

FILED
20 OCT 2000
OFFICE OF THE INDUSTRIAL
REGISTRAR

**BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES**

No. IRC of 3124/2000

Form 43

VALDA JUNE KERRISON
Applicant

**TECHNICAL AND FURTHER
EDUCATION COMMISSION**
Respondent

AFFIDAVIT:
Deponent: Mr Raoul Salpeter
Sworn: October 2000

Filed by:

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On 20 October 2000 I, Raoul Salpeter of 60-70 Elizabeth Street, Sydney, in the state of New South Wales, make oath and say:

- A. I am employed as a Solicitor for and on behalf of the New South Wales State Crown Solicitor.
- B. I am involved in this matter on behalf of the client, the New South Wales Department of Education and Training.
- C. I say in relation to the "Application for Declaration under s.154" the following:
 - i. in relation to ground 1 it is not denied.
 - ii. in relation to grounds 2 to 4
 - a) the New South Wales Government Medical Officer ("GMO") issued a certificate recommending the retirement of the applicant for health reasons. That certificate was issued on 16 June 1995, a copy of that certificate is attached and marked "A".



- b) The GMO is an employee of the Central Sydney Area Health Service and has functions referred to the position pursuant to provisions in various pieces of legislation.
- c) On 23 June 1995 an officer of my client wrote to the applicant formally informing her of the decision of my client to retire her on health grounds. A copy of that letter is attached and marked "B". A further letter was sent on 30 June 1995 (Annexure "C").
- d) The issuing of the certificate by the GMO was pursuant to a request made of the Office by my client to examine the applicant in a letter dated 1 May 1995 (Annexure "D").
- e) The Managing Director of the TAFE Commission authorised the medical assessment in a letter dated 17 January 1995 (Annexure "E") sent to the Director of North Coast Institute.
- f) The TAFE Commission has power under s.20 of the Technical and Further Education Commission Act 1990 (the "TAFE Act") to retire a member of staff. It is as follows:

"Incapable office may be retired

If:

- (i) a member of the staff of the TAFE Commission is found to be unfit to discharge or incapable of discharging the member's duties, and
- (ii) the member's unfitness or incapacity appears to be of a permanent nature and has not arisen from actual misconduct on the part of the member (or from causes within the member's control),

the TAFE Commission may cause the member to be retired."



- g) In carrying out its duties to determine if a member of staff should be retired the TAFE Commission followed the Supplement to TAFE Gazette No 42 of 1993. (Annexure "F"). That document stated inter alia:

" The TAFE Commission has an [sic] statutory obligation to ensure the health and safety of staff in the workplace (Occupational Health and Safety, 1983)....

The TAFE Commission will arrange for medical assessments for people seeking employment with the TAFE Commission, statutory monitoring of staff in positions required by legislation, and medical separation....

To help ensure fair practices and prevent discrimination the TAFE Commission supports the establishment of an appeal mechanism for staff who believe they have been adversely affected by a medical statement."

- h) The Gazette further states:

"A Medical Assessment for employment is gathering medical data and carrying out a number of appropriate medical tests to assist in the process of determining an applicant's (or staff member's) fitness to carry out the duties of the position in response to the health requirements of the position.

A Medical Provider is selected by the TAFE Commission according to the Premier's Department Guidelines 2/9/92, to perform the medical assessment and to provide recommendations. The recommendations will assist in the decision making process. A medical provider may also give feedback to the person being assessed with respect to any identified unfavourable aspects of the assessment. A list of Medical Providers is provided in Attachment 1....



