The controversial case of Lawyer X: Should lawyers be prevented from acting as human sources?

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Abstract
This article addresses whether there are sufficient constraints on legal professionals acting as police informants, following the controversial ‘Lawyer X’ case. It examines key observations of the High Court of Australia in AB v CD; EF v CD [2018] HCA 58 relating to lawyers’ and barristers’ duties to their clients and to the court. It argues that existing professional rules and common law duties are insufficient to prevent legal advocates from acting as human sources. The author also suggests implications arising from the decision for the application of public interest immunity to human sources.

Keywords
Law enforcement, human sources, informants, client legal privilege, public interest immunity

The use of informants, also known as ‘human sources’, is widespread among Australian government agencies. Informants play an essential and extensive role in criminal investigations and evidence-gathering for criminal trials. The terms human sources and informants are used interchangeably in this article to refer to those who provide information to law enforcement agencies, and who expect a level of secrecy in terms of their identity and information-providing relationship with law enforcement. Law enforcement organisations including federal, state and territory police, the Australian Criminal Intelligence Commission (ACIC), the New South Wales Crime Commission (NSWCC); as well as government agencies including the Australian Security Intelligence Organisation (ASIO), the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) all use human sources.¹ Human sources can serve a wide variety of functions; these include providing information about unsolved crime, setting up drug buys, introducing officers to criminal contacts and secretly recording conversations using hidden recording devices.² The rationale for the use of human sources by law enforcement, and for keeping their identities confidential, was explained by Whealy AJ in R v Eastman:

It is extremely difficult for law enforcement to infiltrate organised criminal groups as they conduct their operations according to a strict code of secrecy. Members of these groups who breach this code may be exposed to severe punishment. . . . If people who provide information confidentially to police feel inhibited in assisting police by providing information about serious criminal allegations, it would seriously hamper the [police] in its


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work and would result in many allegations not being properly investigated.  

Although essential to intelligence-gathering, the use of human sources can be ethically fraught and place people at significant risk of harm.  

Human sources can fabricate or exaggerate facts in exchange for benefits, such as monetary payments or reductions in criminal charges and sentences. Unreliable or false information can, in turn, result in unjustified convictions. An additional risk is that harm might be occasioned to the human source or to their family if the fact that they are covertly providing information to law enforcement is discovered.

The limits of and risks associated with the informer-handler relationship have come under scrutiny in light of the controversial case of Lawyer X. Lawyer X (also known by her human source number 3838 or the acronym EF) is a former Victorian barrister who acted as defence counsel for a number of prominent criminal ‘gangland’ figures, including Antonios ‘Tony’ Mokbel and Carl Williams. Victoria Police initially reported that Lawyer X had been registered as a human source between 2005 and 2009. In February 2019, however, it was revealed that Lawyer X was first registered in 1995, a year before she became a solicitor. In March 2019, a suppression order was lifted, revealing Lawyer X to be Nicola Gobbo. The names and images of her children are subject to non-publication orders for a period of not less than 15 years.

The Lawyer X scandal prompted Victorian Premier Daniel Andrews to announce on 3 December 2018 a Royal Commission into the Management of Police Informants. The Royal Commission seeks to determine if, and to what extent, any criminal convictions have been affected by the scandal. The Terms of Reference also ask the Commission to assess “[t]he current adequacy and effectiveness of Victoria Police’s processes for the recruitment, handling and management of human sources who are subject to legal obligations of confidentiality or privilege.”

Since being announced in December, the Royal Commission has been rocked by further controversies. Initially, former South Australian Police Commissioner Malcolm Hyde AO APM was appointed as Commissioner to the Royal Commission. However, the Commissioner resigned from the position in February after it was revealed that he had served at Victoria Police while Ms Gobbo was registered as a human source. The Royal Commission is now headed by the Honourable Margaret McMurdo AC. In the lead-up to the Royal Commission, Mokbel was stabbed in prison, with two men arrested for attempted murder in relation to the incident. (It is presently unclear if the stabbing was related to the Lawyer X case.) In February, the Terms of Reference were amended following reports that six additional legal professionals have been acting as informants to Victoria Police, including solicitors, legal secretaries and a court clerk. Commissioner McMurdo revealed that one of these informants may have breached client legal privilege. This man was not officially registered as a human source, but had been listed by Victoria Police as a ‘community contact’. Another solicitor is deceased and is the subject of an ongoing homicide investigation.

There has been speculation that legal professionals in other Australian states and territories may be disclosing confidential client information to law enforcement. Arthur Moses SC, President of the Law Council of Australia, has said that the Lawyer X controversy should cause each government:

- to raise questions with their law enforcement agencies as to whether such a practice has existed or exists within the law enforcement agencies, and request information in relation to these matters. . . . If the governments are not satisfied with the response that they receive then they should call a Royal Commission.

As at the time of writing, NSW, South Australia and Tasmania Police had audited informant records dating back more than 15 years. It is anticipated that other states and territories will similarly audit their records.

The use of legal professionals as human sources is more widespread than previously anticipated. Consequently, this article analyses the facts and outcome of the High Court of Australia case of AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym) [2018] HCA 58, to demonstrate how the provision of

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9. ‘Royal Commission Hears’ (n 10).
confidential information to law enforcement may breach legal professional rules and common law duties. In addition, the article suggests implications arising from the case of AB v CD for the application of public interest immunity to human sources. It argues that existing rules and duties are insufficient to prevent inappropriate disclosures of confidential information by legal professionals to law enforcement agencies. The Royal Commission presents an important opportunity to consider if reform is needed to prohibit law enforcement agencies from using human sources in a fashion that compromises the integrity of the criminal justice process.

The High Court decision

In November 2018, the High Court of Australia delivered its reasons for judgment in AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym) [2018] HCA 58 (AB v CD). The proceedings involved applications for special leave to appeal brought by both the Chief Commissioner of Victoria Police (AB) and Ms Gobbo (EF) against the Victorian Court of Appeal’s dismissal of orders made by Ginnane J in the Supreme Court of Victoria to lift the suppression of Ms Gobbo’s identity. The Chief Commissioner of Victoria Police had instituted proceedings in the Supreme Court in June 2016, seeking declarations that the information that the Victorian Director of Public Prosecutions (CD) proposed to disclose, which included Ms Gobbo’s identity, was subject to public interest immunity (PII) and could not be disclosed. In June 2017, the Supreme Court dismissed the PII claim, and in November 2017, the Victorian Court of Appeal dismissed AB and EF’s appeals from the orders of the Supreme Court. Both Courts found that the public interest in disclosure outweighed the public interest in immunity, despite the fact that disclosure could result in harm being occasioned to Ms Gobbo and her children. Their reasoning was based on the importance of ensuring that court processes were used fairly and of preserving public confidence in the courts, which prevailed over the interest in preserving Ms Gobbo’s anonymity. In AB v CD, the High Court revoked special leave to appeal, allowing the decision of the Court of Appeal to take effect.

The High Court detailed in AB v CD how Victoria Police had registered and used Ms Gobbo (referred to in the decision as EF) as a human source to obtain criminal convictions against Mokbel and six of his criminal associates (the Convicted Persons). Mokbel was gaoled in 2012 for a total of 30 years with a 22-year non-parole period for large-scale drug trafficking offences.13 Significantly, Ms Gobbo had acted as counsel for the Convicted Persons. The High Court described how the information Ms Gobbo provided to Victoria Police ‘had the potential to undermine the Convicted Persons’ defences to criminal charges of which they were later convicted’.14 Ms Gobbo had also provided to police information about other persons for whom she had acted as counsel. In addition, Ms Gobbo provided information about ‘various members of the criminal fraternity’ who were not her clients. Following the High Court decision in AB v CD, the DPP wrote to 20 individuals in relation to their criminal prosecutions.15

The High Court was strident in its criticism of Ms Gobbo in purporting to act as counsel for the Convicted Persons while covertly informing against them. In a unanimous judgment, the Court called her actions ‘fundamental and appalling breaches’ of her obligations to her clients and to the Court. Victoria Police were also admonished for ‘reprehensible conduct in knowingly encouraging’ the barrister to inform against her clients. The Court stated that the Police were ‘involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will’. As a result of the barrister’s and police officers’ breaches of their duties, the prosecution of each Convicted Person ‘was corrupted in a manner which debased fundamental premises of the criminal justice system’.16

Public interest immunity and human sources

Although not the primary focus of this article, central to the High Court’s decision was the application of PII to human sources. PII is a doctrine of substantive law and a ‘fundamental immunity’,17 which allows for information to be withheld where disclosure would harm the public interest. The general rule articulated by Gibbs ACJ in Sankey v Williams is that ‘the court will not order the production of a document, although relevant and

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13Tony Mokbel Sentenced to 30 Years Jail for Drug Trafficking’ (ABC Radio National, 3 July 2012 http://www.abc.net.au/pm/content/2012/s3538125.htm; Jeuniewic and Ansell (n 10).
14AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym) [2018] HCA 58, [1] (‘AB v CD’) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ).
16R v Lipton (2011) 92 NSWLR 123, [84] (McColl JA).
otherwise admissible, if it would be injurious to the public interest to disclose it.’

Human sources face a risk of retribution if the fact that they have provided information to law enforcement is exposed. In *AB v CD*, Victoria Police argued that if the DPP were to disclose her identity and the information that Ms Gobbo had provided to police, her risk of death would be ‘almost certain’. There were also concerns that harm could be occasioned to her children. For this reason, the Commissioner sought declarations that this, and other information within a 2015 report by the Victorian Independent Broad-based Anti-Corruption Commission (the IBAC report), was subject to PII.

The High Court identified and weighed up two competing public interests. On the one hand, there was the interest in favour of disclosure. This existed because the information might result in convicted persons having their convictions overturned and, ‘more fundamentally, in order to maintain public confidence in the integrity of the criminal justice system.’ On the other hand, there was the interest in ‘preserving the anonymity of EF as a police informer, and thus in keeping her and her children safe from the harm likely to result from disclosure of the information’. In relation to the ‘grave risk of harm’ to Ms Gobbo and her children, it was argued that their safety could be protected if she agreed to enter the witness protection program.

The High Court confirmed the general proposition that ‘there is a clear public interest in maintaining the anonymity of a police informer’. If assurances of anonymity were not honoured, ‘informers could not be protected and persons would be unwilling to provide information to the police which may assist in the prosecution of offenders’. However, the Court held that:

> the public interest favouring disclosure is compelling; the maintenance of the integrity of the criminal justice system demands that the information be disclosed and that the propriety of each Convicted Person’s conviction be re-examined in light of the information. The public interest in preserving EF’s anonymity must be subordinated to the integrity of the criminal justice system.21

Ultimately, the High Court ruled in favour of disclosing the information provided by and the identity of Ms Gobbo. The decision therefore confirms that human sources are not entirely ‘immune’ from having their identity exposed. Ordinarily, the protection of informers’ identities is ‘necessary for the proper administration of justice’, but in this case, the ‘maintenance of the integrity of the criminal justice system’ was deemed to be of greater importance. Ms Gobbo’s communication of confidential client information to police had undermined the integrity of the criminal justice system and had put several persons’ criminal convictions at risk.

It is necessary to note that the High Court’s determination of the issue of PII in *AB v CD* differs from the approach ordinarily taken in NSW. In NSW, a court does not conduct a balancing exercise, weighing competing public interests against each other. Aside from the limited exception of where, during a criminal trial, disclosure could help demonstrate the defendant’s innocence, the balance ‘has already been struck — it falls on the side of non-disclosure’. In *Cain v Glass (No 2)*, McHugh JA stated:

> the courts in this State [NSW] should continue to apply the rule that no question of weighing competing public interests arises when a claim is made that the name of a police informer should be disclosed. The rule is absolute and is relaxed only ‘where upon the trial of a defendant for a criminal offence disclosure of the identity of the informer could help to show that the defendant was innocent of the offence’.25

It will be interesting to see if, should similar circumstances to the *Lawyer X* case arise in NSW, a court would follow the balancing exercise undertaken by the High Court in *AB v CD* and abandon its ‘hardened’ position against disclosure.

**Can legal professionals ever act as human sources?**

This article has so far examined the case of *AB v CD* and its implications for PII as it applies to informants. The following part addresses the question of whether or not current legal professional rules and client legal privilege adequately prevent legal advocates from acting as human sources. In *AB v CD*, the High Court was unambiguous in its criticism of the conduct of Ms Gobbo and Victoria Police, labelling the former barrister’s conduct ‘appalling’ and the Police’s conduct ‘reprehensible’. However, in delivering its brief (four-page) reasons for judgment, the High Court did not consider if current laws were sufficient to prevent police from acting in a similarly reprehensible fashion in the future. There is no legislation that explicitly circumscribes the circumstances

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18Sankey v Williams (1978) 142 CLR 1, 38 (Gibbs ACJ). See also Cain v Glass (No 2) (1985) 3 NSWLR 230 (‘Cain’).
19*AB v CD* (n 14) [2].
20*AB v CD* (n 14) [4], [7], and [11] citing Witness Protection Act 1991 (Vic) s 3B(2)(b). Lawyer X refused to enter the program, arguing that ‘Victoria Police cannot be trusted to maintain confidentiality’ and ‘apparently that she would prefer to wear the risk than subject herself and her children to the limitations and burdens that witness protection would surely entail’.
21*AB v CD* (n 14) [9]-[12]. This followed the decisions of the Supreme Court of Victoria and the Victorian Court of Appeal.
22The Victorian Court of Appeal has since ruled that the suppression order keeping EF’s name a secret should be lifted on 1 March 2019: Tammy Mills, ‘Real Identity of Informer 3838 Set to Be Revealed’, The Age (online at 22 February 2019) http://global.factiva.com/redir/default.aspx?u=http://www.countdown.com.au/news/20190221ekf10000uo&cat=a&sp=A5E.
23Judicial College of Victoria (n 1) [4.4.3] (emphasis added).
24DPP v Smith (1996) 86 A Crim R 308, 312 (Gleeson CJ, Clarke and Sheller JJA) (‘Smith’).
25Cain (n 18) 248 (McHugh JA, Kirby P agreeing on this point).
26Smith (n 24) 311 (Gleeson CJ, Clarke and Sheller JJA).

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in which a person can, and cannot, act as a human source.27 Instead, the informer–handler relationship is governed by internal government agency policies and protocols. In the absence of such legislation, the High Court resorted to abstract ethical statements derived from the police officer’s oath to discharge their duties ‘faithfully and according to law’ and to serve ‘without favour or affection, malice or ill-will’.28

The case raises the normative question of what limits should be imposed on the ability of legal professionals to act as human sources? Would it be desirable or beneficial for all legal professionals to be prohibited from informing to law enforcement, or just those acting in or advising on criminal proceedings? Should solicitors and barristers be prohibited from disclosing information to law enforcement only where that information has been provided by or relates to their client? Or should legal professionals be prohibited from disclosing confidential information to law enforcement under any circumstances?

There are numerous arguments against allowing criminal lawyers and barristers to act as human sources. Primarily, it damages the perception — and the reality — that these individuals are independent from the prosecution in criminal proceedings. This undermines the adversarial system, which frames the criminal trial as a ‘contest’ between the prosecution (acting as the state’s representative) and the defendant.29 Adversarial justice places a significant emphasis on procedural fairness,30 including the defendant’s right to silence, the presumption of innocence and the requirement that the prosecution must prove the defendant’s guilt beyond reasonable doubt. Clients should be confident that their communications to lawyers and barristers are kept confidential; that their best interests will be promoted by their legal advocate; and that the advocate will disclose to them any conflicts of interest that may compromise the advocate’s ability to act freely and fearless in their defence.

On the other hand, it may be argued that law enforcement should have access to all information that may assist them in detecting, disrupting and punishing criminal activity. The High Court has previously recognised an ‘obvious tension’ between client legal privilege and ‘the desirability, in the interests of justice, of obtaining the fullest possible access to the facts relevant to the issues in a case’.31 While recognising that this tension exists, the prosecution should not ‘secure a conviction at all costs’, but has a duty to present accurate evidence fairly before the court.32 In the Lawyer X case, Victoria Police perceived a need to bend the rules of procedural fairness due to the unprecedented nature of Victoria’s ‘gangland wars’ of the late 1990s and 2000s. This was a period of significant underworld criminality and police corruption in which 36 criminal figures were killed. Victoria Police Chief Commissioner, Graham Ashton AM APM justified the handling of Ms Gobbo as an informant on the grounds that the gangland wars — in which Ms Gobbo was used as a ‘weapon’33 — were ‘a desperate and dangerous time’ where ‘a genuine sense of urgency was enveloping the criminal justice system, including police’.34

To understand what rules constrain lawyers and barristers from disclosing confidential information to law enforcement, regard should be had to the Legal Profession Uniform Conduct (Barristers) Rules 2015 and the Uniform Rules. At common law and under the Uniform Rules, solicitors and barristers owe a primary duty to the court and to the justice process. This sits above their duties to their clients. Lawyers and barristers must not act in a way which brings the profession into disrepute or diminishes public confidence in the administration of justice.35

The Uniform Rules provide that barristers and lawyers must not disclose confidential client information.36 This is consistent with the observations of Dr Matthew Collins QC, President of the Victorian Bar Association, that: ‘All Australians are entitled to know that, when they seek legal advice, the information they provide to their lawyer will be treated in the strictest confidence’.37 Client legal privilege (or legal professional privilege) exists for the benefit of, and can be waived by, the client. Once a common law right, in Victoria, client legal privilege is now protected in the Evidence Act 2008 (Vic) s 118, which exists alongside the ‘litigation privilege’ in s 119. Section 118 provides that a confidential communication between a client and their lawyer is not to be adduced as evidence where the communication was made ‘for the dominant purpose of the lawyer … providing legal advice to the client’.38 Where client legal privilege applies, it inhibits or prevents a party’s access to potentially relevant information. A

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27 The author does, however, acknowledge that legal professional rules regulate the conduct of lawyers and barristers in a more general sense.
28 Victoria Police Act 2013 (Vic) sch 2: ‘Oath or Affirmation for Police Officers’.
32 Hayes and Eburn (n 29) [1.60].
35 Hayes and Eburn (n 29) [1.59]; Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015 rr 3.1 and 5 (‘Solicitors’ Conduct Rules’); Legal Profession Uniform Conduct (Barristers) Rules 2015 r 8 (‘Barristers Rules’).
36 Solicitors’ Conduct Rules (n 35) r 9; Barristers Rules (n 35) r 114.
38 Client legal privilege extends to a confidential communication made by two or more lawyers acting for the client and the contents of a confidential document (whether delivered or not) prepared by the client, lawyer or another person: s 118(b)–(c).
primary rationale for the privilege is that it ‘exists to serve the public interest in the administration of justice by encouraging full and frank disclosure by clients to their lawyers’. People should be able to seek and obtain legal advice and legal assistance without ‘the apprehension of being prejudiced by subsequent disclosure of the communication’.39

In addition to breaching the duty of confidentiality owed to the client, acting as a human source may conflict with a legal advocate’s obligation to ‘fearlessly’ promote and protect their client’s best interests to the best of their skills and diligence. Advocates must do this without regard to their own interests. Further, a barrister must refuse to accept or retain a brief if the client’s interest in the matter is or would be in conflict with the barrister’s own interest; or where she or he has already discussed the facts of the matter in any detail (even on an informal basis) with another party with an adverse interest.40

Exceptions to rule against disclosure

There are exceptions to the rule that an advocate cannot disclose confidential client communications. A barrister can disclose confidential client information to appropriate authorities if the client threatens the safety of another person and the barrister believes, on reasonable grounds, that there is a risk to any person’s safety.41 A solicitor can disclose confidential client communications for the sole purpose of avoiding the probable commission of a serious criminal offence or for the purpose of preventing imminent serious physical harm to the client or to another person.42 These exceptions are restricted to future harms or future serious offences, as opposed to harms or offences that have already been occasioned. They might apply, for instance, where the client has expressed an intent to seriously injure or kill somebody. A key difference is the exception for barristers is limited to threats of harm emanating from the client, whereas the exception for solicitors focuses on whether the disclosure of the confidential information may prevent imminent serious harm or a serious offence. The rationale for this distinction is unclear; it is therefore suggested that the exception in the Barristers Rules be amended to be consistent with those in the Solicitors’ Conduct Rules.

The covert communications of Ms Gobbo were not limited to discrete instances where her clients threatened imminent harm. At multiple points, Ms Gobbo acted in breach of the rules relating to confidentiality, loyalty and acting in a client’s best interests. In one example, she appeared for a client (Mr Peters) on a number of criminal charges at the same time as being registered as an informant. Ms Gobbo provided information about Mr Peters before his arrest, including the general location of a drug laboratory that led to his arrest. Ms Gobbo acted as his lawyer on the day of Mr Peters’ arrest, following which he agreed to assist police. She appeared for Mr Peters in relation to further criminal charges. Justice Ginnane stated in the Supreme Court proceedings of AB v CD:

He [Mr Peters] was entitled to receive independent legal advice about his options before he decided to plead guilty, but he did not receive it . . . his plea and assistance to police occurred in the context of his understanding that EF, as his lawyer, was acting solely in his interests. That was not the case.43

Ms Gobbo is also said to have provided ‘literally thousands of hours of recorded conversations’44 to Victoria Police.

Conclusion: Is there a need for reform?

It was Ashton, then Assistant Commissioner of Victoria Police, who instigated a review of the handling of Ms Gobbo, conducted by former Victoria Police Commissioner Neil Comrie AO APM in 2012. This led to the disbandment of the human source unit that dealt with her. The matter was later reported to the Victorian Independent Broad-based Anti-Corruption Commission (IBAC), which investigated and reported on Victoria Police’s management of human sources in 2015 in the IBAC Report. IBAC Commissioner Murray Kellam AO QC found that ‘Victoria police had failed to act in accordance with appropriate policies and guidelines’ in their recruitment, handling and management of 3838.

The IBAC Report made 16 recommendations for the future recruitment, handling and management of human sources. Victoria Police has advised that it has since adopted these recommendations. Changes included ‘ensur[ing] police personnel better recognise and address risks associated with the management of human sources’. Victoria Police has also strengthened its governance arrangements for the management of human sources, including the introduction of a regular audit regime. Significantly however, despite finding ‘negligence of a high order’ in Victoria Police’s human source practices, Commissioner Kellam ‘did not find that any unlawful behaviour had occurred’.45

Aside from legal profession rules, no legislation specifically prohibits law enforcement from registering and...
using legal professionals as human sources. Instead, the informer–handler relationship is regulated by internal agency policies and protocols. The concluding part of this article argues that the Royal Commission presents an important opportunity to consider whether law reform is needed to prevent legal professionals from acting as human sources.

The human source management policies of government agencies are not publicly available. Therefore, they are not subjected to external scrutiny, outside of that which may be undertaken by police integrity organisations such as IBAC, or that which is being undertaken by the Royal Commission. As the Lawyer X case demonstrates, the informer–handler relationship is shrouded in secrecy; only a select few individuals within an organisation ordinarily know the identity of an informant. In addition, rigid secrecy provisions can dissuade whistleblowers from reporting potentially unethical conduct relating to informants. It is presently unclear what internal limits are in place, and how breaches of human source policies are monitored and responded to. It is also unclear at what stage agencies register human sources on their books. Do agencies apply different rules to persons who inform on an ad hoc basis, as opposed to those who are engaged in ongoing informer–handler relationships? Do internal policies expressly forbid certain professionals, such as barristers and lawyers, from acting as human sources? These are matters that the Royal Commission may shed light on.

The Royal Commission might also consider whether legal professional rules and internal policies are sufficient to prevent cases like that of Lawyer X from arising in the future. Specifically, there may be a need for legislation that places clear limits on who can and cannot act as a human source. Such legislation might circumscribe how law enforcement agencies select, register, handle and manage informants. It might also preclude persons holding specific professional obligations or roles from acting as a human source. In the absence of such legislation, the courts and the public must simply trust that lawyers and law enforcement will act without iniquity.

It is insufficient to merely ‘hope’, as the High Court did in AB v CD, that the situation of Lawyer X ‘will never be repeated’. Revelations that additional legal professionals have acted as informants show that the case might not be as ‘unique’ as the High Court then understood. The Lawyer X case and subsequent revelations have likely already undermined public confidence in the integrity of the criminal justice system. We await the findings of the Royal Commission to ascertain what actions it recommends to repair and restore this confidence.

Acknowledgment
The author would like to thank the anonymous reviewers for their feedback on this article.

Declaration of conflicting interests
The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding
The author(s) received no financial support for the research, authorship, and/or publication of this article.

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47See also Edward Elliott, ‘The Travesty in the Background to AB (a Pseudonym) v CD (a Pseudonym); EF (a Pseudonym) v CD (a Pseudonym); JB v The Queen’ (Blog Post, 10 December 2018) https://blogs.unimelb.edu.au/opinionsonhigh/2018/12/10/eliot-jb-v-the-queen/.
48AB v CD (n 14) [10].
49Ibid.