

LOBBAN MCNALLY | LAWYERS

COPY

Your Ref: C/2004/1245
Our Ref: TJM:mr\3224\059

Received by Hand

27 APR 2004

NSW Ombudsman Office
Time 16.15 pm

REDACTED

27 April 2004

By Courier

REDACTED

Assistant Ombudsman
(Children and Young People)
NSW Ombudsman
580 George Street
SYDNEY NSW 2000

Dear REDACTED

PROFESSOR VICTOR MAKAROV

We refer to our earlier letter to you of today's date and our letter to your office on 8 April 2004 answering question 5 of your letter of 30 March 2004.

We also note that in our letter of 8 April 2004 we advised your office that our client had, in the circumstances, appointed a barrister to prepare a full report and recommendations for the Institute's Board; in the circumstances you will appreciate that the allegations raised against Professor Makarov are strenuously denied by him, that discussions with his solicitor would indicate that Professor Makarov will rely upon all his legal rights until Judgment in the hearing of the charges laid against him and the Institute is not fully advised by all relevant parties.

With regard to the seven questions raised in the NSW Ombudsman's letter of 30 March 2004 we advise as follows:

1. The Institute of Music is a company limited by guarantee and the members of its Board are as follows:

Dr P Calvo;
Ms A Hodge;
Mr B Calvo Junior

2. Employment related decisions are made usually jointly by Dr Calvo and Dr Marcellino. Thereafter there is usually consultation with relevant Heads of Departments and consultation with the Board of the Institute, although the Board of the Institute does not usually have a formal role in employment decisions.



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3. Yes, on or about 5 February 2004, shortly after Dr Calvo became aware of the allegations.
4. It is our understanding from your letter that your office has been advised by some party that the three students involved in the AVO's may be alleging child abuse against Professor Makarov.

The three parties acquiring the AVO's have retained a solicitor and Dr Marcellino has conferred with that solicitor.

The solicitor for the three students did not reveal the nature of any allegations against Professor Makarov and on 19 April 2004 the NSW State Crime Command Child Protection and Sex Crimes Squad advised (noting that the writer had been in contact with **REDACTED** of your office) that Professor Makarov:

"...is also being investigated by detectives from the State Crime Command Child Protection and Sex Crimes Squad after three more students have come forward and made statements alleging further offences being committed by Victor Makarov. Strike Force Crathlyn attached to the NSW Police State Crime Command Child Protection & Sex Crimes Squad is currently investigation these allegations. I am the office in charge of this Strike Force."

The same letter (copy attached) declined to provide any relevant documents.

At this stage, unless the Counsel retained to report and recommend to the Board can acquire further information, the Institute's information in regard to the three students' allegations is limited to what the Institute has been advised thus far.

We understand that your office is in close touch with the NSW Police State Crime Command Child Protection & Sex Crime Squad and would appreciate any information you have in this regard.

5. Our client, through our firm, has answered question 5 of your letter of 30 March 2004 by our letter dated 8 April 2004.
6. Dr Marcellino was six days late with the Institute's Risk Assessment.

The reason for the delay was that Dr Marcellino was very anxious to ensure that the Risk Assessment was accurate but could not answer many of the questions as, amongst other things, his inquiries did not result in all relevant information being acquired. (You will appreciate that the NSW Police Service has asked the Institute not to interfere with their criminal investigation and that no party is providing the Institute with what we would regard as being appropriate information).

We understand that Dr Marcellino was in touch with officers of your office in regard to the Risk Assessment and the delay.

7. Professor Makarov has strenuously denied any allegations of child sexual abuse and the charges against him are yet to be heard and proved.

Further, at this stage, the Institute has not been provided by any party (notwithstanding requests) with all relevant information. At this stage even

the three students who have acquired AVO's have not revealed (either themselves or through their solicitors) the allegations against Professor Makarov.

Further, there has never been a complaint of this type against Professor Makarov at any time prior to these incidences.

In this regard we note that there has never been an allegations of any sexual abuse at the Institute, but the allegations appear to be about the alleged conduct of the Professor in his own home and appropriate arrangements have been made with regard to any lessons he conducts at the Institute.

Notwithstanding the efforts of our client, the information provided to our client has been incomplete and it is for this (and other) reasons that our client has retained a Counsel to investigate the whole matters and make recommendations to the Board.

We note the NSW Ombudsman's concern in this regard and we would wish advice whether the NSW Ombudsman is pressing our client to dismiss Professor Makarov in the circumstances.

In regard to your inquires generally, we would ask you to again note the following:

- a. Our client has retained an experienced Counsel to investigate, report and make recommendations to the Board.
- b. Our client, immediately having been advised of the allegations against Professor Makarov sought a meeting with the parent of the student but having been advised that the parent agreed the parent thereafter refused.
- c. Our client has attempted to confer with the solicitor for the three students taking out the AVO's but the solicitor has not been prepared to advise of the nature of allegations against Professor Makarov.
- d. Our client has attempted to confer with the NSW Police Service but has not received a great deal of information.
- e. Our client conferred immediately with DOCS who advised that they could not assist our client in any way and referred our client to the NSW Police Service.
- f. Our client has interviewed Professor Makarov who advises that he strenuously denies all allegations against him.

We note your advice of 23 April 2004 that you demand Dr Calvo and Dr Marcellino be available to be interviewed by your office. Dr Calvo and Dr Marcellino are available to be interviewed and will have a legal representative present.

- a. Our firm notes you advise that the interview will be taped and that we will be supplied with a copy of the tape of the interview.
- b. Please confirm in writing arrangements for and the time of the interview.

REDACTED

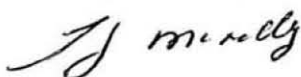
Professor V Makarov

27 April 2004

Page No. 4

- c. We think it only fair that your office advise us in writing in ample time to confer with Dr Calvo and Dr Marcellino as to:
- i. The nature of any documents your office proposes to either put to Dr Calvo or Dr Marcellino (and provide a copy of those documents).
 - ii. What areas will be questioned upon outside the seven specific questions referred to in your letter of 30 March 2004.
 - iii. What matters in our firm's answers to those seven questions are deficient and have caused your office to consider it necessary to press interviews of Dr Calvo and Dr Marcellino.

Yours faithfully



Terence McNally

Encl.