

**Submission
No 9**

**REPUTATIONAL IMPACT ON AN INDIVIDUAL BEING ADVERSELY
NAMED IN THE ICAC'S INVESTIGATIONS**

Name: Mr Charif Kazal

Date Received: 23 July 2020

Partially
Confidential

Please note that the ICAC Committee has not published pages one and two of this submission, which have been redacted.

Introduction

Mrs Tanya Davies MP
Committee Chair
Committee On The ICAC
Parliament Of New South Wales
Parliament House
6 Macquarie St
Sydney NSW 2000

By Email: icaccommittee@parliament.nsw.gov.au

Dear Ms Davies,

Re: Charif Kazal Submission to ICAC Parliamentary Committee

Thank you for your email dated 18 May 2020 offering me the opportunity to lodge this submission to your Parliamentary Committee on the ICAC in relation to its Terms of Reference included in Section 1 of this submission.

I have prepared this report to include:

- My recommendations for the Committee's consideration in response to the Terms of Reference;
- The background to my case known as **Operation Vesta**;
- The Report of Inspector of ICAC John Nicholson to the NSW Parliament dated 28 June 2017 following his investigation of complaints into the actions of ICAC in Operation Vesta and his recommendations to Parliament that included the introduction of an Exoneration Protocol;
- Conclusions drawn from my experience and the Inspectors Report that should motivate the Committee to take the steps needed to correct these past wrongs and draw a line that will never be crossed again after the identified defective cases are rectified.

I commend the ICAC Parliamentary Committee for finally looking at reviewing the ICAC arrangements with a view to correcting what has been an ongoing embarrassment (locally and internationally) for the NSW Government until now, after it failed to address legislative inadequacies in an out of control ICAC as clearly demonstrated by the Margaret Cunneen High Court loss sustained by ICAC.

Rather than deal with the true consequences of ICAC operating outside of its legislative powers, the then NSW Government instead approved what has been reported as some of the worst retrospective legislation ever passed in NSW. This action ensured there was no responsibility, accountability or recognition for the mistakes of past ICAC Commissioners. It is now time to finally take the corrective actions that the previous government clearly hoped would never be necessary and acknowledge the mistakes made by ICAC. Instead of legislating as it did to avoid damaging the reputation of ICAC, action must now be taken by government to restore the reputations of those damaged by ICAC to allow them to finally move on with their lives with their reputations publicly restored through an Exoneration Protocol that expunges their case and name from the ICAC website forever after.

Yours Sincerely,



Charif Kazal

1. Terms of Reference of the ICAC Parliamentary Committee

The Committee on the Independent Commission Against Corruption (ICAC) is conducting an inquiry into and reporting on the reputational impact on an individual being adversely named in the ICAC's investigations, with particular reference to:

- a. whether the existing safeguards and remedies, & how they are being used, are adequate, &
- b. whether additional safeguards and remedies are needed, &
- c. whether an exoneration protocol should be developed to deal with reputational impact, &
- d. relevant practices in other jurisdictions, &
- e. any other related matters.

2. Executive Summary & Recommendations of Charif Kazal

The ICAC as the name suggests is an Independent "Commission" Against Corruption.

It is not a "Court" nor a "parallel Court" and was quite rightly established to gather and assess information and refer matters to the DPP for the Court. The Court has centuries of tried, tested and documented laws and procedures to ensure its credibility and fairness. For this reason, the ICAC is a Commission and cannot, and should not, replace the tried and tested Court, nor operate as a parallel Court nor a route to circumvent the Court.

In my case, ICAC, despite numerous representations and complaints, ignored all the warning signs and evidence gathered (including the DPP's multiple refusals to take on my case, due to the absence of any evidence of wrongdoing, ICAC's own Inspector's Report findings of errors and faults by ICAC and various key officials giving representations contradicting ICAC's stated understanding, which ICAC chose to ignore and exclude to my detriment).

As a result, ICAC wrongly defined me, and continues to define me, publicly as corrupt, causing massive damage to me both personally and financially.

And, despite all the efforts I, and others made to show ICAC it's errors, ICAC decided to ignore this. Even worse, ICAC orchestrated actions through the Parliament to pass retrospective legislation purposefully designed to prevent me from resolving ICAC's errors, leaving me permanently labelled "corrupt" (despite no wrongdoing as confirmed by the DPP), financially damaged and with no options in Australia to clear my name.

Instead, ICAC left me no alternative but to reach out to the United Nations Human Rights Commission (UNHRC) for help to resolve my situation. Thankfully, after reviewing the details of my case, the UNHRC agreed to take on my case and is currently pursuing the Commonwealth of Australia to explain the denial of Natural Justice shown to me by the NSW Government.

2.1 Recommendation 1

The existing safeguards and remedies now in place appear to be working. Accordingly, these same principles enshrined in the updated post July 2015 ICAC legislation should be applied retrospectively towards all past cases that saw either no case brought by the DPP or where the DPP did take someone to Court and the Court ruled in favour of the accused.

2.2 Recommendation 2

The additional safeguards and remedies needed are requirements for a trusted and respected ICAC. Such remedies must apply equally to all cases, past and present. It should not be limited to just the post July 2015 cases that are now recognised for being properly brought by ICAC because the Act was amended to prescribe ICAC must only proceed with cases where there is evidence in their possession of actual corruption.

Cases like mine were shown by the Inspector of ICAC to have had no proper basis for bringing by ICAC in the absence of any wrongdoing by a public official or myself. Hiding behind the flawed past legislation and subsequent cover up retrospective legislation is not an acceptable practice, as it denies natural justice to victims like myself. The Government must right the wrongs of the past and compensate victims that have challenged the Government as I did starting some 2 years before the Cunneen High Court loss by ICAC.

I repeatedly warned your then ICAC Parliamentary Committee that ICAC was operating outside of its legislative powers and I was ignored. I appealed to consecutive Premiers and ultimately have had to go to the United Nations to push for justice. Throughout the last 9 years, my family and I have suffered immeasurably in our business endeavours. The Government cannot simply wipe its hands when it has had clear and repeated warnings of this injustice and done nothing to right the wrongs.

2.3 Recommendation 3

Consecutive Inspectors of ICAC recommended an Exoneration Protocol. It is the only true way to restore the rights of innocent victims who have had their lives and livelihoods taken from them. Being falsely labelled as “corrupt” has meant I have had to explain myself in every transaction I conduct in business and I have lost out on a great many opportunities because of this stain on my reputation.

2.4 Recommendation 4

Other jurisdictions in Australia have almost entirely gone down the route of holding Inquiries in private, at least until there is clear evidence of any wrongdoing, or entirely to allow the Courts to decide the outcome of investigations without compromise or public pressure and then report on it accordingly. In cases like the Federal ICAC, I note their decision to go down this path came off the back of the embarrassing mistakes of the NSW ICAC that endorses my recommendation that it is better to keep Inquiries private and only promote cases once legal outcomes have been determined and findings of corruption are supported at law by defined legal outcomes.

This is the fairest way to ensure true justice and does not see those working for ICAC leaking misleading, false or unchecked information to the media to try to hype their cause, to raise their individual profiles, or to pressure the Government into providing more funding to ICAC for further salacious Public Inquiries, regardless of the damage caused, when so many such cases do not result in the outcomes that were already publicly reported that condemn the accused in the eyes of the public before any evidence is duly obtained, properly scrutinised and determined.

Please note that the ICAC Committee has not published pages from this submission from here onwards including attachments. Pages six to 123 have been redacted and not published.