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Tabled 18 FEB 08
Mr Cornall

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Mr Robert Cornall, AO,
Secretary, Attorney-General's Department,
Robert Garran Offices,
National Circuit,
BARTON ACT 2600

Please file - no
further action -
AW
5/12/07

Dear Mr Cornall,

Justice Michael Adams

Thank you for your letter of 23 November, which requests my "views on the propriety" of the conduct of Justice Adams as the presiding judge in the recent Commonwealth prosecution of Izhar Ul-Haque in the Supreme Court of New South Wales for the offence under s 102.5(1) of the (Commonwealth) *Criminal Code*, of receiving training with respect to combat and the use of arms from Lashkar-e-Taiba at the time knowing it was a terrorist organisation.

The particular conduct to which you refer consists of statements the judge made in his judgment of 2 November 2007 ([2007] NSWSC 1251) when ruling that records of interview of the accused, conducted by Australian Federal Police officers, were inadmissible by reason of breaches of s 84 of the Commonwealth *Evidence Act* 1995. It is, however, no part of my role as the Chief Executive of the Judicial Commission, or of the Commission itself, to express views on a judge's conduct at the request of a government department or of any individual.

One of the Commission's functions is to deal with complaints made to it against judicial officers in accordance with Part 6 of the *Judicial Officers Act* 1986. That function may be performed only after the procedures laid down in the statute are followed. No complaint has been made in accordance with that statute concerning Justice Adams in regard to his judgment in this case. If a complaint is received it will be examined by the Commission.

In relation to the nature of the proceedings which led to the judgment, I note that s 138 of the Commonwealth *Evidence Act* (Discretion to exclude improperly or illegally obtained evidence) required Justice Adams, as the trial judge, to determine whether the conduct of the officers in relation to the interviews they conducted with the accused was improper or illegal. Such a procedure does not involve the laying of charges against those officers for particular offences, but it does involve an investigation of that conduct by the judge. There is no function for a jury to perform in that procedure. It is the role of the Crown prosecutor, who represents the interests of the Commonwealth in the prosecution of offences charged under the *Criminal Code*, to protect the interests of the officers in relation to the allegations of misconduct against them.

Yours sincerely,

E.J. Schmatt
Chief Executive