCIA police working on Reference code named MASCOT was such a task force. The *CC Act 1985* further provided that in assisting the Commission to carry out an investigation the police task force was (subject to any directions from the Management Committee given for the purpose of coordinating an investigation) under the control and direction of the Commissioner of Police.

It was obviously not possible for me to raise my concerns with the Commissioner of Police. Had I have done so I am sure that all he could have (properly) done is refer my concerns to the Police Integrity Commission (the PIC). Given that the PIC was part of the MASCOT investigation (and a beneficiary of the product from the interception of the telecommunication service of XXXXXX XXXXXX XXXXXX) it was not possible for me to raise my concerns with the PIC.

ALLEGED LEAK

The SMH article reports about documents "leaked" by me to Kaldas. "Leaking" occurs when there has been an unlawful disclosure or release of information. I refute that I "leaked" documents to Kaldas, i.e. that I unlawfully disclosed or released information to him.

There were a number of basis upon which I could, and did, disclose information to Kaldas.

At all material times I was both a member of staff of the Commission and a solicitor of the Supreme Court of New South Wales.

Kaldas has been "signed up" as a member of the staff of the Commission since about September 1995. Kaldas is a police officer. Kaldas has, for many years, asserted that he is the victim of police corruption by police assisting the Commission in its investigations.

Kaldas being a member of the staff of the Commission, I was free to divulge or communicate to Kaldas any information acquired by me by reason of, or in the course of, the exercise of functions under the *CC Act 1985.*

In divulging or communicating any information acquired by me by reason of, or in the course of, the exercise of functions under the CC Act 1985 to Kaldas I was doing so for the purposes of the *CC Act 1885* or otherwise in connection with the exercise of my functions under the *CC Act 1985.* Such divulging or communicating was exempt from the secrecy provisions of the *CC Act 1985.*

Further, some years prior to 2012 I was instructed by my then Commissioner to disclose and release to Kaldas any or all information in relation to the Commission Reference codenamed Mascot. Those instructions were never countermanded.

Prior to 2012 I had delegated to me all of the functions of the Commission (other than the power of delegation). That delegation was in force in 2012. Pursuant to that delegation I could disseminate whatever to whomever.

The *Telephone (Interception and Access) Act 1979 (Cth)* provides that a staff member of the Commission may, for a permitted purpose, or permitted purposes, in relation to the Commission, and for no other purpose, communicate to another person lawfully intercepted information and interception warrant information. In disclosing to Kaldas the Affidavit accompanying the application for the warrant for the interception of the telecommunication service of XXXXXX XXXXXX XXXXXX I was doing so for a permitted purpose (the inquiry) and accordingly was not prohibited from so doing by this Act (assuming the Affidavit fell within the prohibition).

When I disclosed the Affidavit accompanying the application for the warrant for the interception of the telecommunications service of XXXXXX XXXXXX XXXXXX, I did so for the purpose of my inquiry to ascertain whether the Affidavit did, in fact, contain any false information.

Indeed, I believed (and believe) that it was a no option play.

When I disclosed and released information to Kaldas I believed (and believe) that I did so lawfully.

To my knowledge, in August 2012 the Ombudsman's investigation was not even in contemplation.

KALDAS
It appears that having disclosed and released information to Kaldas, Kaldas made a protected disclosure in relation to the information on 13 September 2012.

Again, that protected disclosure occurred prior to the Ombudsman having commenced Operation Prospect in October 2012.

NSWCC
In late 2012/2013 I identified to the Commission a number of other affidavits where the deponents had sworn, in my view, materially false affidavits. In a memorandum dated 26 May 2013 I wrote to Peter Hastings QC, Commissioner of the Commission and in part said the following:

" My very serious concern is that together with the matters I raise below, the above incidents are not in fact isolated or aberrations but examples of systemic failures within the Commission in respect of at least applications for telephone interception warrants, surveillance warrants, search warrants and controlled operations which has led to at least misconduct and corrupt conduct within the very wide meaning of 'corrupt conduct' in the Independent Commission Against Corruption Act 1988".

A copy of my Memorandum is attached.

As a result of this memorandum my name was taken off the back sheet on applications made thereafter.

It was then left to the individual lawyers to make applications for warrants or not. About half of the lawyers responsible for making applications for warrants left or took other positions. On 19 July 2013 my positions were made redundant and I left the employ of the Commission.

Peter Hastings QC responded to my memorandum by letter dated 18 October 2103 as follows:

" ...

I have now considered the complaints and have decided that no action is required.

...

... Again, subsequently a number of legal issues have been resolved, and processes have been improved to the point that I am satisfied that they are appropriate".

A copy of the letter is attached.

There was no dispute that the affidavits containing materially false information were used to obtain warrants. Clearly, minds will differ on what action, if any, is to be taken when one knows of a warrant obtained based on the affidavit containing materially false information.

There seems to be a continuing prevailing view within the Commission that nothing should be done about it.

I never subscribed to such view. I think that view is untenable for the reasons outlined above and moreover because the Commission also has an obligation of disclosure to the prosecutor.

AFFIDAVIT ACCOMPANYING WARRANT

In relation to my alleged "leaking" of documents to Kaldas is concerned, my recollection is that having identified to the Ombudsman the document(s) I provided to Kaldas, and having indicated to the Ombudsman that I had a number of basis upon which I could provide documents to Kaldas, I was subjected to intense questioning by Counsel Assisting in relation to the Affidavit accompanying the application for the warrant for the interception of the telecommunication service of XXXXXX XXXXXX XXXXXX.

The line of intense questioning was in relation to a purported breach by me of the *Telecommunications (Interception and Access) Act 1979 (Cth).* Eventually, (when I became exasperated by the continued questioning) I said to Counsel Assisting *"write me up and I'll deal with it in another forum"* or words to very like effect.

In an email dated 11 November 2014 to the solicitor instructing Counsel Assisting I said in part:

"I note that Counsel assisting does not agree on at least one particular legal issue. I had proposed to put something on that but at the end of the day minds will differ and it can be conclusively dealt with in another forum".

In an email dated 23 November 2014 to the solicitor instructing Counsel Assisting I said:

"The NSWCC Annual Report for the year ended 30 June 2014 has been tabled in parliament. At page 13 there is a section on "Dissemination of intelligence and information". The section reads in part:

"Dissemination is not required where the information or intelligence is being communicated from one staff member to another and, given that the Commission conducts much of its work pursuant to task force arrangements in which police and others are made members of the staff of the Commission, the Commission's dissemination figures do not include a significant amount of intelligence passed to police and others".

The section then incorporates a Table (Table 9), which sets out the number of statutory disseminations. It is clear that the NSWCC does not keep records of section 67 disseminations because those disseminations are intra staff members of the NSWCC. Those staff members include police and others. In my estimation, there are thousands of persons who have been and are members of staff compared to the hundreds who have been and are employees. I understand that there are 4-5

non police officers currently at the NSWCC who have been there for years and who have access to TI material on daily basis.

When a "leak" appears in the media, there is always a question as to its reliability. The SMH article also reports

"...It is likely that the DPP will also examine whether Mr Giorgiutti should be prosecuted for his role in leaking documents, although Mr Giorgiuti also insists he is a whistleblower and should be subject to protection."

My expectation was that I would, and now that (having regard to the article) I have been, "written up".

I make the above observations in relation to the questioning of me because it seems to me that the observations go to the reliability of the "leak". The "leak" is reliable as to me, and therefore likely to be reliable as to Kaldas.

TIM O'CONNOR

In the afternoon of Thursday 4 June 2015 I had a chance meeting with Tim O'Connor, Director Investigations of the Commission.

We talked about a range of topics including this Inquiry. O'Connor said to me *"I know who leaked the story"* i.e. the story that the Ombudsman is considering referring Kaldas to the Director of Public Prosecutions to face criminal charges for allegedly misleading his Inquiry into the police bugging scandal.

I have known O'Connor both professionally and personally for very many years. I also know that he is, if not friends with, friendly with Nick McKenzie, one of the authors of the above article. McKenzie is one of a number of journalists that O'Connor speaks to in relation to matters of the Commission, and otherwise.

O'Connor would not have told me that he knew who the "leaker" was if he did not, in fact, know it.

Steve Wilkinson of Counsel was privy to my conversation with O'Connor.

CONCLUSION

The Ombudsman is aware of the above factual matrix.

I presume that the Director of Public Prosecutions has been made aware of the above factual matrix.

I believed (and believe) that it would be useful for the Inquiry to have knowledge of the above factual matrix and other matters contained in these submissions even if only to understand the delay of nearly two years in the Commission producing all of its documents to the Ombudsman, the complexities surrounding the alleged 'leaks" by me, and to me in August 2014, and the complexities surrounding the alleged "misleading" evidence by Kaldas.

Leaving aside everything else the delay in production and the complexities are such that, without doubt, they have affected the (apparent slow) progress of the Ombudsman's Operation Prospect Inquiry into police bugging and in particular have delayed the finalization of the report.

Further, I believed (and believe) that the Inquiry ought know of the identity of a person who knows the identity of the person who divulged ("leaked") the story about Kaldas to the media.

I accordingly provide these submissions.

JOHN M GIORGIUTTI
Former Director and Solicitor to the
New South Wales Crime Commission