IRC 7143 of 2003

NEW SOUTH WALES TECHNICAL AND FURTHER EDUCATION COMMISSION
Appellant

v

VALDA JUNE KERRISON
Respondent

RESPONDENT'S REPLY TO APPELLANT'S SUBMISSIONS – re the RESPONDENT'S APPLICATION TO RE-OPEN

Mrs Kerrison relies on

> 'a All of the 8 January 2006 WBDE Request for Justice ex debito justitiae (Attached)
>
> 'b Affidavit of Emergency filed 21 March 2006
>
> 'c Affidavit Application to Re-open filed 12 February 2007
>
> 'd Application to Re-open filed 12 February 2007
>
> 'e Appeal Books
>
> "

JURISDICTION TO AMEND OR RE-OPEN

1 ' The Court is asked to set aside its own orders 1-3 made 9 December 2004 i.e. the Court is asked to set aside its decision in respect of the Appeal.

2 'The reasons are set out below.

THERE ARE EXCEPTIONAL CIRCUMSTANCES

3 'Just some of these are set out below; eg size of the case, longevity of period of time when the individual decisions and actions against Mrs Kerrison first occurred, and then were revealed to her under FOI and court proceedings.

4 ‘Inherent right to Procedural Fairness and Natural Justice

5 ’This is set out more fully below.

PUBLIC INTEREST

6 The justice or otherwise of this case has been in the public forum including parliament continually since at least 1997. The public interest extends to the desire to see proper administration of justice and all that this entails.

7 The public have already felt compelled to take the issues into its own hands regarding Procedural Fairness/Natural Justice rights of Mrs Kerrison, her family and associates, and especially the TAFE students she taught and awarded TAFE qualifications to. They
- researched,
- investigated, and
- judged

more than 30 decisions and actions Null and Void due to denial of natural justice. (See all of WBDE 8 January 2006 attached) This Court and the ADT rely on those documents as evidence – others have judged them as nullities. It is submitted that the Court should re-open its Judgement before finalizing/perfecting the case.

8 This is set out more fully below.

IRREMEDIABLE INJUSTICE

9 A less than accurate judgement can harm not only Mrs Kerrison’s rights, but justice as a whole especially as the ADT seeks to rely on the integrity of this judgement to fit the evidence which TAFE’s and ors witnesses will deliver again in the ADT.

10 It is submitted that the Court has the power and resources to set its own Order, and the Crown Solicitors should be required to assist the Court as its primary function in Court.

11 This is set out more fully below

MRS KERRISON DID NOT HAVE REPRESENTATION OR COUNSEL COMPETENT AND EXPERIENCED IN THIS LARGE CASE – WHILE TAFE LAWYERS MAY BE CONSIDERED COMPETENT AND EXPERIENCED IT IS SUBMITTED THEY GAINED JUDGEMENT IN CIRCUMSTANCES IN WHICH IT IS ENTITLED TO NO JUDGEMENT

12 While TAFE's more than 10 lawyers and barristers were financed fully from the public purse while they each individually accumulated information and experience over many years, starkly opposite, Mrs Kerrison sometimes had different assistance for a few months at a time.

13 The signatory to the EA, Teachers Federation General Secretary John Hennessey did file the original claim under s154 of the I-R Act, but it filed a discontinuance a few weeks later.

14 For this Appeal, the Court and TAFE legal representatives had full view when Mrs Kerrison's next set of representatives
   1 sat in court on day 1,
   2 did not object or seek to correct anything TAFE's representative said,
   3 asked leave to amend their contentions and filed discontinuance without doing so.

15 This severely disadvantaged Mrs Kerrison in that everything the TAFE barrister expounded stood uncontested.

16 It also severely disadvantaged her time-wise as the Court strived for finality.

17 Following that Mrs Kerrison came to the Court alone to plead for at least 3 months while she searched for replacement legal representatives who would speak against the Crown Solicitors and DET/TAFE on behalf of her employment rights in a government agency.

18 Eventually Ms Barnes of Fisher Cartwright Berriman (FCB) came on board, however as Ms Barnes does not speak in court, and no FCB in-house barrister accepted the position, the search continued for a barrister to take over what could be classified as a tangled web of huge proportions. When the Judgement was handed down in December 2004 TAFE's payments ceased too, and a few weeks later these legal representatives filed discontinuance as if their job was finished.

19 TAFE can afford to be selective with unlimited funds to buy as much legal representation and as many barristers, lawyers, Senior Counsels, Queens Counsels, and administrative staff as it wished. Their knowledge of this case and the pending four cases in the Administrative Decisions Tribunal (ADT) is huge; Ms Brus has been working on the cases against Mrs Kerrison since 1998, Peter Cribb since at least 1997, Raoul Salpeter since 2000, and others, including Crown Team 7 for many, years.

20 In 2003 TAFE demonstrated that they accepted Schmidt J's judgement by choosing itself to restore Mrs Kerrison to payroll, [AB1073Q-R]. The money Mrs Kerrison then received each fortnight from TAFE enabled her to pay rent and living expenses leaving enough money to pay one lawyer little more than ONE HOUR per week.

21 A few months was not in any way sufficient to get on top of this case, and it showed in court. While Mrs Kerrison's submissions clearly showed the list of decisions and actions TAFE and HealthQuest took without PF/NJ [AB 346-348] and in her Application to Re-Open the Case 12 February 2007 commencing Page 15, Mrs Kerrison's barrister was sometimes seen to be at a loss, and even the Court commented on it in their Judgement.

22 This is not surprising because of the scope

SCOPE OF THIS CASE

23 The case consists of more than 30 damaging incidents over more than a decade, performed outside Mrs Kerrison's knowledge/input/defense, by an unknown number of people involved in each incident, manufactured and carried out over an unknown amount of time, in an unknown number of locations. The equivalent to 30+ mob bashings by 30+ same or different mobs – against one person.

PUBLIC INTEREST

24 One reason for it to be re-opened and error/s corrected is the public interest, especially the public's reliance on a competent efficient effective justice system seen to be administering the laws of the land without fear or favour.

25 In this respect, not only are some of the AB Exhibits evidence of the public interest, such as the public inquiry into HealthQuest and its processes, but more recently the 8 January 2006 Request by WhistleBlowers Documents Exposed (WBDE) and attached again for convenience of the Court. WBDE describe their organization as "… a self-funded community-based initiative as recommended in United Nations Convention Against Corruption to assist government combat corruption. We aim to curb the use that some individuals and organizations make of using public resources for their own private purpose of punishing and discrediting dissenters, silencing free speech, and covering up.." (See http://wbde.org)

SUBSEQUENT CASES RELY ON THE INTEGRITY IRC JUDGEMENT

26 Due to the discrimination issues there have been 4 cases pending in the Administrative Decisions Tribunal for
'1 Discrimination on grounds of presumed disability
'2 victimisation for reporting racial and gender discrimination in TAFE
'3 & 4 Aiding and abetting TAFE by HealthQuest and Dept of Health's Medical Appeals Panel.

27 These cases were adjourned on Ms Brus's application pending the finality of this case.

28 Ms Brus has now re-activated them and they are proceeding. The ADT will be relying on the accuracy of the IRC written judgements. If these are not reliable it will extend the duration of these cases due to the confusion caused by conflict of written judgements not consistent with Tribunal evidence. If they are reliable it will cut down on the time to hear the balance of the issues.

29 The Courts can benefit from the time spent to correct error/s now.

30 The Affidavits filed by TAFE etc in ADT are mostly identical to their Affidavits in this jurisdiction. Those witnesses will be cross-examined again and are likely to give the same evidence as they gave to Schmidt J. and articulated in Mrs Kerrison's submissions especially concerning Dr Ramsey and Dr Willmott.

31 It is noted that Schmidt J. in her Judgement recorded at Para 144 "Dr Willmott's evidence was to similar effect. He could not recollect having seen the certificate. He sought guidance from Ms Walshaw on staffing matters. He thought it likely that he had spoken to Ms Walshaw about the [later] letter she sent to Ms Kerrison, but did not recall doing so. In cross examination he explained that he had never seen the letter sent to Ms Kerrison by Ms Walshaw and that: 'This matter, when it arose earlier, was referred by me to Kerry Walshaw as the manager of human resources in North Coast Institute, and when the notification from the HealthQuest would have come through that would have been referred on to Kerry Walshaw as well for attention. Judging from this particular correspondence that you have shown me dated 23 June 1995, it's clear that Kerry Walshaw prepared and sent this presumably shortly after being aware that HealthQuest had notified yourself, Ms Kerrison, of <u>their</u> decision." Emphasis added.

32 That judgement was delivered in accordance with the other TAFE witnesses' testimony as well, and as it stands can cause serious concerns in the ADT and elsewhere if the Appeals Bench's Judgement is opposite especially when this is so open to Schmidt J's (considered correct) judgement.

TAFE ACCEPTED SCHMIDT J. JUDGEMENT

33 It should be noted by the Court that Dr Willmott and DET/TAFE's lawyers Cribb and McDonnell, being competent lawyers and deeply involved in the case, so accepted that TAFE had not terminated Mrs Kerrison's employment that they chose to restore her to TAFE payroll. Dr Willmott was either the addressee or the MD regarding communications/meetings with Mrs Kerrison and TAFE and Crown Solicitors when that was arranged. Therefore it may assist the Court to make its decisions if it considers that as at some months after Schmidt J's decision, Mrs Kerrison's submissions and Justice Schmidt's decision was not disputed in any way by TAFE and its lawyers and barristers, including Ms Brus and Mr Cribb who now appear in this Appeal court.

34 TAFE hired and instructed a new Counsel (Menzies) instead of the barrister who saw and heard all the witnesses (Kenzie). It is submitted that Me Kenzie agreed that Dr

Willmott did not need to be questioned on PF/NJ as he made no decision, and may not have even seen the "Certificate" before Court proceeding commenced. As TAFE now seek to "claw back" its payroll payments from Mrs Kerrison the Court may consider that they may be using the Court to extend its victimisation.

35 It is submitted that if TAFE believed at the time of examination of its witnesses that Dr Willmott or Dr Ramsey had made a decision to carry out some sort of termination, they would have or should have re-examined them to protect their own interests regarding ensuring any such decisions were legal and binding - and not Null and Void due to lack of PF/NJ. They were aware of this claim as it was fully claimed in Mrs Kerrisons amended original claim and is again claimed in this Court now.

36 The public have already expressed their concerns, and pursued answers to their questions on the validity of the decisions and actions TAFE relies on to this Court..

37 The public interest in seeing justice served can benefit from the time spent to correct any error/s now.

BRIEF BACKGROUND

Terms and Conditions of Mrs Kerrison's Employment

38 In 1994-95 TAFE's industrial union, NSW Teacher Federation (TF), which together with IRC and TAFE formulated and signed the TAFE Enterprise Agreement (EA). This set out the minimum terms and conditions that TAFE and Mrs Kerrison operated under.

39 The EA did not give TAFE the power to force an employee into any forced retirement, be it either medical, marriage, or age retirement – such antiquated detriments were disallowed as being detriments prohibited under AntiDiscrimination Act 1977

Mrs Kerrison reported to TAFE Management serious and ongoing discrimination and victimisation in TAFE

40 It is uncontested, and properly found in the Judgement of Schmidt J. that: "7 Ms Kerrison made complaints to her superiors about various matters, including the conduct of another teacher employed with her, over a considerable period of time. Various concerns were raised, including allegations that certain students, **particularly certain women and students of an aboriginal background, had been discriminated against or victimised in various ways and that she and other teachers at Kempsey had also been victimised by the other teacher.** Ms Kerrison's view was that those responsible for dealing with these complaints had failed to act upon them. 8 [TAFE Manager] Ms McGregor corroborated this view…" [AB5M-T]

Mrs Kerrison reported to TAFE Management apparent criminal acts within TAFE

41 It is uncontested, and properly found in the Judgement of Schmidt J. that "37… the teacher against whom Ms Kerrison had made complaints, had enrolled herself in a course at the College without the knowledge of the head teacher of that subject and had given herself 100% exam results. It had been alleged that the then Registrar and principal of the College were also involved. This allegation was later found proven against the teacher concerned. [AB15E-I]

42 **At AB408 TAFE confirm that Mrs Kerrison's performance of duties was "satisfactory"; i.e. satisfactory in every respect.

Around 23 June 1995, overnight TAFE summarily excluded her from work.

43 TAFE overnight excluded Mrs Kerrison from the workplace. TAFE acted as if there was no AE, and as if she had no rights.

44 SUMMARY of the Brief Background: TAFE duly appointed Mrs Kerrison, and her performance of duties was satisfactory in every respect. She reported discrimination and victimisation within TAFE. TAFE managers summarily excluded her from work and maintained that.

PUBLIC INTEREST IN WHISTLEBLOWER PROTECTION

45 This summary above may be interpreted as evidencing victimisation of a whistleblower, and if so falls directly under the recent Treaty United Nations Convention Against Corruption of which Australia has been a signatory since 2003. The FIRST SESSION OF THE CONFERENCE OF THE STATE PARTIES TO THE CONVENTION AGAINST CORRUPTION http://www.unodc.org/unodc/caccosp_2006_resolutions_1.html states:

46 **"Protecting whistleblowers :** There is evidence from all regions of the world that civil society activists have a crucial role in promoting transparency and accountability. They need to be supported and protected. We note with deep concern that in many countries activists and others who report or denounce corruption are harassed, physically attacked or prosecuted. We welcome the commitments made under UNCAC to protect *all* whistleblowers. We call on governments to incorporate protection from retaliation, for those who report corruption, under their domestic legal systems."

47 **It is** submitted that the public interest in protecting whistleblowers and the flow-on of conserving public funds for public benefit is fundamental to why this case should be re-opened and corrected if and where necessary.

Reply to TAFE's Submissions re Jurisdiction.
It is submitted that TAFE has complete jurisdiction to re-open, especially as the case is not perfected. See also Application to Re-open.

LEGISLATION AND JURISDICTION ETC. :

a) . **Sec 154 of the Industrial Relations Act 1996 154 Declaratory jurisdiction** (1) The Commission in Court Session may make binding declarations of right in relation to a matter in which the Commission (however constituted) has jurisdiction. The Commission in Court Session may do so, whether or not any consequential relief is or could be claimed .

And

b) **Section 3 Objects of the Industrial Relations Act 1996 which state inter alia** :(a) to provide a framework for the conduct of industrial relations that is fair and just, (b) to promote efficiency and productivity in the economy of the State, … (e) to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments, (f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value, … (h) to encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations.

And

c) s **169 of the Industrial Relations Act 1996 Anti-discrimination matters** (1) The Commission must [emphasis added], in the exercise of its functions, take into account the principles contained in the *Anti-Discrimination Act 1977*.

And

d) 1. In the AntiDiscrimination Act 1977

. **4B References to certain employers**

(1) A reference in this Act to an employer:

(a) in relation to employment in a Department, is a reference to the relevant Department Head, and

(b) in relation to employment in the Police Service, is a reference to the Commissioner of Police, and

(c) in relation to employment in the Teaching Service, is a reference to the Director-General of the Department of Education and Training.

(2) Anything determined or done with respect to any matter concerning any such employment by an officer or employee in any Department, in the Police Service or in the Teaching Service who is authorised to determine and do things in that respect is taken to have been determined or done by the Department Head, Commissioner of Police or Director-General of the Department of Education and Training, respectively.

(3) Subsection (2) includes anything determined or done with respect to:
(a) any offer of employment, or
(b) the terms and conditions on which employment is offered, or
(c) the opportunity afforded for promotion, transfer, training or other benefits associated with employment, or
(d) dismissal from employment.

5 Act binds Crown
This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

And

d)

d) 2. **The *Anti-Discrimination Act* 1977 provides for: 49A Disability includes past, future and presumed disability**

A reference in this Part to a person's disability is a reference to a disability:

(a) that a person has, or
(b) that a person is thought to have (whether or not the person in fact has the disability), or
(c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability), or
(d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

49B What constitutes discrimination on the ground of disability?
*(1) A person ("**the perpetrator**") discriminates against another person ("**the aggrieved person**") on the ground of disability if, on the ground of the aggrieved person s disability or the disability of a relative or associate of the aggrieved person, the perpetrator:*

(a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability, or

(b) *requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.*

And

Division 2 – Discrimination in work
49D Discrimination against applicants and employees

(1) It is unlawful for an employer to discriminate against a person on the ground of disability:

(a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
(b) in determining who should be offered employment, or
(c) in the terms on which the employer offers employment.

(2) It is unlawful for an employer to discriminate against an employee on the ground of disability:

(a) in the terms or conditions of employment which the employer affords the employee, or
(b) by denying the employee access, or limiting the employee s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
(c) by dismissing the employee, or
(d) by subjecting the employee to any other detriment.

48. Under AntiDiscrimination law neither IRC nor TAFE have the right or jurisdiction to apply the detriment forced 'medical retirement' or any other forced retirement including forced age retirement, forced HIV retirement, or forced female retirement.

49. TAFE may only terminate according to its Enterprise Agreement (EA).which includes definitive charges being laid in relation to a set duty, procedural fairness/natural justice, and the right to unbiased, transparent process.

50. IRC only has jurisdiction to allow or disallow a termination such as is set out in the EA it endorsed 1994-95 which includes definitive charges being laid in relation to a set duty,, procedural fairness/natural justice, and the right to unbiased transparent process.

51. TAFE's (and now IRC's) purported forced *medical retirement* is a carry-over from the also now illegal power to force *age retirement or pregnancy retirement* etc.

52. If either TAFE or IRC Appeals Panel somehow allowed to stand the detriment of forced 'medical retirement' it brings themselves into disrepute as it is a detriment

completely outside the terms and conditions allowed in the EA. To allow such detriment outside the EA negates the integrity of the whole EA rendering it a trap for employees who rely on those rights and responsibilities.

53. This case demonstrates how some TAFE's managers actually behave when they choose – when its staff member Mrs Kerrison relied on the inbuilt protections of the AE and lodged valid and serious grievances/complaints to TAFE management they simply did whatever they wished manufacturing a vast web of continual summary punishments which discredited her and keept her out of TAFE.

54. It is submitted that the Appeal judges were misled and at present their words are published for all to see. It is submitted that the judges should correct their own judgement when in error, either by the Slip rule or whatever means available. At present their words and names are published on the web, and currently set precedents such as forced 'medical retirement' or forced 'age retirement'. The Judgement has presented that, these detriments are again legally available for managers to use at will to get rid of unwanted staff; and can quote the published words of the Judges to support it..

55. The IRC's duty is to uphold the standards set in the EA and deal with mismanagement of the AE to the fullest extent of the law.

    a. s 48 of the Industrial Relations Act 1996 -National Decision

    And

    b. s 49 of the Industrial Relations Act 1996 -State Decision

    And

    c. **s 50 of the Industrial Relations Act 1996 -Adoption of National decisions which state**: (1) As soon as practicable after the making of a National decision, a Full Bench of the Commission must give consideration to the decision and, unless satisfied that it is not consistent with the objects of this Act or that there are other good reasons for not doing so, must adopt the principles or provisions of the National decision for the purposes of awards and other matters under this Act. (2) A Full Bench of the Commission is to give consideration to the National decision either on application or on its own initiative. (3) The principles or provisions of a National decision may be adopted: (a) wholly or partly and with or without modification, and (b) generally for all awards or other matters under this Act or only for particular awards or other matters under this Act. (4) The principles or provisions of a National decision so adopted may be varied by a Full Bench of the Commission, whether or not another National decision is made.

    And

d. s **146 of the Industrial Relations Act 1996 General functions of Commission** (1) The Commission has the following functions: (a) setting remuneration and other conditions of employment … (2) The Commission must take into account the public interest in the exercise of its functions and, for that purpose, must have regard to: (a) the objects of this Act, and (b) the state of the economy of New South Wales and the likely effect of its decisions on that economy.

57. It is submitted that as things now stand it is open for others with power to disregard both the Industrial Instrument and Discrimination law, and thereby bring these and the Courts into serious question. It is in the public interest to ensure that this does not happen. It is in the public interest, and ultimately financially beneficial that the Courts and justice processes are not misused or brought into disrepute because this can send a clear message to wrong-doers to not rely on the Court to uphold breaches of Industrial rights and responsibilities.

e. s152 of the Industrial Relations Act 1996 Commission in Court Session as a superior court of record in s 152 of the Act

’58 The ADT is relying on the integrity and expertise of the IRC judges to assist them speedily deal with discrimination and victimisation matters, as well as aiding and abetting to discriminate/victimise under AntiDiscrimination law

f. **s 162 of the Industrial Relations Act 1996 Procedure generally** (1) The Commission may, subject to this Act, determine its own procedure. (2) (i) may exercise, on its own initiative, any function exercisable by it on application (except when it is in Court Session), and (j) may, on its own initiative, inquire into any industrial matter.

g. **s 170 of the Industrial Relations Act 1996 Amendments and irregularities** (1) The Commission may, in any proceedings before it, make any amendments to the proceedings that the Commission considers to be necessary in the interests of justice. (2) Any such amendment may be made: (a) at any stage of the proceedings, and (b) on such terms as the Commission thinks fit (including, if it can award costs in the proceedings, terms as to costs). (3) If this Act, the regulations or a rule of the Commission is not complied with in relation to the institution or conduct of proceedings before the Commission, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings, or any decision in the proceedings. (4) For the purposes of subsection (3), the Commission may wholly or partly set aside the proceedings, a step taken in the proceedings, or a decision in the proceedings

h. s **175 of the Industrial Relations Act 1996 Powers of interpretation** The Commission may, for the purpose of exercising its functions in connection with a matter before it, determine any question concerning the interpretation,

application or operation of any relevant law or instrument (including the industrial relations legislation and any industrial instrument).

’59 It is submitted that these points expressly empower and give the Court the jurisdiction to re-open the proceedings, and if necessary in the interest of justice, make good the Judgement before it is relied on by others including the ADT and the public at large. It is submitted that failure to do so can harm the rights and protections of the EA and other similar instruments.

i. s **179 of the Industrial Relations Act 1996 Finality of decisions** (1) A decision of the Commission (however constituted) is final and may not be appealed against, reviewed, quashed or called into question by any court or tribunal.

’60 It is submitted that if the ADT cannot overturn errors in the IRC judgements according to the evidence supplied by the witnesses, any error in this jurisdiction has far-reaching repercussions which may not be rectified by the Justice system, but may be grounds for later intervention to correct perceived injustice.

j. s **406 Awards and other industrial instruments provide minimum entitlements** (1) The conditions of employment set by an industrial instrument are the minimum entitlements of employees. (2) The provisions of a contract of employment or other contract do not have effect to the extent that they provide an employee with a benefit that is less favourable to the employee than the benefit to which the employee is entitled under an industrial instrument.

’61 For whatever reason the Appeal Bench disallowed the contention that TAFE acted without procedural fairness/natural justice (PF/NJ). Although this record is apparently removed from the court transcript, it was noted by others in court. It is submitted that PF/NJ is a basic right and cannot be avoided by “disallowing”. It is noted that after the Court ‘disallowed’ the contention TAFE’s legal representatives announced that they needed to do no more. Mrs Kerrison’s opportunity was ended when the Court ‘disallowing’ PF/NJ contentions. The Court then awarded judgement to TAFE. TAFE now seek vast monies for 7 years of IRC proceedings.

’62 Yet Procedural Fairness may be considered to be a “People’s Right” and not a right to be awarded or disposed of by the Court unless there is some unambiguous Section of the law giving them that right. Some PF/NJ references are quoted as conferring rights so inherent that they are clearly articulated in Bible:

‘1. Ref: Administrative Law Commentary & Materials 2nd Ed, Douglas & Jones, Fed Press 1994.

3.a.Page 467 Chapter Sixteen THE RIGHT TO PROCEDURAL FAIRNESS:

General Principles

"The laws of God and man both give the party the opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam", says God, "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat". And the same question was put to Eve also.

> Lord Fortescue in R v Chancellor, etc, of Cambridge (1823) 1 Stra 557 cited by Byles J in *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180.

3.b.Page 510 THE RIGHT TO PROCEDURAL FAIRNESS: Application

(g) The decision-maker

Para 3"…In the case of report-makers, the position was once that the maker was not under a duty to afford procedural fairness where the report did not directly affect a person's legal rights. This is no longer the case. As noted above, the duty to afford procedural fairness is no longer conditioned upon rights being affected. **A person whose reputation is affected is treated as having a sufficient interest to ground a claim to procedural fairness,** [emphasis added] as is a person closely connected with one whose reputation is at stake. But what is the position where the report must be, or will be, considered by another authoritative body? In *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 (and below, Chapter 21), the High Court held that where a person's reputation might be adversely affected by a report, the maker of the report has a duty to afford procedural fairness, even where the report would be subject to subsequent consideration by a Parliamentary Committee…"

---

2. 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.

---

3. 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."

---

69. It is submitted that if it Mrs Kerrison's contention of denial of PF/NJ was presented to the Court in an incorrect format that the Bench should have imparted that information to Mrs Kerrison's legal representatives. If her legal representatives were remiss in formulating the contention it is submitted that other legal representatives responsibilities to the Court should have compelled them to assist the court and to further enhance the Court's standing by assisting it to be seen to administer impartial justice in perhaps difficult circumstances.

70. If Mrs Kerrison is disadvantaged either wholly or in part by her inability to find and fund a legal team to deal with this large case, and also her inability to adequately prepare competent legal representation, it is submitted that the Court should be able to accommodate litigants with less than huge purses and expertise. It is submitted that people who come to the IRC are often poorly educated or with slim purses, and the Court should be able to accommodate them to present their case.

71. It is not known what was in the minds of the Appeals Judges, whether it was that Mrs Kerrison's legal representatives either did not or could not put the case effectively, or whatever reason, but the Appeals Judges announced that it somehow disallowed Mrs Kerrison's contentions of denial of PF/NJ.

72. It is submitted that as PF/NJ is a negative, it is difficult if not impossible for Mrs Kerrison to prove as it is TAFE and its legal representatives alone who hold that proof if it exists.

PROPOSED

73. It is proposed that the fastest way forward is work towards the Court formally inquiring into and declaring unfair detrimental decisions and actions of TAFE, HealthQuest and MAP etc against Mrs Kerrison to be acts in denial of PF/NJ and completely Null and Void – to be so marked firmly attached in the original form as a replacement similarly to other instances of void other documents.

74. It is further proposed that TAFE legal team could or should be able to immediately assist the Court in this as it important information that they should have obtained in investigation before Crown representation was granted. It is submitted that they would have informed themselves whether or not decisions they were considering supporting in Court were done with due process , or whether they were nullities. If this was not canvassed years ago, they probably performed this recently when WBDE sent their letters and documents to the decision makers including Drs Willmott and Ramsey, Ms Brus and Mr Cribb as set out in Para a) on Page 3 of their 8 January 2006 request for justice (attached). WBDE asked for proof of PF/NJ from all.

75. It is proposed that this should enable the Court to quickly by-pass many questionable areas because the documents and decisions may be now a nullity. It may be that the Appeals Bench deems that this should be investigated again perhaps by remitted back to Schmidt J., or explore options to obtain answers to PF/NJ questions of the decision-makers by phone or affidavit.

76. IN THE ALTERNATIVE it is submitted that "fraud unravels everything", and that the document entitled "Again Re-reporting Apparent Crime" dated 6 February 2007 and attached to the Application to Re-open is not scandalous as proclaimed by Ms Brus, but evidence of fraud on which Mrs Kerrison relies to unravel this vast tangled web and seek justice as is her right.

VAL KERRISON