

**Submission  
No 21**

**INQUIRY INTO THE CONDUCT AND PROGRESS OF THE  
OMBUDSMAN'S "OPERATION PROSPECT"**

**Name:** Mr Naguib Kaldas

**Date received:** 19/01/2015

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19 January 2015

The Hon. Robert Borsak MLC  
Chair  
Legislative Council Select Committee on the conduct and progress of the Ombudsman's  
inquiry "Operation Prospect"  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Sir

**Submission by Deputy Commissioner N. Kaldas**

**1. Preliminary: secrecy provisions**

- 1.1. I rely on the view stated by the Legislative Council in paragraphs 6 and 7 of the terms of reference for the Legislative Council Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect" (**Committee**) to the effect that the statutory secrecy provisions in the *Ombudsman Act 1974* (NSW) do not affect the power of the Committee to require answers to lawful questions as those provisions contain no express words which would alter the law of parliamentary privilege.
- 1.2. I also note that the terms of s 31H of the *Ombudsman Act* support the view that the proper construction of the secrecy provisions is that they do not affect the law of parliamentary privilege.
- 1.3. On this basis, I understand that this submission and anything said by me during oral evidence will not constitute a breach of any direction given by the Ombudsman pursuant to s 19A of the *Ombudsman Act* nor does it constitute a breach of s 19C of the *Ombudsman Act*.
- 1.4. I make this submission and will give evidence on the basis of that understanding.

**2. Introduction**

- 2.1. This submission is an act of conscience about a series of events that many have, for years, tried to bring into daylight. I do this not only for me but for the many honest police whose lives, careers and health were destroyed and the many who are currently, yet again, feeling the same winds of reprisal and payback. There are some who committed the original wrongful acts, and many who spent over a decade covering it up for them, protecting a handful of people. Many of those who dared to complain in this matter have been victims of reprisal, whether it be intimidation, or campaigns of whispers and lies, without any evidence, to derail careers or worse. Cover-up was followed by cover-up, and overlaid with reprisal after reprisal. What has

happened in this matter for over a decade is wrong and must never be allowed to happen again. All eyes are now on our elected officials to finally air the truth, loudly and publicly. That, and that alone, may right the wrongs.

- 2.2. From the first time it became clear to me that there was massive wrong doing and habitual illegal acts committed by the NSW Police Force Special Crime and Internal Affairs (**SCIA**), and sanctioned and covered up by the Police Integrity Commission (**PIC**) and others, I have done my best to have the truth of these matters aired and addressed. Faith in our entire justice system cannot be maintained when these illegal activities are covered up with secrecy and lies.

### 3. Background

- 3.1. In the early 2000s, PIC, SCIA and the NSW Crime Commission (**NSWCC**) conducted a lengthy joint operation known as Operation Mascot/Florida, targeting alleged corruption.
- 3.2. At around this time, I was involved in well-documented disputes with senior officers of the SCIA, including Commander Mal Brammer and Detective Sergeant John Dolan.
- 3.3. As part of Operation Mascot/Florida, I received visits from another police officer codenamed M5 by PIC. I barely knew him and he began to visit me regularly in a manner which seemed to me to be bizarre. I had significant experience as an undercover operative and identified his conduct as an amateurish attempt to entrap me. Ultimately, I told him I did not want anything to do with him.
- 3.4. In 2001 or 2002, I was interviewed at length (for three or four days) by both the NSWCC and PIC with the sole purpose of ascertaining why I would not deal with M5. The only allegation that was put to me was that there was a leak through Andrew Scipione, who was then commander of SCIA, and that this leak caused me not to deal with M5. There had been no such leak. I was ultimately cleared of any wrongdoing.
- 3.5. I consider the targeting of me through Operation Mascot/Florida to have been baseless and inappropriate.
- 3.6. In 2002, Strike Force Emblems was established to investigate Operation Mascot/Florida. I was one of the complainants to Strike Force Emblems, and was interviewed at the time.
- 3.7. In 2002, public statements were made by then Commissioner Ryan in an interview with *60 Minutes* to the effect that a large number of people the subject of a listening device warrant had been named in the warrant because they were to be present at a police function at which recording was proposed to take place. [A transcript of that interview is under tab 1]. In 2003, then Senior Assistant Commissioner Walsh stated that, to have been named in the warrant, it was not necessary for a person to have been suspected of any wrongdoing and that there should be no cause for alarm from those who were named in the warrant. [Please see document under tab 2]. These public statements cannot be correct in light of the documents that came to light in 2012 (discussed below). This must mean that, at some point in the process, somebody engaged in deliberate deception.

- 3.8. In 2004, I received a letter from Strike Force Emblems stating that they could not reach any conclusions. I have always understood this was because they were denied access to the relevant documents.

#### **4. Comment**

- 4.1. I submit that the attached documents together with my oral evidence demonstrate the following:
- 4.1.1. it was entirely inappropriate for SCIA to target me in light of the absence of any evidence to justify that targeting;
  - 4.1.2. it was inappropriate for SCIA to investigate me, due to well known conflicts of interest;
  - 4.1.3. the NSWCC and PIC protected those who engaged in improper behaviour;
  - 4.1.4. false information and/or omissions were used in swearing affidavits for warrants to bug people, for example, in an affidavit in support of a telephone intercept warrant for the address at which my ex-wife and my children resided, and I did not, it was stated that I still lived at that address, which was not true and where the correct information would have been very easy to ascertain;
  - 4.1.5. the level of intense electronic and other surveillance carried out on every aspect of my life, home and work, my ex-wife and children, was totally unjustified, but in the end yielded not one allegation to be put to me at the end of the operation;
  - 4.1.6. the public explanations given about these operations were incorrect and misleading; and
  - 4.1.7. a campaign to discredit me was then undertaken, resulting in me losing a number of promotions and opportunities, and being intensely targeted by PIC in particular.

#### **5. Documents Coming to Light in 2012**

- 5.1. In 2012, some documents came to light relating to Strike Force Emblems and Operation Mascot/Florida, including the actual affidavits sworn in support of certain listening device warrants.
- 5.2. On the basis of those documents, among other points, the following can be said:
- 5.2.1. many people were subjects of listening device warrants, including 114 people in relation to one warrant alone (NSWCC LD No 266 of 2000); and
  - 5.2.2. in the affidavit supporting that warrant, there was no information at all in relation to the majority of the people in the warrant. For example, while I was named in the warrant, I was not mentioned in the supporting affidavit at all.
- 5.3. This suggests significant misconduct by a person or persons involved with Operation Mascot/Florida.
- 5.4. The documents that came to light reveal a level of intense electronic and other surveillance carried out as part of Operation Mascot/Florida on every aspect of my life, home and work, including my ex-wife and children, and was clearly unjustified.

- 5.5. Further, Operation Mascot/Florida ultimately yielded no allegations that were ever put to me at the end of the investigation (aside from the alleged leak, referred to above). I found the entire process to be highly stressful and intrusive.
- 5.6. I also believe I have been targeted in other ways. For example, I believe I have been prevented from being granted certain promotions because of the complaints about Operation Mascot/Florida.
- 5.7. I am aware of a number of other officers or former officers who I believe have been seriously psychologically affected as a result of what was done through Operation Mascot/Florida or the covering up which followed it, including one who committed suicide and two others who attempted to do so.
- 5.8. Further, the manner in which the Ombudsman's processes as part of Operation Prospect have been applied to me have caused me to feel that Operation Prospect is essentially a repeat of the stressful, intrusive and targeted processes applied to me earlier.

## **6. Complaints**

- 6.1. I have made the following complaints in relation to these matters:
  - 6.1.1. in around 2002, I made a complaint to Ken Moroney, who was then Commissioner or Deputy Commissioner, about having been targeted inappropriately in Operation Mascot/Florida;
  - 6.1.2. at around the same time, I made a complaint to the Police Association of NSW, and the Police Association made a complaint to the Ombudsman on behalf of a large number of former and serving officers, including me;
  - 6.1.3. I was a complainant in Strike Force Emblems;
  - 6.1.4. on 13 September 2012, I made a formal written complaint to Commissioner Scipione, claiming protection under the *Public Interest Disclosures Act 1994* (NSW) (my complaint was copied to the Deputy Commissioner of Specialist Operations, the Commander of the Professional Standards Command, the Ombudsman, the Inspector of the PIC and the Minister for Police and Emergency Services). [A copy of my complaint is under tab 4];
  - 6.1.5. on 21 September 2012, I wrote a letter to Minister Gallacher;
  - 6.1.6. shortly thereafter, I made a complaint to the Inspector of the PIC;
  - 6.1.7. in 2012, I made a complaint to the Ombudsman as part of Operation Prospect, which was recorded in a short interview in late 2012; and
  - 6.1.8. in July 2013, I made a written complaint to the Ombudsman as part of Operation Prospect.

## **7. Scope and Purpose of Operation Prospect**

- 7.1. On 7 October 2012, then Premier Barry O'Farrell stated in a media release that the Ombudsman would "undertake an independent investigation of Strike Force Emblems and any relevant matters leading up to it" [Please see the document under tab 5].

- 7.2. Calls for information released by the Ombudsman stated Operation Prospect was "an investigation ... into allegations of serious misconduct by officers of the NSW Police Force, NSW Crime Commission and the Police Integrity Commission in relation to Operations / Strike Forces, Mascot, Florida, and other associated investigations during the period 1998 to 2003" and that the "terms of reference include matters surrounding NSW Crime Commission Listening Device warrant 266/2000 and other associated warrants" [Please see the document under tab 6].
- 7.3. An information sheet released by the Ombudsman provided much the same information [Please see the document under tab 7].
- 7.4. The legislation empowering the Ombudsman to conduct Operation Prospect was debated in parliament on 20 November 2012.
- 7.5. In all of the above, there is no mention whatsoever of the purpose of the inquiry being partially or wholly to track down who leaked the incriminating documents revealing the wrongdoing. It is my firm view that the government's intention was not for the Ombudsman to use the resources and legislation put at his disposal for this matter to hunt down the whistleblowers.

#### **8. Expansion of Scope of Operation Prospect**

- 8.1. The scope of Operation Prospect has been expanded to include an investigation into who leaked, handled and discussed the incriminating documents revealing the wrongdoing.
- 8.2. There is a significant inconsistency between investigating very serious misconduct in relation to Operation Mascot/Florida on the one hand and, on the other hand, investigating the whistleblowing which brought the misconduct to light.

#### **9. Resource-Intensive Investigation**

- 9.1. In 2012, the Ombudsman predicted "that Operation Prospect will be a protracted and resource intensive investigation". [Please see the document under tab 7].
- 9.2. On 18 February 2014, in his evidence to the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, the Ombudsman said (*Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, Report 8/55 – August 2014 at 26 [1.131]*):
  - 9.2.1. funding had initially been provided to the end of the 2013-2014 financial year;
  - 9.2.2. he had requested additional funding beyond that period as he anticipated he would "be in a position to finalise the matter with a public report by the end of 2014";
  - 9.2.3. as at 18 February 2014, it was still his belief that he would be able to produce his report by the end of 2014; and
  - 9.2.4. as at 18 February 2014, Operation Prospect "ha[d] finalised a lot of the analysis of the information ... [and] conducted a large range of private interviews and private hearings ... the matter is on track".
- 9.3. I understand that the Ombudsman now proposes to report at some time in the first half of 2015.

9.4. I request the Committee to investigate whether it has been an appropriate use of public funds to expand the scope of Operation Prospect to include an investigation into the manner in which the documents came to light in 2012, instead of focusing on the serious misconduct which is alleged to have taken place as part of Operation Mascot/Florida.

#### **10. Secrecy Provisions**

10.1. The use of secrecy provisions by PIC and the Crime Commission were extremely successful in concealing apparently incriminating documents for over a decade and ensuring that these matters could not be revealed or exposed.

10.2. I request that the Committee consider whether the Ombudsman has applied the correct test when making secrecy directions pursuant to s 19A of the *Ombudsman Act*.

10.3. Factors which the Ombudsman ought to have considered include:

10.3.1. protections such as those in the *Public Interest Disclosures Act*;

10.3.2. whether the protection or health of a witness means they should be permitted to disclose their involvement in Operation Prospect to treating practitioners;

10.3.3. why blanket secrecy orders are necessary to prevent prejudice to the investigation;

10.3.4. the capacity for the use of the secrecy provisions to restrict transparency and accountability, and so to potentially lead to the covering up or promotion of corrupt or wrong conduct; and

10.3.5. whether use of the secrecy provisions has the tendency to prevent journalists or media outlets from accessing and/or publishing information which would promote openness and accountability in matters of serious corruption and misconduct.

#### **11. Questions to be considered**

11.1. I request that the Committee consider the following questions.

11.2. Has the scope of Operation Prospect altered so as to focus on an investigation into who leaked, handled and discussed the incriminating documents revealing the wrongdoing and is this appropriate in circumstances where:

11.2.1. Operation Prospect was initially intended as an investigation in relation to Operation Mascot/Florida and Strike Force Emblems;

11.2.2. if any misconduct is alleged or even demonstrated in relation to the manner in which the documents came to light, that misconduct is insignificant compared to the misconduct alleged in relation to Operation Mascot/Florida;

11.2.3. the original scope of Operation Prospect was predicted to result in, and has resulted in, a "protracted and resource intensive investigation"; and

11.2.4. funding was provided for a certain period of time and apparently in respect of the original scope, that is, in relation to Operation Mascot/Florida and Strike Force Emblems?

- 11.3. Has Operation Prospect given appropriate consideration to serious allegations including the misconduct alleged in relation to Operation Mascot/Florida, in particular:
- 11.3.1. inappropriate and improper targeting of persons named in warrants, particularly where clear conflicts of interest existed;
  - 11.3.2. any misconduct in relation to the provision of false information in affidavits sworn in support of applications for warrants;
  - 11.3.3. how and why warrants were issued by the courts with no or insufficient supporting evidence;
  - 11.3.4. the later provision of misinformation about those warrants (for example, the misinformation that many of the 114 people named in warrant NSWCC LD No 266 of 2000 were named because they would be present at a function); and
  - 11.3.5. the consequences of that misconduct on targets' career prospects, mental health and so on?
- 11.4. How and why has the oversight framework failed in relation to:
- 11.4.1. failing to identify the misconduct referred to above;
  - 11.4.2. failing to publicly expose the misconduct and those who engaged in it; and
  - 11.4.3. failing to hold to account those who engaged in misconduct and/or covered it up.
- 11.5. Has the correct test been applied in making orders pursuant to s 19A of the *Ombudsman Act*?

Deputy Commissioner Naguib Kaldas

19 January 2015