

SKYLINEPUB03227
17/04/2019

SKYLINE
pp 03227-03235

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 17 APRIL, 2019

AT 1.45PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes. Ms Curtin, I note you appear.

MS CURTIN: Yes, Commissioner.

THE COMMISSIONER: Thank you. Ms Curtin, just before we proceed, there have been a number of emails exchanged between principal solicitor Mr Broad and Mr Petroulias and I think it'd be desirable for those emails to be tendered. Do you have those available?

10 MS CURTIN: Yes, I do have copies of that correspondence, Commissioner.

THE COMMISSIONER: Thank you.

MS CURTIN: I can tender those. It's an email from Mr Petroulias - - -

THE COMMISSIONER: Perhaps if you could just speak into the microphone, if you could just identify the emails that you're tendering.

20 MS CURTIN: Sorry, Commissioner. Yes. The first is an email from Mr Petroulias to Mr Broad dated 27 March, 2019. The second is an email from Mr Petroulias to Mr Broad dated 31 March, 2019. The third is a subsequent email from Mr Petroulias to Mr Broad dated 3 April, 2019. Then there's a letter from Mr Broad to Mr Petroulias's then lawyer, Mr Theo Voros, dated 4 April, 2019. And a letter in response from Mr Petroulias to Mr Broad dated 8 April, 2019. And the most recent item of correspondence is an email from Mr Petroulias to Mr Broad dated 16 April, 2019. And I tender those documents.

30 THE COMMISSIONER: Yes, thank you. Thank you. Mr Petroulias, you're aware of this email exchange that Counsel Assisting's just referred to?

MR PETROULIAS: Yes, Commissioner.

THE COMMISSIONER: You have copies of those available?

MR PETROULIAS: Not available, no.

40 THE COMMISSIONER: Do you want copies available, or - - -

MR PETROULIAS: If they're, if they're, they're convenient.

THE COMMISSIONER: Or perhaps if Mr Broad will hand you another set of those so that you have them. Now, Mr Petroulias, just while you're on your feet, I understand Mr Voros, who has appeared on your behalf on the last occasion, no longer represents you. Is that the case?

MR PETROULIAS: That's correct. That's correct.

THE COMMISSIONER: So you are now appearing on your, your own behalf?

MR PETROULIAS: I am, yep.

THE COMMISSIONER: All right. Are there any other matters you wanted to raise before I proceed?

10

MR PETROULIAS: Well, as the last email indicated, I had, it was in the, it was indicated that it was substantial more material going to support additional submissions, and my last question to Mr Broad was, well, why is a decision being made without having received that? To which I have not received a response.

20

THE COMMISSIONER: I understand there was, and it's reflected in the email exchange, a request made by you to identify how you contend that any of the material to which you've referred is relevant to any of the applications that I've been called upon to decide by way of discontinuance. When I say material, I'm now referring, as you'd appreciate, to what you have advised Mr Broad are recorded interviews of persons who have given evidence in the Commission previously, and I think the request was for you to advise him as to whether or not there's any material in those recorded interviews which you've made that you contend in some way is relevant to the applications for discontinuance that I was called upon to decide and he hasn't received a response to that question.

30

MR PETROULIAS: Well - - -

THE COMMISSIONER: So I'm just raising it now so that you can address that question.

40

MR PETROULIAS: Yeah. That's a little bit unfair, because based on your directions to me in, back in February, the ICAC was here to, to assist me if I wanted to direct the Counsel Assisting to material, they're the channel for which my defence is going to be put. I've giving the recordings which I think you can imagine wouldn't be done unless I thought they were valuable, unless the, in evidence extracted from them were valuable, every question was directed to obtain an answer that was pertinent. I, it was obvious. Now, I would have thought – and I did ask Mr Broad if I can get a transcript to make reference and significance plain. No attempt had been made to, to, to make a transcript. Therefore I have to create the transcript myself. That'll take over a week and a half just to do the, the existing material. Then I got Ms Bakis's statement, which already has gone to over 130 pages. That's without the annexures. So it's a substantial work in progress.

THE COMMISSIONER: That may be so, but if you just focus on the point I've raised with you that in email correspondence to you by Mr Broad, he asked you to identify any material that you say you've gathered by these interviews you've conducted with the witnesses. I think they're Mr Green, Ms Dates, and some other person, is it?

MS CURTIN: Ms Bakis.

10 THE COMMISSIONER: Ms Bakis. That goes to the applications to
discontinue or not, and you haven't responded to that point. Now, it may be
that what you're saying, as I understand you might be saying now, is that
any additional material that you will contend should be before the
Commission that you have gathered and recorded from those three named
witnesses might be relevant to what you call your defence, in inverted
commas, in the main inquiry – that is the substantive public inquiry, as
distinct from the applications for discontinuance – because, as I've said, you
haven't responded and told Mr Broad whether or not there's anything in the
material you've gathered by way of recorded interviews that you contend is
20 relevant to the applications for discontinuance. I hope I've made myself
clear.

MR PETROULIAS: Commissioner, that's a distinction without a
difference. It's exactly the same. The material in the defence and the
material for, to discontinue is exactly the same.

THE COMMISSIONER: Yes, but you haven't identified what that material
in the recorded interviews you say is material.

30 MR PETROULIAS: Because I was misled by your direction that it was for
Counsel Assisting, that, to, to become my, effectively, defence lawyer
because it's an inquiry and not a courtroom. So I've been misled into that
and I said, well, if you're not going to help me, then I'll do it myself. If I'm
going to it myself it's going to take a little bit more time and it's very
advanced stages now.

THE COMMISSIONER: All right. Is there anything further you want to
say on that topic?

40 MR PETROULIAS: No, that's fine, thank you.

THE COMMISSIONER: All right, thank you. These proceedings, by way
of public inquiry, were relisted today for the purpose of, firstly, the making
of a ruling in respect of an application by Mr Petroulias to discontinue the
investigation and, secondly, my decision in relation to his application for
discontinuance of the proceedings – to which he refers in his application and
grounds – on the grounds of bias and procedural fairness.

It's first necessary for me to address some events that have occurred. On 14 and 21 March, 2019, Mr Petroulias produced applications for discontinuance of the public inquiry and discontinuance of the investigation respectively. He had not foreshadowed any such application when the hearing dates for a two-week period were set commencing 18 March, 2019. As the application raised allegations of bias and procedural fairness, I determined that I should immediately proceed to consider that application, which necessitated the two-week hearing to be vacated, realising, as I did, the inconvenience and possibly the expense to others participating in the public inquiry as a result of adjourning the proceedings and abandoning the other hearing dates set in that two-week period.

Subsequently, Mr Petroulias, by email correspondence, advised that he had undertaken recorded interviews of three persons who had previously been called and who have given evidence in the public inquiry. Mr Petroulias had provided no forewarning, no notice to the Commission that he was proposing to take it into his own hands to interview each of those three witnesses.

20 On 27 March, 2019, Mr Petroulias advised that he had undertaken a recorded interview with Debbie Dates in support of his application to cross-examine Ms Dates at the public inquiry.

On 31 March, 2019, Mr Petroulias advised that he had undertaken a recorded interview with Mr Green in support of his application to cross-examine Mr Green and in support of his applications to discontinue the investigation. Mr Petroulias did not identify how the information obtained from Mr Green supported the applications to discontinue the investigation, other than to assert that Mr Green had given "flawed" evidence before the Commission for reasons personal to Mr Green but which Mr Petroulias had not recorded as part of the interview.

He, in effect, now seeks, as I understand it, a postponement of any decision on his discontinuance applications and the separate application to, sorry, the discontinuance of the application based on allegations of bias and procedural fairness and the separate application to discontinue the investigation on the grounds that seek to, in effect, establish that the subject matter of the public enquiry is trivial and of no substance.

40 On 1 April, 2019, the Commission received a USB stick containing the recorded interview of Ms Dates. On 2 April, 2019, the Commission received a USB containing the recorded interview of Mr Green. Mr Broad, principal solicitor to the Commission, on 4 April, 2019 emailed Mr Petroulias, Mr Petroulias's then legal representative, and attached a letter requesting that Mr Petroulias identify material in any of the interviews that he had undertaken which he contended supported his applications for discontinuance, and I refer in that respect to Mr Broad's letter of 4 April, 2019.

On 8 April, 2019, Mr Petroulias sent a letter to Mr Broad by email. However, Mr Petroulias has not, in that letter or in any further correspondence, responded to the request for him to identify any material in the interviews that he has now conducted with the three witnesses to whom I've referred that goes to an issue in either or both of the applications for discontinuance.

10 Today I enquired of Mr Petroulias, given his failure to respond in the terms to which I've referred to Mr Petroulias's, to Mr Broad's letter of 4 April, 2019, to identify how he contends that any of the material contained in the interviews which he recorded is material to the applications for discontinuance which now stand for decision. I raise that matter in order to give Mr Petroulias the opportunity of now identifying any material that he contends is germane to the discontinuance applications.

20 Mr Petroulias's response, which has been recorded, did not, with respect, address that question as to how any of the material gathered by him from the recorded interviews with either one or more of the three witnesses to who I have referred bears upon or is material to the discontinuance applications which fall for my decision.

30 I have taken that course in order to provide Mr Petroulias with an opportunity to put forward any material which would at this point in time justify or require me to further adjourn the proceedings based on the applications for discontinuance. Notwithstanding Mr Petroulias's response to my question today, he has not, with respect, identified how any material that he has obtained from the three witnesses does bear on or could bear upon the allegations subjacent to the applications, namely bias, prejudice, or trivial or lack of substantive issue before the Commission.

40 In all of the circumstances to which I have referred, including the details in the email correspondence which will be shortly tendered, which has been tendered, and which will be shortly marked, it would be wholly inappropriate, both from the Commission's point of view and from that of those participating in the public enquiry, to further delay proceedings in order to accommodate whatever unspecified use or purpose Mr Petroulias may have in mind so far as the recorded interviews are concerned, touching or concerning the matters relevant to the discontinuance application.

So in determining the application, in effect, as I understood it to be an application to adjourn or postpone the delivery of the decisions on his applications for discontinuance, I had regard, firstly, to the matters to which I have already referred today; secondly, to the email correspondence between Mr Petroulias and the Commission's principal solicitor; thirdly, the failure of Mr Petroulias to identify how any of the interviews conducted and recorded by him are material to his applications for discontinuing the public inquiry and/or investigation.

I have also taken into account the need for the Commission to proceed with this investigation and public inquiry as part of the investigation efficiently, fairly and to avoid undue delay in finalising the investigation, having regard both to the interests of other parties or persons who are participating in the investigation or who may be affected by it, and their legal representatives.

10 Accordingly, I decline to adjourn the applications for discontinuance and intend to proceed today to deliver my ruling and a decision in relation to them.

I note that Counsel Assisting has tendered all of the relevant email correspondence to which I've referred in this statement of reasons on the adjournment question. They will be together admitted. They'll be marked as Exhibit 124.

20 **#EXH-124 – FOUR EMAILS FROM NICHOLAS PETROULIAS TO PATRICK BROAD BETWEEN 27 MARCH 2019 TO 16 APRIL 2019**

THE COMMISSIONER: And I make a suppression order under section 112 of the Independent Commission Against Corruption Act in respect of each of those emails constituting Exhibit 124. Thank you.

30 **SUPPRESSION ORDER UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT IN RESPECT OF EACH OF THOSE EMAILS CONSTITUTING EXHIBIT 124**

THE COMMISSIONER: In relation to the application by Mr Petroulias in respect of the public inquiry, being his application for discontinuance of the proceedings to which he refers in his application and reasons, I have concluded that there is no basis for his contention of actual or apprehended bias or any denial of procedural fairness, and accordingly that the application must be dismissed.

40 Accordingly, the application for discontinuance of the public inquiry and of the proceedings referred to in his application, made on 14 March, 2019, is dismissed.

In relation Mr Petroulias's application to discontinue the investigation known as Operation Skyline, this ruling concerns an application made by Mr Petroulias, dated 20 March, 2019, to discontinue the investigation being conducted by the Commission under section 20 of the ICAC Act, the public inquiry for which is part heard.

I have had regard to the submissions made by Mr Petroulias which, in effect, it includes grounds that the subject matter of the investigation is trivial or that the subject matters concerns commercial negotiations beyond the ICAC's jurisdiction and his contention as to the alleged improper purposes.

10 In the context of the application, Mr Petroulias has made assertions that the real purpose behind the inquiry is to improperly cause damage to his reputation and to the reputation of Ms Bakis. That submission is rejected. There is no evidentiary basis for it. It is entirely an unsupported assertion.

I have determined that there is no basis for finding that the subject matter of the investigation, in terms of section 20(3)(a) of the ICAC Act is trivial or concerns matters beyond the Commission's jurisdiction.

20 It is apparent for, reasons expressed which I'll shortly publish, that it is apparent that the nature of the subject matters of the public inquiry has a sound jurisdictional basis. Accordingly, for the reasons set out in the ruling, the application is dismissed. I publish that ruling, as I do the reasons for decision on the previous application to which I have referred based on the alleged bias and pre-judgement.

Before adjourning, it will be necessary to given directions as to the future course of the public inquiry. The principal solicitor for the Commission will be advising shortly, firstly, as to the witnesses who will be called in the first week.

30 The inquiry is to resume on 6 May, 2019, and will proceed into the following weeks. Accordingly, I set it down for the two weeks commencing 6 May, 2019, for continued hearing.

The outstanding matter concerning the application by Mr Petroulias to cross-examine Mr Farage and Mr Vaughn will be determined by me and Mr Petroulias advised as to my ruling in that regard. I note that it is envisaged that Mr Petroulias is likely to be called towards the end of the first week of the two weeks I've referred to, commencing 6 May, 2019, and/or early the following week, the second week of the period of time to which I've referred.

40

Ms Curtin, are there any matters that you want to raise?

MS CURTIN: Only, Commissioner, that there was one further witness who Mr Petroulias did seek to cross-examine, that was Ms Keagan, and I understand, Commissioner, that you haven't made a ruling yet in relation to her. And secondly, it's my understanding, Commissioner, that Ms Bakis and Mr Green and Ms Dates will be required to give evidence in the first week.

THE COMMISSIONER: Sorry, Ms Bakis, Mr Green.

MS CURTIN: Ms Dates and Mr Green will be - - -

THE COMMISSIONER: Will be required?

MS CURTIN: Amongst others, Commissioner, yes.

10 THE COMMISSIONER: Will be required during the course of the two weeks, is it?

MS CURTIN: Most likely in the course of the first week, Commissioner.

THE COMMISSIONER: The first week, all right. Well that will be noted. Nothing further?

MS CURTIN: No.

20 THE COMMISSIONER: Mr Petroulias, is there any matter you want to raise?

MR PETROULIAS: Yeah. I want to put on the record, there's certain hypocrisy in what's been said today. It's very clear that the reason why Mr Green, Ms Bakis and Ms Dates have been called is because somebody's listened to the recordings and they want to have a cross-examination about why those recordings were made.

30 THE COMMISSIONER: Well, Mr Petroulias, interrupting for a moment. You can make that assumption if you wish. I don't wish to comment on its accuracy. Now, is there something else you want to raise?

MR PETROULIAS: Well, with respect, if, if, if, well, if the, if the Commission has made that, has listened to these recordings, then why hasn't that information, that evidence been available for you, for you take into consideration in the applications that you've just determined?

40 THE COMMISSIONER: All right. Is there anything else you want to raise?

MR PETROULIAS: I thought that was pretty sufficient.

THE COMMISSIONER: All right, thank you. Yes, very well. I'll adjourn.

**AT 2.14PM THE MATTER WAS ADJOURNED ACCORDINGLY
[2.14pm]**