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Reference: DM/GDS  
In reply to: T.Salvini

## **Tank Jowett Solicitors**

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**Mr. Colin Nicholls QC**, 3 Raymond Buildings, London

VIA FAX/RECORDED DELIVERY/ E MAIL

7<sup>th</sup> October 2008

Regina -v- DANIEL JAMES

Dear Simon (Jowett), David (James) and Colin (Nicholls):

In March 2008 this firm received an e mail from friends of DANIEL JAMES urgently seeking advice and representation with regard to a matter that he was facing trial at the Central Criminal Court. The matter being sensitive and subject to the Official Secrets Act 1911 and with material that was or could cause embarrassment and/or harm to the United Kingdom the material that we received was placed in safe storage with only certain personnel having access. Before we accepted any mandate we reviewed the material that was available to us both from the public domain and the material supplied to us by those that held the interests of DANIEL JAMES at heart. We have seen and reviewed a number of witness statements which we will not name as it is our intention to publish this letter. We have the personal statement of Daniel James, the indictment, the case summary, the opening note from prosecuting counsel and certain correspondence between the then lawyers acting for Daniel James and the Crown Prosecution Service.

None of this material has or will be ever, from our part, be released or published as we hold certain responsibilities to heart without the need for endless and completely useless undertakings. In our view no undertakings are necessary when duty calls upon those acting for the client to comply with pure common sense and responsible actions.

Neither are we interested in the actual merits of the case. DANIEL JAMES has been held in custody for the disgracefully long period of nearly two years without trial and with only two bail applications having been made. In any civilized country this type of conduct obviously condoned by the defence (at that time) will invariable lead to certain conclusions aided and abetted by the Crown Prosecution Service who frankly should have known better than to

permit lengthy delays in what is at heart a simple case, as is described by Leading Counsel for the Prosecution in the draft opening note.

We reviewed the indictment and drew the conclusion that this case merited a challenge to the indictment namely the issue of what constituted an 'enemy' contained within the indictment. We undertook legal research and sought advice from a number of Queens Counsel and Law Professors all of whom were of the view that as discreet a point as it was the onus lay upon the Crown Prosecution Service to define and prove by admissible evidence what constituted an 'enemy'. Without an 'enemy' there is no violation of the Official Secrets Act.

In April of 2008 we spoke with Simon Jowett of Tank Jowett Solicitors and advised DANIEL JAMES that any change of representation from his previous solicitors should be made in favour of Tank Jowett Solicitors. We discussed the case at length with Mr. Jowett and further with David James. We stated quite categorically that the condition upon which DANIEL JAMES sought a change was to challenge the indictment and a pre-trial issue. Mr. Jowett agreed to the conditions and an application was made to the Central Criminal Court to change solicitors. That application was refused at first but two weeks later the change was permitted on condition that Leading Counsel and Junior Counsel would be retained.

Mr. Jowett and ourselves spoke about the legal issues of the case and at no time did we ever touch upon the merits or details because for our purposes (a) we already had possession of the material before Tank Jowett Solicitors and in fact supplied them with material when they were on record and (b) our interest was limited to the legal principle in this case. At all material times Mr. Jowett agreed that as the trial solicitors their brief to counsel would include instructions to counsel to raise the legal issue involved.

In discussing the legal issue with Mr. Jowett and with other Leading Counsel it was suggested by a Law Professor that the only way 'evidence' could be admitted as to whether or not the country named in the particulars of the offence could constitute the definition of 'enemy' was from the Minister of Defence. An 'enemy' is defined as either (a) a country that the UK is currently at war with or (b) a country that one day the UK could be at war with. The specific country in this case it was clear that the UK was not at war with and as such that left only one other alternative. Could the UK one day be at war with the certain country subject to the particulars of the indictment? Tank Jowett Solicitors duly wrote to the Minister of Defence as did we. The reply was immediate and without hesitation namely, that this was an issue of the court and a legal issue and not one that the Ministry of Defence wanted to answer.

In September of this year Leading Counsel that was appointed for personal and professional reasons withdrew from the case. We were asked by the client and Tank Jowett Solicitors which Leading Counsel should be appointed. We spoke with Colin Nicholls QC and with Claire Dobbin of 3 Raymond Buildings. Mr. Nicholls is a person whom we hold in the highest esteem and we outlined the legal issue surrounding this case. At no time did we talk with Mr. Nicholls or Miss Dobbin or in fact Mr. Jowett regarding the merits of the case. Our interest was the legal issue surrounding the word 'enemy'. Miss Dobbin briefly considered the matter and went further to suggest that there may be a violation of Art. 6 of the ECHR- the right to a fair trial. Afterall, it is for the prosecution to prove its case not for 'presumptions' to be made.

Miss Dobbin owing to illness had to withdraw from the case and the clerk to Mr Colin Nicholls QC spoke with us regarding the matter. We spoke with Mr. Nicholls QC whilst he was on holiday in Spain about this matter and to all intent and purposes it was agreed that the preliminary issue of law would be argued as a pre-trial matter.

[REDACTED]

Of late and without any proper explanation Tank Jowett Solicitors- who were recommended by this firm to DANIDEL JAMES and whom we at all times in May 2008 had to convince DANIEL JAMES that they were in our view the best-refused to discuss the matter and developments simply saying that an undertaking was signed not to discuss the matter with anyone outside those advising DANIEL JAMES (which must have included ourselves) and on the 6<sup>th</sup> October 2008 refused even to tell us what Mr. Justice Roderick Evans had decided at the Central Criminal Court because of a new undertaking given to the court that (a) neither Daniel James or (b) Tank Jowett Solicitors could discuss the matter with anyone.

Mr. Nicholls QC advised, we are told, Tank Jowett Solicitors not to discuss the case with anyone including ourselves which we find discourteous, confusing, contradictory and further refusing to raise the matter contained within the indictment which many other Queens Counsel and Law Professors have stated is an arguable issue which can, if successful stay the indictment.

Leaving quite aside that DANIEL JAMES by being forced into giving an undertaking to the Court and by Tank Jowett Solicitors remaining silent on the matter it is clearer than clear that his rights to 'effective' legal advice has been restrained, injuncted, and violates his rights of independent legal advice; both Tank Jowett Solicitors and Mr. Colin Nicholls QC are party to the gravest of injustices against a fragile defendant (DANIEL JAMES) who sought solace from ourselves and sought 'effective' legal advice which we have delivered and by our recommendation of Tank Jowett Solicitors and Colin Nicholls QC have, it would appear, betrayed the code of conduct of lawyers who are duty bound at acting in the best interests of the client.

It can never be in the best interests of the client if the said client is restricted from seeking 'effective' or legal advice from anyone other than those representing the said client. It is a violation of his rights and by being party to such places Tank Jowett Solicitors and Colin Nicholls QC in grave professional difficulties in the event that a trial proceeds.

It is actually irrelevant whether or not the legal issue surrounding proving an 'enemy' succeeds at trial. Once an arguable issue is raised it must be argued. Counsel and trial solicitors cannot ignore arguable issues even if such are discreet and have a remote possibility of success. The position is compounded when to ourselves both Tank Jowett Solicitors confirmed to us that it was a point they would instruct counsel upon and on our three conversations with Mr. Nicholls QC at no stage did he ever state that he disagreed with the legal issue.

It is clear that if there is no enemy there can be no violation of the Official Secrets Act. The existence of an 'enemy' has to be proved. By letter the Ministry of Defence have stated the issue must be resolved in Court. We agree absolutely. By allowing DANIEL JAMES and pressurizing him into undertaking that he would not discuss the case or this issue with anyone outside Tank Jowett Solicitors/Mr. Colin Nicholls constitutes a violation of his rights and in our view a serious professional error of judgement at best, misconduct at worst.

We are of the view that prior to any other action being taken DANIEL JAMES be properly advised if necessary by an independent lawyer and that forthwith an application be made to the Court to revoke the undertaking that DANIEL JAMES was forced into providing and that the condition that he not be allowed to discuss the case with anyone outside Tank Jowett Solicitors/Mr. Colin Nicholls QC be vacated as it is unlawful and obtained by undue influence.

We can understand if the court seek an undertaking that lawyers not discuss the facts and merits of case but the legal issue or issues of law are common to many who are and have been indicted under this rather draconian Official Secrets Act. No harm can be caused to the State if DANIEL JAMES seeks advice from a hundred lawyers of his choice if he so desires regarding the legal issues.

We have provided no undertakings to anyone in this matter because it has not been necessary. However, rest assured that we will not, have not, and will not ever discuss the facts surrounding this case with anyone as they are irrelevant to the issues of law that we have raised.

Tank Jowett Solicitors and Mr. Colin Nicholls QC are acting in our view contrary to the interests of the client and certainly wholly contrary to the interests of justice in this matter by a continuation of this attitude (on the legal issues only) and must consider their position accordingly.

It is our intention to publish this open letter since we are party, unwillingly, to a violation of the rights of DANIEL JAMES who came to us for advice and guidance first and we are responsible for the appointment of Tank Jowett Solicitors and Mr. Colin Nicholls QC.

In conclusion there will always be a time when colleagues differ in opinions but when the said difference affects and effects the interests of the client and the interests of justice no matter how amicable the relationship between professional advisors has been, the interests of the client and justice must always prevail. It is for these reasons that this open letter must be published despite requests to the contrary.

Yours sincerely

*Studio Legale Internazionale*

STUDIO LEGALE INTERNAZIONALE

GIOVANNI DI STEFANO

# TANK JOWETT

## S O L I C I T O R S

Baljit Tank LL.B Hons.   Simon Jowett LL.B Hons.   Rajesh Bhamm LL.B Hons.

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Italia

Our ref: SJ/James/5610.1

By email as an attachment

8<sup>th</sup> October 2008

Dear Giovanni

**Daniel James**

I have made the firm's and counsel's position clear on the issues that you raise. I would like to reiterate that we all have Mr James best interests at heart and are working hard in order to ensure he receives a fair trial.

I am not prepared to discuss the case with you.

I request that you remove the extract from the advice of Leading Counsel from the internet.

Yours sincerely

Simon Jowett  
Tank Jowett Solicitors

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**Mr. Colin Nicholls QC**, 3 Raymond Buildings, London

VIA FAX/RECORDED DELIVERY/ E MAIL

8<sup>th</sup> October 2008

Regina -v- DANIEL JAMES

Dear Simon (Jowett), David (James) and Colin (Nicholls):

We are in receipt of your letter dated 8<sup>th</sup> October 2008. As expected your letter exemplifies the arrogance of office and the misconception in law and general practice that is sadly predominant within our profession. The manner upon which you have permitted DANIEL JAMES to 'sign away' what little rights he had to a fair trial and access to justice beggars belief. We shall continue to protect the rights of DANIEL JAMES as best as possible but be in known that if this case results in a conviction, which invariable will attract a heavy prison sentence, be it on your consciences:- if you still have any left.

We are unable to even if we could withdraw our advice from the internet since as you may have noticed such advice was not published on our website or any website under our control.

Our correspondence will be published in as many outlets as possible in order that others are made aware of what irresponsible actions you have taken in this case.

Yours sincerely

*Studio Legale Internazionale*

STUDIO LEGALE INTERNAZIONALE

GIOVANNI DI STEFANO

# TANK JOWETT

## S O L I C I T O R S

Baljit Tank LL.B Hons.    Simon Jowett LL.B Hons.    Rajesh Bhamm LL.B Hons.

Michael John Smith

Our Ref: DS/5610/1/jb

Your Ref:

Date: 7<sup>th</sup> October 2008

Dear Mr Smith

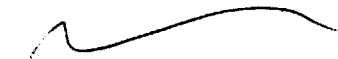
**Re: R v Daniel James**

It has recently come to our attention that a "legal argument" has been published on your website on 23<sup>rd</sup> September 2008, regarding the interpretation of the Official Secrets Act.

Please note that Counsel from 3 Raymond Buildings did not give permission for this document to be published amended or otherwise.

Please remove it from your website forthwith.

Yours faithfully



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