

2 February 2015

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Acc. Spec. (Com. Lit.)

Our Reference LCO-701410817

Your Reference

The Hon. Robert Borsak MLC  
Chair  
Legislative Council Select Committee on the conduct and progress of the  
Ombudsman's inquiry "Operation Prospect"  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**By Email:** operationprospect@parliament.nsw.gov.au

**CONFIDENTIAL**

Dear Mr Borsak,

**RE: LEGISLATIVE COUNCIL SELECT COMMITTEE ON THE CONDUCT AND PROGRESS  
OF THE OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"**

1. Reference is made to the evidence given by Deputy Commissioner Kaldas on 30 January 2015 and, in particular, to Deputy Commissioner Kaldas' request to provide the Select Committee with further information regarding the receipt of documents on a confidential basis [T 23].
2. Deputy Commissioner Kaldas' request arises out of the following series of questions posed by the Chair [T 18-19]:

*Chair: Then we jump in 6.1.4 to 13 September 2012. You made a protected disclosure. What triggered that sudden action of the protected disclosure at that time?*

*Mr Kaldas: I became aware or received some documents that made me realise obviously that there was evidence that had not previously been available.*

*Chair: It was the documents you received, which were?*

*Mr Kaldas: There are the affidavits.*

*Chair: Was it the two warrants and the affidavit that were attached to your –*

*Mr Kaldas: No, I think one warrant, as I said, 266 – I think I received that in 2001. But most of the other documents that are here – in fact, all the documents that are here – came to me at the end of 2012.*

*Chair: They came to you how?*

*Mr Kaldas: There were two packets that I received anonymously and then there were other documents that people either asked me to look at or were discussed generally and I became aware of them if I did not physically have them. All of that led me to believe that there was now definitive evidence about what had happened the 10 years before. That is why I made this complaint.*

*Chair: You have no knowledge of where those documents came from?*

*Mr Kaldas: No.*

3. We are instructed that when Deputy Commissioner Kaldas answered “no” to the last question in the above series, he understood that that question was directed to the two packets of documents received anonymously, which included a copy of the affidavit in support of the application for warrant number 266 (being the affidavit sworn by Glenn William Trayhurn on 14 September 2000 (**September Affidavit**)).
4. If that question was also directed to the other documents referred to by Deputy Commissioner Kaldas, then we are instructed to inform the Select Committee that Deputy Commissioner Kaldas also received a copy of the September Affidavit, together with other documents, from
5. At the time \_\_\_\_\_ gave the documents to Deputy Commissioner Kaldas, \_\_\_\_\_ expressed a strong view that Deputy Commissioner Kaldas was permitted to have the documents because Deputy Commissioner Kaldas was a member of the NSW Crime Commission (when police officers work with the NSW Crime Commission on various investigations, they are effectively sworn in as members of the NSW Crime Commission. At that time, Deputy Commissioner Kaldas had had that status for some years).
6. As you are aware, one of the important criticisms that Deputy Commissioner Kaldas makes in relation to Operation Prospect is that when the Deputy Commissioner was called to give evidence before the Ombudsman, the entire focus of the examination was directed to the circumstances in which Deputy Commissioner Kaldas came into possession of documents and what he did with those documents thereafter. Put another way, the whole focus of the Ombudsman was directed to the way in which whistleblowers became aware and dealt with the information which came into their possession in relation to the serious wrongdoing some years before.
7. For reasons that have already been explained in the submission by Deputy Commissioner Kaldas, this was contrary to:
  - 7.1. his hope that the Ombudsman’s inquiry would be directed to the wrongdoing referred to in the then Premier’s press release dated 12 October 2012, Hansard dated 20 November 2012, the Ombudsman’s call for information [undated] and the Fact Sheet published by the Ombudsman on his website; and
  - 7.2. the indication given to the then legal representatives of Deputy Commissioner Kaldas would be relatively short and “friendly” thus reinforcing the impression that the examination would be directed towards the substantive wrongdoing.
8. What occurred during the examination had the effect, on our instructions, of Deputy Commissioner Kaldas believing he had been “ambushed” and him believing that Operation Prospect was miscarrying in the sense that it would not identify and expose the wrongdoing.

9. These tactics and this line of inquiry had the effect that Deputy Commissioner Kaldas found it impossible to cope adequately with the examination of the Ombudsman – particularly in the afternoon and early evening. Deputy Commissioner Kaldas had given assurances to that he would not inform anyone in relation to documents he received from the NSW Crime Commission and initially in his examination before the Ombudsman he gave a partial, incomplete and incorrect account. By the end of the day, this information was provided to the Ombudsman but in the context of a sustained attack on the credit of Deputy Commissioner Kaldas.
10. As has previously been advised, Deputy Commissioner Kaldas has been extremely distressed by what occurred during the course of his examination by the Ombudsman and subsequently went on sick leave.
11. We provide the above information so as to ensure that Deputy Commissioner Kaldas has provided a complete account to the Select Committee as to the subject matter of the inquiries made by Committee members during the course of his evidence.
12. If you wish any part of this additional material to be given openly by Deputy Commissioner Kaldas in further evidence, please advise this office accordingly. We will otherwise presume that this further information will be sufficient for the Select Committee's purposes.
- 13.

Yours faithfully,  
William Roberts Lawyers

  
**Robert Ishak**  
Principal