

Tabled  
18 FEB 08  
Mr Cornall



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Australian Government  
Attorney-General's Department

Secretary

23 November 2007

Mr Ernie Schmatt  
Chief Executive Officer  
Judicial Commission of New South Wales  
GPO Box 3634  
SYDNEY NSW 2001

Dear Mr Schmatt

**Justice Michael Adams**

I wish to bring to your attention comments made by Mr Justice Adams in case 2005/2660 Regina v Izhar Ul-Haqe in the Common Law Division of the Supreme Court of New South Wales.


I attach a copy of the relevant pages of the judgment, which was delivered on 2 November 2007, for your information.

In particular, I draw your attention to the judge's comments at paragraph 62:

I do not have to be satisfied beyond reasonable doubt that the ASIO officers committed the offences that I have mentioned. Nevertheless, an adverse finding that they did so should not be made without carefully examining the evidence, bearing in mind that the issue to which it is directed is the commission of a criminal offence or conduct involving significant oral turpitude. Bearing in mind this caution, I am satisfied that that B15 and B16 committed the criminal offences of false imprisonment and kidnapping at common law and also an offence under s86 of the *Crimes Act 1900*. It follows, a fortiori, that they committed the tort of false imprisonment. Their conduct was grossly improper and constituted an unjustified and unlawful interference with the personal liberty of the accused. So far as their conduct in his parents' home is concerned, it also constituted an unlawful trespass against the occupants, since they gained admittance under colour of the warrant which did not authorise what they did: keeping the accused incommunicado in a bedroom, let alone subjecting him to compulsory questioning.

I would appreciate your views on the propriety of a judge finding that Commonwealth officers, acting in the course of their duties, have committed criminal offences in circumstances where:

- no charges had been laid against them
- the alleged offences were not matters before the judge for determination

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- the officers were not given notice of these adverse findings
  - the officers were not given the opportunity to defend themselves
  - the findings were not supported by a jury verdict, and
  - it is impossible to see how the judge could be satisfied of their alleged guilt to the required level of proof that the offences had been committed beyond reasonable doubt.

I would also appreciate your views on the propriety of a judge finding that Commonwealth officers, acting in the course of their duties, have committed the torts of false imprisonment and unlawful trespass in circumstances where:

- no proceedings had been commenced against them
- the alleged torts were not matters before the judge for determination
- the officers were not given notice of these adverse findings
- the officers were not given the opportunity to defend themselves, and
- it is impossible to see how the judge could be satisfied to the required level of proof that the torts had been committed.

These unjustified findings have attracted a great deal of publicity. They reflect adversely and very unfairly on the officers concerned and their organisation.

The judge had a number of other options open to him if he felt the officers' conduct warranted further attention. One obvious course would have been for him to refer his concerns to the appropriate authority for further investigation.

The lack of concern the judge has shown for due process and natural justice in his comments about the officers' actions stand in complete contrast to the great care he took to determine that the officers had not complied with the applicable requirements in the matter that was actually before him for determination.

I await your reply.

Yours sincerely

Robert Cornall AO  
Secretary