[25 January 2006 - As at today WBDE have not received any reply]

WhistleBlowers' Documents Exposed

WBDE Procedural Fairness Natural Justice Panel 8 January 2006
PO Box 140
NEWTOWN NSW 2204 **Web: http://www.wbde.org**

NOTICE MADE AND ISSUED IN THE PUBLIC INTEREST.
REQUEST FOR JUSTICE FOR MRS KERRISON

To:
Justice Lance Wright - President Industrial Relations Commission
Justice Michael Walton - Vice-President of NSW Industrial Relations Commission
Justice Staunton
Justice Staff
Knight I.V., Crown Solicitors' Office
Others

Re: New South Wales Technical and Further Education Commission v Valda June Kerrison [2004] NSWIRComm 369

Attention: _____

Who We Are:

> WhistleBlowers Documents Exposed (WBDE) is a self-funded people's initiative arising from our dissatisfaction with the performance of some existing funded organizations and personnel, who are considered to have failed to perform their duties effectively, within the law, and in the public interest. More information is available on our WhistleBlowers' Documents Exposed site: http://www.wbde.org/

We have been asked to assist TAFE Teacher Mrs Val Kerrison obtain justice in the form of her right to her job and income as a duly appointed full-time permanent Teacher in TAFE.

The Public's Right to Question the Judiciary

We claim the public's right to question the judiciary of the Industrial Relations Commission and those who are responsible for the administration of justice. We base this claim on the Federal Court of Australia judge, Justice Ronald Sackville and his lecture on 29 August 2005 to the 1 3th Lucinda Lecture Monash University: *"How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary"*

Justice Sackville: "Yet the High Court has acknowledged the importance of protecting even some forms of erroneous speech. Thus in *Gallagher v Durack*, the majority judgment identified as a principle of 'cardinal importance' that:

> *'speech should be free, so that everyone has the right to comment in good faith on matters of public importance, including the administration of justice, even if the comment is outspoken, mistaken or wrong-headed'*

And

"Reasoning by analogy with the position of courts, Mason CJ regarded the protection afforded to the Commission as 'so disproportionate' as to be outside the scope of the relevant head of Commonwealth power His Honour emphasised that, as with courts:

> *'the interest of the public [lies] in ensuring that the Commission and its activities should be open to public scrutiny and criticism'*.

"Mason CJ quoted approvingly the celebrated observation of Black J in *Bridges v California* that:

> *'the assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American public opinion ... [A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt, much more than it would enhance respect'*.

> "Nor is it a matter simply of providing an outlet for critics whose frustrations might otherwise take over. The judiciary itself benefits from vigorous criticism. Judges no less than other fallible human beings may overlook or underestimate the need to change apparently settled principles or practices.

As a matter of public concern, and in the interest of the public's entitlement to justice, we question the **judgement handed down by Justices Walton, Staunton and Staff** in December 2004 in the matter New South Wales Technical and Further Education Commission v Valda June Kerrison [2004] NSWIRComm 369

Justice to be Seen

The Hon J J Spigelman AC, Chief Justice of New South Wales, in his address "Our Common Law Heritage" to the 2004 Joint Study Institute of Law Librarians on 21 February 2004:

> "One of the fundamental principles of the administration of justice in a common law system is the principle of open justice. This is sometimes referred to in terms of the saying: 'Justice should not only be done but should manifestly be seen to be done.'"

During the time that the IRC conducted the case, pronounced its judgement, and since, we protest that we have not seen justice being administered in this case.

Due Process, Natural Justice, Procedural Fairness

We draw your attention to the attached documents.

Part 1 18 July 2005

a) Pages 1-10 WBDE letter which was sent to the decision makers, lawyers, managers, politicians: Ms Elaine Brus, Mr Bob Carr, Mr Peter Cribb, Dr Helia Gapper, Dr Jim Holmes, Dr Helen Jagger, Mr Chris Lockwood, Mr Menzies, Dr Eva Mandel, Ms Elizabeth McGregor, Mr Mike Quinn, Dr Gregor Ramsey, Ms Gail Robison, Mr Raoul Salpeter, Hon Jeff Shaw' Ms Kerrie Walshaw' Dr Gary Willmott' Mr Robin Shreeve' Dr Andrew Refshauge, Hon Morris Iemma;
Asking, amongst other things,

> "Did you, personally, accord PROCEDURAL FAIRNESS AND NATURAL JUSTICE to Val Kerrison, her family and associates, and her students before any or all of the following documents actions decisions were committed?
>
> "IF 'YES', and you wish to establish this, you would need to supply to us within 14 (fourteen) days of the above date your first-hand evidence including at least
> i) Identify the individual/s who accorded this justice right,
> ii) Specify the specific date, location, time, it was accorded
> iii) All documents by the relevant parties needed to show such alleged Procedural fairness/natural justice was accorded.
>
> "IF "NO": It is taken that as at this date you hold no evidence of procedural fairness and therefore agree that procedural fairness/natural justice was not accorded unless it was accorded by some other person.
>
> "Similar to the "NO" option above, your non-response to this documentation is held to be your agreement that you did not accord procedural fairness and/or natural justice and any or all of the listed documents and actions may be deemed null and void.

b) Page 11 - References and information re Procedural Fairness and Natural Justice.

c) Page 12 - List of documents for inquiry and action by WBDE Procedural Fairness and Natural Justice Panels and now supplied to the people above for them to answer.

d) Pages 13-50 of the package sent to the individuals in a) above were copies of the documents for this investigation.

Note: The list identifies the documents all of which were selected from the documents already held by the Commission, legal representatives and parties to this case.

This bundle is not supplied at this stage because many of those documents are now judged to have been performed without procedural fairness and natural justice, and accordingly are stamped Null and Void. They are listed on the web at

The updated copies of these documents are on the web in clickable format at
http://www.wbde.org/documents/2005 Jul 18 WBDE Procedural Fairness Panel Documents.php

Part 2 August 2005

a) Pages 1-2 WBDE letter to Convening Panels for Procedural Fairness/Natural Justice to be Accorded to Valda June Kerrison, her family, her associates, and her ex-students.

It sets out the steps WBDE had taken to accord procedural fairness and natural justice, and notifys that attached was a copy of the actual package as sent to:

Ms Elaine Brus, Mr Bob Carr, Mr Peter Cribb, Dr Helia Gapper, Dr Jim Holmes, Dr Helen Jagger, Mr Chris Lockwood, Mr Menzies, Dr Eva Mandel, Ms Elizabeth McGregor, Mr Mike Quinn, Dr Gregor Ramsey, Ms Gail Robison, Mr Raoul Salpeter, Hon Jeff Shaw' Ms Kerrie Walshaw' Dr Gary Willmott' Mr Robin Shreeve' Dr Andrew Refshauge, Hon Morris Iemma;

It informed that, regarding this project inquiring into whether or not procedural fairness had been accorded to Mrs Kerrison and other parties effected, these key persons had not contributed any further or conflicting material [and, as set out in Part 1 a) above that they agreed "... that [they] did not accord procedural fairness and/or natural justice and any or all of the listed documents and actions may be deemed null and void"

b) Page 3 Information and instructions to the Convening Panels

c) Pages 4 – 10 Worksheets for the Panel/s setting out the individual documents and asking specific answers on each decision/document/action which was being judged e.g.

Q.1. Do you see Natural Justice? YES/NO

Q.2. Does anyone else claim there was natural justice? YES/NO

Q.3. Is there any evidence of natural justice? YES/NO

Q.4. Do you deem and declare this a nullity and void? YES/NO

Q.5. Do you deem/declare this decision to be founded on and flowing from a bad decision and therefore a nullity/void? YES/NO

d) Copy of the package sent to the key players listed in Part 1 a) and Part 2 a) above.

Part 3 WBDE Panels Judge documents and decisions performed without Procedural Fairness and Natural Justice to be Null and Void

WBDE exercised its rights as set out:

In Twist v Randwich Municipal Council (1976) Barwick C J stated: "The common rule that a statutory authority having power to affect the rights of a person is bound to hear them before exercising the power is both fundamental and universal ...

The effect of a breach of the hearing rule is as follows:
"The decision is invalid (void, rather than voidable) see Ridge v Baldwin (1964)
"Although the decision may ultimately be declared void by the court, the fact that it has been made still gives the court jurisdiction to hear an appeal against it (in the event of there being a statutory right of appeal)

Ref: *Essential Administrative Law* by Ian Ellis-Jones, lecturer Faculty of Law UTS Sydney.

And

In Hubbard Association of Scientologists International v Anderson and Just (No 2) (1972) VR577 579 Adam J delivered the judgement of the court (Adam, Little and Gowans JJ) and said:

'If an act is void then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it, aside. It is automatically null and void, without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad."

"You cannot put something on nothing and expect it to stay there. It will collapse."

Following the agreement that Ms Elaine Brus, Mr Bob Carr, Mr Peter Cribb, Dr Helia Gapper, Dr Jim Holmes, Dr Helen Jagger, Mr Chris Lockwood, Mr Menzies, Dr Eva Mandel, Ms Elizabeth McGregor, Mr Mike Quinn, Dr Gregor Ramsey, Ms Gail Robison, Mr Raoul Salpeter, Hon Jeff Shaw' Ms Kerrie Walshaw' Dr Gary Willmott' Mr Robin Shreeve' Dr Andrew Refshauge, and Hon Morris Iemma had all failed to apply procedural fairness, and they all agreed that any or all of the listed documents and actions may be deemed null and void. WBDE noted that the previous failure to address this issue continued.

WBDE observe that there is ongoing failure of IRC, Attorney General and other politicians and departments to correct the failure to accord procedural fairness, and responding to the growing impression that the NSW justice system has been brought into disrepute regarding its treatment of HealthQuested whistleblowers, WBDE convened various Panels.

The panels duly judged the relevant documents regarding procedural fairness, and where applicable made pronouncements on those decisions/documents which should be made Null and Void due to lack of procedural fairness.

Pages 1- 28 --December 2005 Report From WBDE Procedural Fairness and Natural Justice Panel supplying individual judgements for the relevant documents and decisions.

Copies of the revised bundle of documents are published in clickable links from the web site of WhistleBlowers' Documents Exposed at:
http://www.wbde.org/documents/2005 Jul 18 WBDE Procedural Fairness Panel Documents.php

IRC had the opportunity and responsibility to declare decisions and documents null and void due to lack of procedural fairness, but failed to do so

The Appeal Books held by all parties including the IRC Bench show that in her submissions to the Industrial Relations Commission in 2003, Mrs Kerrison reiterated in more than 70 places her claim that this case shows that she was denied procedural fairness and natural justice from 1994 onward through the years of decisions made against her rights.

IRC had the opportunity to ensure procedural fairness but failed to do so.

The denial of procedural fairness extends through many decisions and actions which the Bench use to form their judgement.

As those decisions and documents were formulated in secret without according Mrs Kerrison procedural fairness, they are null and void. And all actions based on them are similarly collapsed, null and void.

This includes the documents lodged in the Industrial Relations Commission, and the following judgement December 2004 is also collapsed.

It does not extinguish the Judgement 2003 because that judgement correctly declared that Mrs Kerrison's employment was ongoing.

20 September 2004 IRC commits more denial of procedural fairness natural justice by announcing that it 'Disallows' Mrs Kerrison's Procedural Fairness Contentions

On 20 September 2004 the appeals panel of Justices Walton, Staunton and Staff proclaimed that it disallowed Mrs Kerrison's contentions that she had been subjected to serious denial of procedural fairness.

Witnesses in the Court noted this, wrote it down, and commented that they did not believe that Justices Walton, Staunton and Staff held power to disallow contentions on procedural fairness natural justice rights.

The witnesses and Mrs Kerrison did not know what was in Justices Walton, Staunton and Staff's collective minds, but knew that the judges all held all the evidence which awarded Mrs Kerrison the first judgement, including her submissions on denial of natural justice.

December 2004
Applicant TAFE obtains a judgment in circumstances where it is entitled to no judgment

In 2004 the IRC Bench decided to either apply or validate that TAFE, in some unknown year, on some unknown day, using some unidentified process can/did somehow force Mrs Kerrison to be "medically retired". In doing so, the IRC has issued an irregular judgement.

> In Farrow Mortgage Services Pty Ltd v Victor Tunevitsch Pty Ltd, Victor Valentine ValentineTunevitsch and Virginia Kaye Tunevitsch No 1383/1991 Judgment No. A56/1 994, at Para 14:
>
> > "Most cases of irregular judgments fall into two categories. One category is when a plaintiff obtains a judgment in circumstances where he or she is entitled to no judgment whatever. Examples include a judgment in default of appearance or defence when either the writ has not been served or the statement of claim has not been delivered, or the time for the appearance or defence has not expired. Courts have almost always set aside such a judgment upon the basis that a defendant is entitled to an order setting it aside **ex debito justitiae**. The judgment is treated as a proceeding which is void or a nullity rather than one which is merely irregular. A void proceeding is of no legal effect and cannot be cured by amendment. Anlaby v Praetorius at 768-9;Craig v Kanssen (1943) KB 256 at 259.

There are at least 3 major areas of irregularity in the judgement handed down in December 2004. We claim that they cannot be cured by amendment because the basis is so fundamentally flawed to the extent that we cannot see any valid grounds, that it appears to be a complete travesty of justice going against good sense.

- DISCRIMINATION. Section 20 of Technical and Further Education Act it is worded similarly to many public service acts and, paraphrasing s20, include several separate definite pre-requirements to be determined, and then links sought, leading to decisions before the employer may make a decision to cause an employee to be retired.

  TAFE counsel considered these sections originated long ago.

We consider that the Commission should have been aware that the mere concept of forcing or causing an employee to be retired based on his or her age, gender, presumed disability, or any other area identified in the AntiDiscrimination Act 1977 is prohibited

In light of the antiquity of the concepts in s20 of the Act, we believe that the Commission should have exercised its right to denounce it as being obsolete, and called to have it deleted in line with modern law (AntiDiscrimination Act).

It is noted that the Industrial Relations Act at s 169, states that the Commission MUST take into account discrimination principles. s **169, Anti-discrimination matters.** (1) The Commission must, in the exercise of its functions, take into account the principles contained in the *Anti-Discrimination Act 1977.*

We consider that the IRC should have spoken out against discrimination practices such as the HealthQuest and TAFE "medical retirement" machinations, and not sought to either inflict a discriminatory retirement or uphold TAFE to apply a discriminatory retirement.

Failure to set aside this judgement sets the precedent for allowing further detrimental acts which were previously legislated against in the AntiDiscrimination Act.

This judgement 2004 has effectively negated the AntiDiscrimination Act, complete with its human rights entitlements. By so doing, the IRC has taken away the power of the AntiDiscrimination Board and the Administrative Decisions Tribunal EEO Division to address the wrongs committed on the grounds of discrimination categories.

- WITHOUT POWER. Section 20 of Technical and Further Education Act is worded similarly to other public service acts. Although they state that authorised person/s may cause an employee to be retired, unless the employee has knowingly signed a binding contract agreeing to allow the employer this power, no such general power exists. Another person, even if s/he is an employer or public servant, does not have the authority or power to force the employee to be retired. They only have the power to terminate/dismiss.

Counsel for TAFE referred to s20 as perhaps dating from dinosaur age, and the IRC should have recognized that although in the olden days forced retirement upon reaching a certain age was legislated, times have changed and the AntiDiscrimination Act is law.

We consider that the Commission should be aware that, since the advent of the AntiDiscrimination Act, that the most that can be forcibly applied against the employee is dismissal.

Although s20 of the Technical and Further Education Act appears obsolete, perhaps it could be used as the last individual step of a multi-Step process:

20 Incapable officer may be retired

If:

(a) a member of the staff of the TAFE Commission is found to be unfit to discharge or incapable of discharging the member's duties,

Step One: ***this would require that the member of staff was charged with having failed to discharge a duty, and such duty of course must be part of the member's statement of duties***

and

(b) the member's unfitness or incapacity

Step Two: ***This requires that a medical practitioner diagnoses a medical condition which was consistent with*** **Step One** ***proven failure to carry out all or most of the duties of office as set out in the member's statement of duties***

appears to be of a permanent nature

Step Three: This requires measurement of the member's vital signs, and be linked to duties as set out in the member's statement of duties. This, of course in the last few decades is problematic because of a) a member's right to rehabilitation; and b) other options including reasonable accommodation for the member, and possibility of artificial limbs etc for people who 50 years ago may have been considered crippled/incapable.

and has not arisen from actual misconduct on the part of the member (or from causes within the member's control),

Step Four: This requires proper investigation of the work environment, including whether or not the member has control of himself or herself.

the TAFE Commission may cause the member to be retired.

Step Five: If the employee freely elects to apply to retire, the TAFE Commission may either reject the application, or accept that signed application and cause/instruct the clerical staff to process the application.

Naturally each progressive step as set out above would have to be performed in the full knowledge of both TAFE and the employer with procedural fairness applied at every decision/step otherwise it would collapse null and void due to this omission at any one stage.

However, we understand that this irregularity is even more bizarre in that TAFE and the Commission consider a small undated, unsigned post-it tag with the words written by some TAFE officer "Kerry URGENT need to terminate her at close of business today" is somehow valid evidence of those 5 steps set out above were all carried out.

It is noted that neither the Commission nor TAFE and its legal representatives put forward a date that the first step of such a process was ever commenced. Furthermore as neither the Commission nor TAFE's representatives put into evidence a statement of Mrs Kerrison's duties it is abundantly clear that there cannot even be a valid claim that even the first step of s20 of the Act occurred.

Clearly, for the Commission to simply make presumptions about Mrs Kerrison's capacity is in itself discrimination on the part of the IRC.

Furthermore, as TAFE was paying salary and issuing payslips to Mrs Kerrison in 1996, and making changes to her employment status in 1998 (See Exhs 35 38) we conclude that TAFE itself knew perfectly well that Mrs Kerrison was still its employee.

We consider these irregularities so fundamental yet glaring, more than sufficient to create for Mrs Kerrison an unconditional right, ***ex debito justitiae,*** to have the judgment set aside, (See WBDE Procedural Fairness Panel letter 28 December 2005) and for the Commission to correct itself by disallowing TAFE's appeal.

• PROCEDURAL FAIRNESS.

We observe that there are irregularities regarding denial of natural justice since 1995 as set out in WBDE Procedural Fairness Panel letter 28 December 2005.

We consider more irregularities occurred when the IRC 'disallowed' Mrs Kerrison's procedural fairness contentions in September 2004.

These irregularities are fundamental but so much the antithesis of the standards which we want our courts to be delivering in the form of justice, that they create for Mrs Kerrison an unconditional right, ***ex debito justitiae,*** to have the judgment set aside, and for the Commission to correct itself by disallowing TAFE's appeal.

<u>The Court should set its own Order.</u>

For the reasons listed above Mrs Kerrison is entitled to ***ex debito*** **justitiae** to have that judgement set aside as a nullity, and having no legal effect.

The Court should set its own Order.

This would leave the original judgement by Schmidt. J. standing.

Doing so would leave the way clear for the IRC to correct its errors and disallow TAFE's application to appeal on the grounds that TAFE has not produced a properly formulated claim of date or evidence that TAFE made a valid decision to terminate Mrs Kerrison's employment. Clearly, previous purported evidence was not only fragmented and unconvincing, in addition it was identified as wholly null and void -

<u>Mrs Kerrison' s Entitlement to Her Job Continued Through the Years</u>

The documentary evidence shows that Mrs Kerrison's employment was ongoing through 1995, and 1996, and 1997 etc, although TAFE frequently chose to stop and resume paying her, they did not sack her. Mrs Kerrison chose to not apply to resign or retire.

TAFE kept its duly appointed teacher Mrs Kerrison in employment limbo for around 10 years. We consider this outrageous and inexcusable, especially when one recollects that TAFE holds itself out to be a standard bearer on employment and teaches this subject to its students.

We observe that TAFE appeared to be making a numerous, clandestine efforts in 1996, 1997 and 1998 to sever its obligations by changing and back-dating Mrs Kerrison' s employment status through all sorts of variations of Leave Without Pay etc.

We consider that TAFE knew that simply secretly changing Mrs Kerrison' s employment status through all sorts of Leave Without Pay - and telling the superannuation authority - did not constitute a valid termination (See the exhibits to 1998).

We are surprised and register our objection that Justices Walton, Staunton and Staff did not at least express outrage against TAFE for the unfair, unreasonable conditions it imposed on Mrs Kerrison violating massive sections of the Industrial instrument Enterprise Agreement signed by both TAFE and the Commission.

At all times TAFE held the employer's power to sack its employees including Mrs Kerrison. TAFE did not do so; instead its personnel, or lawyers, have spent more than 10 years wasting public money, attempting to fabricate a 'back door' retirement or some other form of forced severance while ignoring procedural fairness obligations.

Seemingly, when one attempt failed, TAFE officers/lawyers simply 'tried on' another, and all apparently under the instructions of TAFE legal department.

In 2000 it came to the IRC.

It is noted that the Commission including Vice-President Walton was aware that TAFE, from 2003 accepted its obligations to Mrs Kerrison because, in 2004 the Commission held the PAYG group certificate which TAFE issued to Mrs Kerrison for the financial year 2003, and the Commission ordered TAFE's lawyers to provide proper records of the PAYG tax they were subtracted from her fortnightly pay.

Cases:

1. In *Isaacs v Robertson* (1985) (AC97) the Privy Council said at page 102:

   "... The judges in the cases which have drawn a distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts ex debito justitiae the right to have it set aside, save that it specifically includes orders that have been obtained in breach of rules of natural justice.

2. Lord Greene MR stated in Craig v Kanssen (1943) 1 KB at 262:

   "a person who is affected by an order which can be properly described as a nullity is entitled ex debito justitiae to have it set aside."

   And

   "In Craig v. Kanssen Lord Greene M.R. set aside an order purportedly made under the rules of the Court after examining the distinction between orders that are nullities and those which are only irregularities.

Lord Greene stated

"*These cases to me establish that a person who is affected by an order which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. So far as procedure is concerned, it seems to me that the court in its inherent jurisdiction can set aside its own order and it is not necessary to appeal it."*

3. Hoskins v Van den Braak (3 April 1998; Mason P; Priestley JA; Beazley JA

"... **common law right to relief ex debito justitiae** against such a denial of natural justice

On the ground of denial of procedural fairness all decisions of the Department of Education and Training/TAFE officials involved and HealthQuest are nullities including the initial decisions referring Mrs Kerrison to HealthQuest.

Ex debito justitiae" Mrs Kerrison is entitled to have the decision of the Industrial Relations Commission In Court Session set aside: See Craig v Kanssen (1943) KB at 262

New South Wales Technical and Further Education Commission v Valda June Kerrison [2004] NSWIRComm 369 is still not finalized or perfected; therefore may be revisited

"... from **Tenaga Nasional Bhd - *vs* - Prorak Sdn Bhd**

"...We pause to observe that counsel and the learned Judge were quite wrong in assuming that the court was *functus officio* merely because judgment had been entered against the appellant. The default orders made by the learned Judge had not been extracted. The court, at the point in time when counsel for the appellant made his oral application, therefore, continued to have full control over the judgment it had entered. That proposition finds support from the decision of the former Federal Court in **Chee Kuan Cheng v Chuo Kong Kah** [1967] 2 MLJ 74, where Ong Hock Thye FJ (later CJ (Malaya)) said (at P 75):

> "Until an order is perfected the court's jurisdiction to review the subject matter and to recall an order pronounced is undoubtedly a matter of wide discretion."

Mrs Kerrison is entitled to relief against injustice

NSW Court of Appeal Judgments Report [1998] 2 NSWCA Jud Rep; [1998] NSWCAJR 2

"...held - since neither the Appellant nor anyone acting on his behalf was served with the claim on which judgment was given against him, prima facie the proceedings, and the judgment are nullities - the Appellant was entitled *ex debito justitiae* to have the judgment set aside unconditionally - the Local Court has power to relieve against the injustice suffered by the Appellant as an incident of its function as a court of justice - nothing in the language of s 75A(1) detracts from the common law

right to relief *ex debito justitiae* against such a denial of natural justice - Hoskins v Van Den-Braak (3 April 1998; Mason P; Priestley JA; Beazley JA)

Industrial Relations Commission to correct its own failure

1 In our view, the interests of the administration of justice, in this case requires the intervention of this Industrial Relations Commission to correct its own failure to ensure that Mrs Kerrison was accorded procedural fairness.

Industrial Relations Commission to correct any failure by the legal representatives.

Whether or not the Commission feel it was misled by mistakes made by counsel for either side what Lord Denning said in **Doyle v Olby Ltd** [1969] 2 All ER 119, 121 was:

> "We never allow a client [Mrs Kerrison] to suffer for the mistake of his counsel if we can possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side. Sometimes the error has seriously affected the course of the evidence, in which case we can best order a new trial.

Points have emerged now that the Court has pronounced its judgement,

In R. v. REARDON, Michael Leonard [2004] NSWCCA 197:

> "The question was adverted to again in PantoRno v. The Queen (1989) 166 CLR 466. That was a case where special leave to appeal to the High Court was sought on a ground raised for the first time in that Court. It was argued that this was a point that emerged only when the Court below pronounced its judgment.

In pronouncing judgement it has emerged that the Bench intended to, and did, turn a blind eye to all of the occurrences of lack of procedural fairness including all of TAFE's decisions 1995, 1996, 1997, 1998...

Members of the public expresses shock at the degree that the IRC seemed to accommodate lack of justice to Mrs Kerrison by TAFE and its legal representatives.

They commented that the Commission stuck to vagueness in the absence of facts.

In pronouncing judgement it has emerged that the Bench so ignored the basic requirement that both parties need to know the duration of the employment [contract] that the Bench did not /could not supply a termination date to fit the evidence, and indeed had it attempted to it would have run foul of the evidence it held. Examples of that evidence showed that TAFE attempted to sever Mrs Kerrison's employment and superannuation again in April 1998.

All of which makes mockery of a claim that Dr Willmott caused Mrs Kerrison to enter a retirement situation in some previous year – or years.

IRC pronounced judgement but it is not perfected

Now that the Industrial Relations Commission has pronounced its judgement December 1994, it is now clear that counsel should have drawn the court's attention to the lack of procedural fairness or natural

justice of the HealthQuest appointment, its purported retirement certificate and all decisions and documents which flowed from them as they are all null and void. This leaves the Commission without evidence to find for TAFE.

Counsel Have a Duty to the Commission and Should Have Moved the Commission to Reconsider

29 At pp.474, Mason CJ and Brennan J said this:

> Failure to argue a point before a court of criminal appeal presents a considerable obstacle to an applicant who seeks special leave to argue it in this Court. Even if the point emerges clearly only when a court pronounces its judgment, **it should be appreciated by counsel who receive jud2ment that they are under a duty to draw the court's attention to issues which, in the li2ht of the jud2ment, require further consideration by that court and to move the court to consider any such issues before the formal order of the court is perfected.** [emphasis added] ..."

The IRC can review, correct, and alter its judgement before it has been perfected

In Lapa (No.2) (1995) 80 ACrimR 398, the Court of Criminal Appeal had delivered judgment on 8 August 1994, and the appellant's solicitors had written to the Court on 27 October 1994 claiming that the Court had not determined one of the grounds of appeal. The Court found in that case that the order of 8 August 1994 had not been formally entered when the application was made on 27 October 1994, it gave judgment on the application on the assumption that the order was perfected thereafter before this judgment was given. **The Court of Criminal Appeal held that it could review, correct or alter its jud2ment at any time until its order or jud2ment had been perfected;** [emphasis added] and that power was not lost by the administrative act perfecting the order taking place after the application to re-open had been made.

CONCLUSION

WBDE makes this notice in the public interest. If there is anything further which WBDE or anyone else needs to do to get justice for Mrs Kerrison we ask that this be clearly and unambiguously conveyed to the relevant person and notify us and Mrs Kerrison.

1. We ask the relevant parties to address the irregularities and breaches set out in these documents by 22 January 2006 being 14 days from the date of this notice.
2. In addition, by 22 January 2006, if Mrs Kerrison has not been contacted by the addressees and a different arrangement agreed to by the parties, it is taken that the addressee/s of this document, together with Mrs Kerrison and WBDE (if applicable) agree unreservedly and binding that all the documents identified as being null and void at http://www.wbde.org/documents/2005_Jul_18_WBDE_Procedural_Fairness_Panel_Documents.php

   are null and void; that all copies must be so stamped; and that the judgement of December 2004 is formally set aside as void by the IRC and TAFE's application to Appeal is denied.

WBDE Procedural Fairness Natural Justice Panel