

Submission by Mr Giovanni Polimeni in support of his Application for Leave to Appear at the Public Hearings of the Royal Commission

1. On 8 August 2008, Mr Polimeni was charged with conspiracy to commit the offence of possessing a commercial quantity of an unlawfully imported border controlled drug, namely, Cocaine, contrary to sub-section 11.5(1) and sub-section 307.5(1) of the Criminal Code (Cth) (**charge**). The charge related to an operation carried out by the Australian Federal Police (AFP) known as 'Operation Inca'. The trial was prosecuted by the Commonwealth Director of Public Prosecutions (CDPP) and Mr Polimeni was convicted of the charge. The evidence adduced at trial was circumstantial in nature.
2. Mr Polimeni has not received any notification from the CDPP similar to those believed to have been provided by the Office of Public Prosecutions.
3. Mr Polimeni has reason to believe that his case has been affected and his convictions rendered unsafe as a result of the recent media reports and High Court decision in *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* [2018] HCA 58.
4. Mr Polimeni is concerned that his case has been affected by the gross breaches of duty found by the High Court namely, that by providing information to investigating authorities, *EF* (assuming Mr Polimeni's belief about her identity is correct) is in breach of her professional obligations of confidentiality and privilege owed to her clients. It is contended that such information was later used against Mr Polimeni and his co-accused to assist authorities during the investigation and prosecution of Mr Polimeni and others in connection with the above-named operation and related operations carried out by the AFP such as Operation Bootham-Moko (collectively referred to as Operations).
5. The prosecuting authorities served a voluminous brief of evidence which purported to include all materials relevant to Operation Inca. The prosecuting authorities failed to disclose human source material provided by *EF* (and potentially other human sources) or the fact that such information had come from a human source who was subject to legal obligations of confidentiality and privilege. Based on the media reports, it is suggested that *EF* provided information to Victoria Police in relation to the Operations for which our client was charged. If the substance of the media reports is established to be accurate, this is a matter that may have impacted upon the proper administration of justice and procedural fairness that ought to have been afforded to Mr Polimeni in the prosecution against him.

6. It is submitted that there have been numerous recent reports in the media concerning the conduct of other alleged human sources, in particular, [REDACTED] [REDACTED] firm acted as agent for Mr Polimeni's Sydney solicitor, Mr Arthur Aguirre and as a solicitor for Mr Polimeni throughout his Appeal in or around 2014. At this stage, it is unknown to what extent [REDACTED] provided information to investigating authorities in relation to Mr Polimeni and other clients for whom he has acted historically or whether he has in fact breached his obligations of confidentiality and/or legal professional privilege. A detailed inquiry into this particular subject-matter is required in order to determine the extent to which the cases of [REDACTED] former clients including Mr Polimeni may have been affected.
7. It is submitted that in light of the matters raised above, Mr Polimeni has a special or direct interest in the subject-matter of the Royal Commission pursuant to Section 15 (2) of the *Inquiries Act 2014* (Vic).
8. The interests of justice require Mr Polimeni to be permitted to attend the public hearings of the Royal Commission and cross-examine relevant witnesses. The seriousness of these matters cannot be adequately addressed by filing written submissions alone.
9. If Mr Polimeni is granted leave to appear, it is intended that he be represented by Senior Counsel instructed by Condello Lawyers.

CONDELLO LAWYERS

14 February 2019