

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT

-AND-

IN THE MATTER OF AN INQUIRY INTO THE RETIREMENT OF THE FORMER  
COMMISSIONER OF POLICE CONVENED BY A COMMISSION ISSUED BY HER  
MAJESTY'S GOVERNMENT OF GIBRALTAR ON 4 FEBRUARY 2022 (LEGAL  
NOTICE NO. 34 OF 2022) ('THE INQUIRY')

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AFFIDAVIT OF LLOYD DEVINCENZI

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I, LLOYD DEVINCENZI, Solicitor General, Government Law Offices, 40 Town Range  
(No. 6 Annex), Gibraltar, MAKE OATH AND SAY as follows:

1. I make this affidavit at the request of the Inquiry, in support of its investigations.
2. I was designated as Solicitor General on 1 March 2021. At the time of the matters described in this affidavit I was the Senior Advisory Counsel.
3. The matters set out below are within my knowledge, except where I indicate otherwise.
4. On or about 22 September 2019 I was informed by Mr Tito Garro (then the Data Protection Officer for the Government) about a data breach in connection with the National Security Centralised Intelligence System (NSCIS) platform operated by the Bland Group for the Government. I had not known about the existence of NSCIS or of an arrangement with the Bland Group until that point. Mr Garro sought my assistance on two interconnected matters: (a) engaging with the Gibraltar Regulatory Authority to address their concerns about the data breach; and (b) drafting a legally binding written agreement between the Government and the Bland Group as none appeared to have been put in place.

5. On 25 September 2019, at the request of the Attorney General, I attended a meeting at No. 6 Convent Place between the Chief Secretary and the Royal Gibraltar Police in connection with NSCIS. I recall that Mr Ian McGrail (Commissioner of Police at the time) asked the Chief Secretary whether an agreement between the Government and the Bland Group had been found. I understood that Mr McGrail wished to see a copy in the context of determining the ownership of NSCIS (because this bore on the investigation), the making of a complaint by the Government, and the nature of possible charges. The Chief Secretary responded that, despite searching Government records, an agreement between the parties had not been found and that he would continue the search. Mr McGrail also asked the Chief Secretary about who might have had access to NSCIS at No.6 during the time of the breach, and about access protocols. I believe this was when I first became aware that Mr Caine Sanchez, an official at No. 6, was alleged to be implicated in the data breach.
6. Over the following weeks, Mr Garro and I continued to engage with each other, Government colleagues and the Bland Group's Head of IT & Infrastructure to put together a binding agreement between the parties, and also to address the concerns of the Gibraltar Regulatory Authority.
7. In the middle of October 2019 I helped the Chief Secretary and the Attorney General respond to external correspondence in connection with disciplinary action against Mr Sanchez. I also assisted the Chief Secretary with his Witness Statement to the Royal Gibraltar Police, a draft of which the Royal Gibraltar Police had prepared for him.
8. On 25 October 2019 I was copied in to an email from Mr Garro to the Chief Secretary attaching a draft 'Master Software Development and Maintenance Agreement' that Bland Limited had provided to Mr Garro. I understood that Bland Limited probably considered it the draft meant to have been executed by the parties.
9. On 19 November 2019 I accompanied Mr Garro to a meeting called by the Chief Minister to discuss the NSCIS data breach. The meeting was also attended by the Deputy Chief Minister, the Attorney General and the Financial Secretary, amongst others. The principal topic of discussion was how to ensure that data protection compliance was balanced with ensuring that law enforcement

agencies were able to operate NSCIS and its various modules effectively. The ownership of NSCIS was discussed, and I recall the Chief Minister opining firmly that the platform belonged to the Government.

10. On 5 February 2020 I attended a follow-up meeting at No. 6 with Mr Albert Mena (the Financial Secretary), Mr Javier Redondo (Private Secretary to the Chief Minister) and others to coordinate an integrated approach to the contractual and operational aspects of NSCIS.
11. On 7 April 2020 the Attorney General asked me to attend a meeting he was about to hold in his office with the Royal Gibraltar Police. The meeting was attended by Mr McGrail and former Superintendent Paul Richardson. I believe former Detective Inspector (now Superintendent) Mark Wyan was also in attendance. The focus of the meeting was possible charges against various individuals allegedly connected with the NSCIS matter, including Mr Sanchez. The Attorney General inquired about the significant number of charges, and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney General asked Mr McGrail to keep him informed until they could next meet.
12. Until the meeting of 7 April 2020 I had not known that charges were being prepared, or about the police interest in Mr Levy. It became apparent to me that the NSCIS investigation was not only far advanced, but that the file was complex, potentially very sensitive given Mr Levy's position in the community and professional links to the Chief Minister, and therefore reached well beyond questions of poor administration (the contractual gap, NSCIS access protocols), regulatory breaches (questions raised by the Gibraltar Regulatory Authority), or alleged malfeasance by a Government official (the investigation of Mr Sanchez).
13. In late April 2020 the Attorney General and I discussed the ownership of the NSCIS platform and I set him a copy of the draft 'Master Software Development and Maintenance Agreement'.
14. On 5 May 2020 the Attorney General and I discussed the NSCIS file generally, including the constitutional role of Attorneys General in Gibraltar and the wider

Commonwealth. Out of personal and professional interest I was acquainted with the recent SNC-Lavalin affair in Canada and sent the Attorney General a link to the official report: I thought it contained pertinent analysis and perspectives to help him navigate the NSCIS matter.

15. The following day, 6 May 2020, the Attorney General and I discussed the NSCIS ownership question again, prompted I believe by a call from the Financial Secretary to the Attorney General. I mentioned during our discussion that I had seen an invoice from the Bland Group during my discussions and email exchanges with Mr Garro. I thought that, in the absence of a binding written agreement, the invoice could provide useful information as to how the relationship was being treated by the parties in fact, and therefore how it might be regarded in law. I examined a copy of the invoice, spoke to the Attorney General about my provisional conclusions, and forwarded him the copy.
16. On or about 13 May 2020 the Attorney General asked me to attend a meeting in his office with Mr McGrail. I believe Mr McGrail was accompanied by the same individuals who accompanied him to the meeting of 7 April 2020, namely Mr Richardson and Mr Wyan. Mr Christian Rocca, Director of Public Prosecutions, was also present.
17. It is probably true to say that the atmosphere at the meeting was subdued and tense. It was evident to me as discussion ensued that there had been significant developments in the intervening period since 7 April 2020, including the execution of a search warrant at Mr Levy's offices at Hassans. I recall discussion among those present about the role of the Chief Minister in the matter - I believe in the context of his having been mentioned in a document. At one point, the Attorney General told Mr McGrail that he had betrayed his trust (or words to that effect) in proceeding to execute the search warrant without first informing him or meeting with him. I recall that Mr McGrail disavowed this interpretation of events.
18. The discussion moved on, and in emotive terms the Attorney General emphasised the importance of protecting Gibraltar's reputation and that of the Chief Minister (which I believe he later clarified to mean the office of Chief Minister). The Attorney General also raised what he perceived as the lack of dignity with which Mr Levy had been treated, given that Mr Levy was an officer of the court. I believe Mr Richardson (and if not Mr Richardson then one of the

other Royal Gibraltar Police delegation) said that the police had attended Hassans in plain clothes, with discretion, and acted professionally throughout. I recall some discussion between those present about conversations and text or email exchanges between them (or some of them) regarding the handling of the investigation, including in connection with Mr Levy. I recall the Attorney General saying that the conduct of the investigation and the charges were ultimately a matter for the Royal Gibraltar Police (or words to that effect), as he had done during the meeting of 7 April 2020. At one point the Attorney General asked for time to speak alone with Mr McGrail. The rest of us made our way out and conversed in the corridor until Mr McGrail emerged from the office and left with his colleagues.

19. Shortly after the meeting I recall the Attorney General raising briefly with me the applicable legal test or threshold for a *nolle prosequi*. The conversation was of an academic nature, and to the best of my recollection it was against the background of protecting the jurisdiction and the office of Chief Minister.
20. On 8 June 2020 the Chief Secretary asked me to assist him in drawing up a retirement agreement for Mr McGrail on terms that he and Mr McGrail had been discussing, and on which he was receiving input from the Chief Minister in his capacity as Finance Minister.
21. In the middle of June 2020 I had been advising the Department of the Environment on an unrelated matter with a Bland Group connection. The matter had become difficult to resolve, and during the course of a telephone conversation with a departmental official I was informed that '36 North', the company allegedly implicated in the data breach, was owned or partly owned by the partners of Hassans through an investment company. I was deeply concerned about the implications of this information if true, given that the Chief Minister and others in the political and administrative spheres of Government were themselves partners of Hassans. I proceeded to inform the Attorney General, and asked him if the Royal Gibraltar Police were aware. He told me that both he and the police knew about this specific nexus, which reassured me.
22. I recall mentioning to the Attorney General that, in the context of this nexus, it would be especially important to be alive to the possibility that those with an interest in the outcome of the NSCIS matter could seek to influence the

investigative or legal process, either directly or indirectly. I was especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar's interests with their own. I particularly recall mentioning the importance of not regarding Gibraltar as a 'PLC' but as a community whose values transcend corporate ones, even if it was important not to be naïve about the need to safeguard Gibraltar's economic well-being and international standing.

23. In mid-July 2020 the Chief Secretary was requested by Mr Ullger (the Commissioner of Police) to consider making a formal complaint on behalf of the Government regarding the NSCIS breach. The Chief Secretary asked me to help him draft a reply in which he affirmed that the Government was a complainant. The letter was signed and issued by the Chief Secretary on 14 August 2020. I supported the decision to issue the letter, both in principle and because I believed it was consistent with the Government's past position and representations to the Royal Gibraltar Police.

24. Some days after the letter was issued, the Attorney General called me into his office. The Chief Minister was on the speaker phone and asked whether I had advised the Chief Secretary to make a complaint to the RGP regarding the NSCIS matter. I understood from this, later exchanges with the Chief Secretary and other indications that the Government had reconsidered its position.

25. Having supported the making of the complaint and associated myself with it, and being unsure of my instructions from the Government, I told the Attorney General on or about 12 October 2020 that I did not feel able to continue to assist the Chief Secretary or the Government more widely on the complaint, which he fully understood.

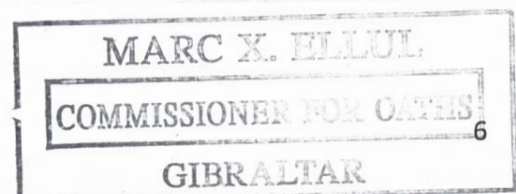
SWORN at Gibraltar by the above named Deponent on,

this 24<sup>th</sup> day of August 2022 AT SUITE 7,  
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Before me

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Commissioner for Oaths



*This Affidavit is filed by the Deponent*