BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

NO IRC 7143 of 2003

NEW SOUTH WALES TECHNICAL AND FURTHER EDUCATION
APPELLANT

VALDA JUNE KERRISON

RESPONDENT

AFFIDAVIT FOR EMAIL TO DAVISON CEO HEALTHQUEST

Deponent
VALDA JUNE KERRISON

Date: 15 May 2007

Filed by

V Kerrison
Respondent

Address for Service

C/- 12 Alverton Street
KEMPSEY NSW 2440

Telephone Message:
C/- Don Kerrison 6562 6767

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C/- Don Kerrison 6562 6767

On 15 May 2007, I Valda June Kerrison say on oath:

1. The Industrial Relations Commission (IRC) hold a vast amount of information.
2. Recently I was informed that Mr Steven Davison CEO of HealthQuest CEO had said something like " I want to contact people treated unfairly or wrongly by HealthQuest in the past. Here is my email and phone and fax numbers.
3. I emailed to that address asking that HealthQuest fix up its denial of justice to me.
4. On 14 May 2007 I received a phone call and an email from other people who were 'HealthQuested' saying words to the effect the "Steve Davison wants you to phone him before Thursday 17 May 2007 when you are due in the Industrial Relations Commission."
5. I phoned Mr Davison and we talked for about an hour.
6. Mr Davison discussed with me various matters.
7. Mr Davison asked me to send him a copy of a case regarding discrimination I mentioned.
8. This morning I formulated the attached email, including excerpts from the discrimination case and emailed this to Mr Davison.
9. I seek to submit this attachment to the Appeals Panel as I believe it is relevant to the hearing on Thursday 17 May 2007.
10. I seek also to submit a folder which has material from the numerous submissions and Affidavits consolidated in specific areas to assist us all especially myself as this case is the equivalent of 30+ mob bashings, spread over more than 12 years and as I do not have assistants like the Crown Solicitors and TAFE I believe this will make it easier for me to find the areas for the Court.

SWORN By the Deponent)
At Kempsey)
Before me:)

On the fifteenth day of May in the year two thousand and seven.

………………(signed)…………….. ……..……(signed) ………
Solicitor/Justice of the Peace Deponent

From: Val Kerrison [mailto:kerrison1@iinet.net.au]
Sent: Tuesday, 15 May 2007 9:06 AM
To: Steven Davison CEO HealthQuest
Cc: Val Kerrison
Subject: Discrimination

Dear Steven

I appreciated your phone call, and your concerns at the treatment meted out to us by HealthQuest in the past.

It is good that you wish to bring about change for the future. As I mentioned, that in itself does not correct past wrongs, especially it does not remove the ongoing punishments carried out by HealthQuest for their clients (Departments such as TAFE, DET, DoCS, etc.)

I mentioned a court case which sets out the steps which must be taken to avoid discriminating on presumptions.
As you requested, I have included that case below in the body of this email.

As we discussed, if one simply applies a label and presumes that label is a finding that a person is unable to carry out the duties of office, that is discrimination.

You may not be aware, but when it is a psychiatric label it is particularly offensive and punishing as psychiatric label ling's stigmatization is worse than a jail record. And the stigmatization follows the person throughout his or her life, and even backdates to imply that the person was ALWAYS, or from an early age - psychotic.

Psychiatric labelling in Australia seems to be easy to come by - pay the psychiatrist willing to form a belief and "find" whatever is asked for. There are plenty of them, and they are much in demand - HealthQuest's 'sister' organisation titled Medical Appeals Panel who, from behind closed doors and using some undisclosed secret material rubberstamped HealthQuest's psychiatric labelling, named some psychiatrists as the ones which were "useful".

Psychiatric labelling was the political tool much in favour by Soviet Russia against its political dissenters, also China, and, of course, HealthQuest in Australia.   I mentioned to you the International Russell Tribunal Accusation to World Psychiatric Association for its psychiatrists' crimes against humanity, and HealthQuest psychiatrists formed part of the Russell Tribunal records. That information can be found on the WhistleBlowers' Documents Exposed website http://wbde.org .

DISCRIMINATION Discrimination on the grounds of a (real or imagined) disability is the area we were discussing yesterday. As mentioned, psychiatrists inquire and investigate the human's beliefs, sexual matters, family relations, personal thoughts etc. All of these questions are prohibited generally when a person is being interviewed for employment. In the past, on receipt of a cheque the HealthQuest doctors/psychiatrists wrote some thousands of "Retirement Certificates" and sent them to TAFE, DET, DoCS, Police etc particularly against people who had reported mismanagement or worse within those departments (whistleblowers).

The suffering and misery inflicted by this cannot be measured.

But all of HealthQuest "Retirement Certificate"s I have seen show systemic discrimination. i.e. HealthQuest simply apply a label, followed by an ASSUMPTION OF INCAPACITY. Therein is the discrimination.

HealthQuest fail to even inform themselves of the inherent duties that the targeted employee is required to perform. To avoid discrimination the inherent duties is the vital ingredient. People must identify THEN LINK AND PROVE THAT THE LABEL THEY STATE ACTUALLY STOPS THE

PERSON FROM BEING ABLE TO CARRY OUT AT LEAST ONE SPECIFIC INHERENT DUTY PARTICULAR TO THAT EMPLOYEE in whatever position in the department/agency s/he is employed..

In other words : The capitalized line above is HealthQuest's MISSING LINK. If there is a statement which does not incorporate the proof supplied in this missing link explanation/proof, it is discrimination.

Psychiatric labelling is extremely convincing to some people. Generally people more readily recognise when there is a missing link (and therefore discrimination) in other grounds under the AntiDiscrimination Act. eg;

Age discrimination, such as: You are 60 years old therefore you are unable to carry out the duties of your office. (people generally can say/think 'hey wait on a minute, what duty can't be carried out, and how do you know?)

Gender discrimination, such as: You are a woman therefore you are unable to carry out the duties of your office. (people generally can say/think 'hey wait on a minute, what duty can't be carried out, and how do you know?)

Physical disability discrimination such as: You are colour blind therefore you are unable to carry out the duties of your office. (people generally can say/think 'hey wait on a minute, what duty can't be carried out, and how do you know?

**** Unless there can be identified, described, and named a SPECIFIC INHERENT DUTY OF THE PARTICULAR JOB OF THAT PARTICULAR EMPLOYEE WHICH CAN BE NAMED, DESCRIBED AND THEN PROVEN -** then it looks very much like a presumption and can be considered discrimination.
But people cannot prove that s/he is not psychotic. As we are all individuals, we are all different in different circumstances and times. One psychiatrist will state one belief - another will claim the opposite - perhaps you have observed this in some Courts.

Regarding examining if a person is or is not able to carry out the duties of office, it can be immaterial and offensive to hire psychiatrists to simply inquire into a person's sexuality or personal beliefs - it is the INDIVIDUAL INHERENT DUTIES OF THAT PARTICULAR PERSON PERFORMING THAT PARTICULAR JOB which is relevant. It is only if a person's beliefs or sexual history come into conflict with the requirements in the workplace that are they relevant - and that is taken into account in the Enterprise Agreement and its facilities to enable monitoring any perceived unsatisfactory performance of duties. In the workplace the employer is required to identify the undesirable or prohibited behaviour, and fully inform the employee in the workplace - of course allowing the employee procedural fairness and also allowing the employee to mount a defence if s/he wishes.

This can include the employer ordering the employee to submit to a physical medical examination such as in the case of a food worker having been in contact with a communicable disease. Physical medical examinations involve observable, measurable criteria, and are generally uniform across the medical profession. Unlike psychiatric opinions - they are subjective according to the opinions/beliefs of the psychiatrist and are not observable and measurable in a uniform assessment criteria.

Going again to my case, TAFE admit that my work in and out of TAFE was exemplary.
And you must admit that HealthQuest (or any other) psychiatrists, generally, are not qualified to judge whether or not I, as a computer teacher was capably teaching computing or not - especially when I was hundreds of kms away in Kempsey TAFE. Also, generally speaking psychiatrists in those days could not judge my capacity to teach computing as the did not apparently know a bit from a byte.

But my students, TAFE managers, and the general public including detectives, doctors, accountants, teenagers, etc who knew and observed me in and out of Kempsey TAFE and the wider community, sought me out mentioning with approval my expertise, kindness, patience, and sense of humour.

The same geographic arguments apply to the other whistleblowers you have asked to contact you.

Steven, thank you for your time. I hope that the reiteration and explanations above will be helpful to you, and ultimately others. Similarly I seek all of the assistance which you might be able to give. As you suggested I faxed to the Crown Solicitor's Office a request for mediation in the hope that matters can improve, and thank you for your desire to assist as much as possible. After 12 years of punishment I hope that the present situation can be moved and ended.

Below are excerpts from the case I undertook to forward to you. If you cannot locate the full case and require it, please feel free to contact me.

Kind regards
Val

David Loscialpo v New South Wales Police Service

IN THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
DISABILITY DISCRIMINATION ACT 1992

DATE OF HEARING: 24-26 March 1999

DATE OF DECISION: 2 September 1999

PLACE: SYDNEY

#DATE 02:09:1999

DENNIS MAHONEY QC

1. INTRODUCTION

Mr Loscialpo applied to enter the New South Wales Police Service ("the Service"). He is, to an extent, colour blind. For that reason his application was refused. He claims that the refusal constituted discrimination contrary to the provisions of the Disability Discrimination Act 1992 (Cth), ("the DDA"). He has therefore brought proceedings against the Service under the DDA.

...what in my opinion, are the essential issues to be determined. I shall formulate those issues in the light of the material that has been presented and the manner in which the proceeding had been conducted.

The matters which I must decide are:

1. Did the Complainant have a "disability" within the legislation and what was the order of that disability?

2. Did the Service refuse his application because of that disability?

3. Did that refusal constitute prima facie discrimination within the DDA?

4. If it did, did the Service have, in the relevant sense, a defence for what it did within s.15(4) of the DDA?

5. What orders should be made?

In considering these matters, I shall address the questions which, under the legislation, I am required to deal with or decide.

2. THE FACTUAL CONTEXT

The Complainant was born on 1 July 1967. The details of his education are before me. He obtained a degree in science at the University of Western Sydney. However he has not pursued a career based upon that degree. He has followed a number of occupations ranging from labouring to data processing. He has said that he wants, and at relevant times wanted, to be a police officer.

On 3 September 1996 the complainant applied to enter the Service. He had a selection interview but his application was subsequently refused: "He was unsuccessful at the interview". The refusal was apparently not based on the complainant's colour blindness. In evidence the complainant suggested that his refusal might not have been bona fide.

On 20 April 1997 he again applied to enter the Service. That is the application now in question. The procedure to be followed involved that he supply, inter alia, information as to his medical condition. It appears an optometrist consulted by him recommended that he have a test of his eyesight, in relation to colour blindness, at the University of New South Wales. This, I think, was because of the findings that that optometrist had made.

On 11 June 1997, the complainant was tested for colour blindness at the University of New South Wales and Associate Professor Dain made an assessment of his condition. A copy of this assessment was faxed to the Service. The findings are sufficiently set forth in a letter dated 11 June 1997 to Dr Crowle, the Senior Police Medical Officer. In due course the Service wrote to the complainant by letters dated 22 October 1997 and 10 November 1997. They indicated, inter alia, that his application was refused.

On 21 November 1997 the complainant commenced proceedings under the legislation.

The complaint was referred for conciliation. On 15 August 1998, Acting Disability Discrimination Commissioner Chris Sidoti certified that the matter was "not amenable to conciliation". It was then referred to the Commission for a hearing and the matter came before me.

During the hearing a large amount of material was placed before me. One of the exhibits ("the Referral Report") contained some 577 pages. Witnesses were called and oral evidence was given on behalf of both the complainant and the respondent. The cross-examination of the witnesses by the complainant extended over a long period.

It is not practicable, or in my opinion necessary, for me to detail all of the evidence which has been given, or to make findings in relation to all of the various matters which have been in dispute during the hearing. My decision not to deal in detail with a number of the matters raised by the complainant in cross examination and otherwise must not, of course, be seen as discourtesy to the complainant, or to indicate that I have not taken into account what he has said in relation to them. However, I shall confine myself in these reasons to the findings and reasons which, under the legislation, I am required to make and give, and to what, in my opinion, are the matters relevant to the complaint as it has been made and pursued.

3. DID THE COMPLAINANT HAVE A "DISABILITY" WITHIN THE LEGALISATION?

It is not, I think, in contest that the complainant suffers from colour blindness and that whatever the extent of it, that colour blindness constitutes a "disability" within the definition in s.4(1) of the DDA. The real matter in dispute is the extent of that disability and the significance of it for the purposes of the legislation and the present complaint. To these matters I shall refer subsequently.

4. DID THE RESPONDENT REFUSE THE COMPLAINANT'S APPLICATION BECAUSE OF THAT DISABILITY?

This has been an issue in this proceeding. The complainant has referred to the circumstance in which, as he claims, his first application was refused and to the circumstances in which the present application was dealt with. He has alleged that there was undue delay. He has, to an extent, suggested that (as he described it) "racism" influenced, or may have influenced, the refusal of one or both of his applications.

The complainant also made reference to, inter alia, statements he made at interview in response to questions about the Wood Royal Commission into Police Corruption. He suggested these statements and matters that he sees as arising from the Wood Royal Commission into Police Corruption and other such matters may also have been the basis for the refusal of his application.

It is proper to record that although these matters were referred to during the proceedings and in the submissions, they do not appear to have been the subject of substantial evidence.

However that be, in his submissions, the complainant has said:

"I believe the reason that the Police Service rejected me due to Colour Vision was, in their eyes, a legal avenue to dismiss somebody who they did not want to become a Police Officer or to cover up inappropriate delays and mismanagement on their part. This supports the fact that Inspector Choat quickly and simply states that red defective individuals are not permissible".

The Service has, in it's submission and in evidence, consistently maintained that the reason for the refusal of the complainant's application was because he was colour blind and therefore unable to perform the duties expected of a police officer. I note that standard publications provided to prospective applicants state clearly that normal colour vision is required for employment in the Service.

I am satisfied that the reason why the complainant's application was refused was his colour blindness. This was a matter properly to be taken into account in considering the application. I am not satisfied that the refusal was based upon other or impermissible considerations. To the extent that it may be relevant, I am of the opinion that the evidence clearly establishes that colour blindness was the reason why the application was refused.

One further matter should be referred to. The Service has pointed out that even if colour blindness had not been a reason sufficient to warrant the refusal, it would not follow that the complainant's application would have been granted. The respondent has contended, in my opinion correctly, that in determining whether an application to enter the Service is to be granted, the Service may, in the course of interview and otherwise, take into account other matters affecting the fitness of the applicant, and the desirability of his entering the service. The Service therefore submits that, even if the complainant succeeded on "the colour blindness issue", no order requiring the Service to employ the complainant should be made at this stage because, for these reasons, his application might well have been refused.

5. DID THE REFUSAL CONSTITUTE "DISCRIMINATION" WITHIN THE LEGISLATION?

It is, I think, not seriously in contest that a refusal of the application because of the complainant's colour blind condition prima face constitutes discrimination within the legislation.

The basic concept of discrimination adopted by the legislation is that contained in s.5(1) of the DDA. There is discrimination on the ground of a disability:

"if, because of the aggrieved person's disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability".

This is the concept that is, in general, applicable in the present case.

I note that the prima facie affect of this provision may be qualified by relevant exceptions or defences contained in the DDA. The application of section 15(4) will be discussed below.

The literal operation of such a concept of discrimination would, if standing alone, produce curious results. For example, there would be discrimination if a blind person or a person with one leg or no hands were refused employment as an ordinary constable on general duties in the police service. The prima facie affect of a provision based on the concept in s.5 (1) is, of course, qualified by, as they are conventionally described, the "defences" provided by the legislation: see eg, s.11 and s.15. Whether the width of the concept of discrimination adopted in the legislation and the curious results which may be produced by it, standing alone, warrant giving to the defences a wider, rather than a narrower interpretation, is a matter that does not arise for decision in the present case.

6. IS A DEFENCE AVAILABLE UNDER S.15?

The concept of discrimination contained primarily in s.5 is employed in the provisions of the legislation dealing with employment. Section 15(1) relevantly declares it to be unlawful for an employer to:

"discriminate against a person on the ground of the other person's disability...

(b) in determining who should be offered employment;"

Section 15(4) provides:

"Neither paragraph (1)(b) nor (2)(c) renders unlawful discrimination by an employer against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

(a) would be unable to carry out the inherent requirements of the particular employment; or ..."

To establish such a defence in the present context, it is necessary for the respondent, in effect, to establish:

- what the complainant is "unable to carry out"; and

- that the complainant's inability to carry out those things results in his being unable to carry out the "inherent requirements of the particular employment".

It is these matters which have been mainly in issue in the present proceeding.

I come first to consider what the complainant is "unable to carry out". This has been dealt with, in the main, by the two professional witnesses for the respondent, Professor Cole and Associate Professor Dain, and by the complainant in his oral and written evidence.

Before dealing with this evidence it is proper for me to indicate my conclusion as to the acceptability of the evidence of Professor Cole and Associate Professor Dain.

The complainant, in the course of his conduct of the case, has put in contest the credibility, capacity and conclusions of each of these witnesses. In saying this I do not mean to indicate that the complainant has, at all times during the hearing, maintained a consistent attack upon them in respect

of each of these matters. But what has been said and suggested makes it relevant that I indicate my views as to these two witnesses.

Professor Cole holds a chair within the University of Melbourne. His area of expertise extends to the matters here in question. He concluded that, to the extent and in the sense to which he referred at length in his written and oral evidence, the complainant is "moderately protanomalous". This, he explained, means that the complainant suffers from a significant form of colour blindness. Professor Cole was cross-examined at length. He was an impressive witness and I accept the thrust of his evidence. I am conscious of the experience of lawyers who have been involved in trial work, that the meaning conveyed by what a witness has said to one who has seen and heard him give evidence, is sometimes different from the meaning which would or may be drawn from that evidence by a person who merely has read the transcript of what has been said. Professor Cole gave his evidence fairly. He gave careful consideration to the matters put to him by the complainant in cross-examination and to the material that he was asked to consider. In this case, I record that what I saw of Professor Cole in giving evidence has assisted me in concluding that I should accept, in the respects here relevant, the correctness of what he has said.

Professor Cole's qualifications are substantial, and in my opinion, have not been put substantially in issue.

In his written evidence, (see in particular pages 1, 2, 3 and 5) Professor Cole dealt with the extent of the severity of loss of colour discrimination by the complainant, his risk of involvement in a road accident, his ability effectively to search as a police officer may have to do and other matters of relevance. In his oral evidence, in chief and in cross-examination, he indicated that the degree and/or effect of the complainant's condition was rather more severe then he had at first thought. The condition, though "moderate", was, he concluded, somewhat more serious than he had at first concluded.

His evidence suggested that the complainant would:

- on occasions, misname colour;

- be subject to a higher risk of accident by reason of a failure to see red lights sufficiently quickly or at the appropriate time;

- though able to discriminate colour, be more likely to make errors in colour naming and colour differentiation as between colours of subtle difference;

- have a reduced capacity to carry out the search functions required of police officers;

- make (as they have been described) non trivial errors in police work;

- have a reduced visual range of recognition of orange traffic lights;

- be at risk of making errors in the recognition of signal colour.

This condition is effectively permanent. (I have summarised these matters with the assistance of the submissions by Ms Anderson and need not repeat the references made therein to the particular parts of the evidence in which they are dealt with).

Professor Cole was asked for his opinion as to whether a person having such a condition of colour blindness should be employed in the Service in the relevant capacity here in question. He expressed the opinion that such a person should not be so employed. In expressing this opinion he indicated the basis upon which he felt able to speak as to the capacities required of a relevant police officer. I accept that, by reason of his qualifications and experience, Professor Cole is qualified to give such an opinion and I accept the opinion that he has expressed.

Associate Professor Dain initially tested the complainant for colour blindness. His views were expressed, inter alia, in his letter of 11 August 1997. It is not necessary for me to detail what he there said. It is proper to record that the complainant conceded that, if he were again tested, the results of the testing would be effectively the same. Professor Dain's oral evidence confirmed the general thrust of his testing and of his assessment of the complainant's condition.

Professor Dain did not claim to know the requirements of the Service in the present regard and he was not able to express an opinion as to whether, given the condition he found, the complainant was an appropriate person to be a member of the Service.

It is not necessary for me to note a detailed comparison of the evidence of Professor Cole and Associate Professor Dain. There were some variations between them. In my opinion such variations as existed did not represent a difference between them as to the complainant's essential condition or as to the main relevant effects produced by such condition. In my opinion the evidence of Associate Professor Dain confirms the views expressed by Professor Cole, to which I have referred, as to the effect of the relevant condition upon the functioning of the complainant.
t…. I accept the views of Professor Cole as to the Ishihara test and its use in the present case.
….

The complainant has emphasised, in my opinion correctly, that the present legislation requires that, in deciding whether there has been discrimination, a judgement must be made of the individual disability and incapacity of the complainant and, that this judgement is to be made by reference not to classes or categories of persons or conditions, but by reference to the actual disabilities and capacities of the individual complainant. There is to be no stereotyping. In a case such as the present, I must consider the actual disabilities and incapacities of the complainant and determine the extent to which they affect what he can do.

I am satisfied that the complainant is moderately protanomalous and that this condition will affect him in respect of the matters to which I have adverted to such a degree that, as Professor Cole indicated, he should not be employed in the Police Service as he sought to be. I am satisfied that the question of the degree of the complainant's disability and of the effects of it were matters which were present to the minds of the witnesses in the course of their giving the written and oral evidence which they gave.

I now turn to consider whether the effect of the complainant's colour blindness, as outlined above, is such as to indicate that the complainant is unable to carry out the "inherent requirements of the particular employment".

The proceeding has been conducted upon the basis that the complainant was not seeking a special category of employment within the Service. That has not been suggested. The position he sought, and which is in question, was one in which he would have been required to carry out, in the ordinary way, the general duties of a police officer of the relevant rank and seniority. As was submitted by Ms Anderson, the complainant envisaged that he would undertake general duties and expressed a desire to do so.

Reference was made in argument to the meaning of the "inherent requirements". There is, however, no substantial difference between the parties as to the meaning of the phrase. Their difference is as to the application of it to the present case. Therefore, while I note, for example, the consideration of the provision by the Full Federal Court in the Commonwealth of Australia v The Human Rights and Equal Opportunity Commission and "X", (1998) 152 ALR 182, it is not necessary for me to discuss in detail the consideration which has been given to the phrase in other proceedings.

In its submissions and in evidence, the Service suggested that a police officer is required to undertake a range of core tasks. Amongst other things, these include: the investigation of crime scenes; the search for and identification of suspects; driving police vehicles (sometimes at speed and in dangerous or difficult situations); search and rescue; and, the provision of evidence in court (including identification evidence).

Given the nature of the work carried out by the Service, I am satisfied that these operations, amongst others, are at the core of employment as a Police Officer. Such tasks flow directly from the duties and functions carried out by the Service. They are not mere operational requirements imposed by it and they are not tasks imposed by other considerations such as efficiency or economy.

I note also that the Service operates within a judicial system and that as a result, it is subject to certain requirements that are not capable of modification by it alone. Police Officers are required, for example, to provide evidence before courts of law in which the identification of the defendant, his/her clothing and surroundings may need to be described with an appropriate degree of certainty before a conviction can be obtained.

As indicated above, Professor Cole and Associate Professor Dain have indicated that, as a result of the complainant's condition, the complainant may:

- on occasions, misname colour;

- though able to discriminate colour, be more likely to make errors in colour naming and colour differentiation as between colours of subtle difference;

- have a reduced capacity to carry out the search functions required of police officers;

- have a reduced visual range of recognition of orange traffic lights;

- be subject to a higher risk of accident by reason of a failure to see red lights sufficiently quickly or at the appropriate time; and

- make (as they have been described) non trivial errors in police work.

I am satisfied that, as a result of the complainant's disability, he is unable to carry out the inherent requirements of employment as a police officer as here envisaged. The capacity to do these things, and in particular, to identify accurately and describe persons and things, to recognise colour and distinguish between the different colours and the capacity to drive safely at appropriate speeds and to recognise, for example, traffic lights in doing so, are matters within the scope of s.15(4)(a). I have given careful consideration to the evidence of Professor Cole and Inspector Chaot in this regard. That evidence supports the conclusion to which I have come.

In my opinion therefore, the defence relied on by the respondent has been made out.