

## DANIEL DEEKS – Telephone Conversation #1 - Transcript

Receptionist: Good morning, Victoria Legal Services Board and Commissioner, how can I help you?

Peter Mericka: Uh, yes Peter Mericka speaking, could I speak to Daniel Deeks please?

Receptionist: I'll transfer you, one moment Peter.

Peter Mericka: Thank you.

Receptionist: Good morning, Victoria Legal Services Board.

Peter Mericka: Uh, hello, Peter Mericka speaking, I was after Daniel Deeks please.

Receptionist: And it's Peter?

Peter Mericka: Mericka.

Receptionist: Just one moment please.

Peter Mericka: Thank you.

Daniel Deeks: Good morning, Victoria Legal Services Board. This is Daniel.

Peter Mericka: Uh, hi Daniel. Peter Mericka speaking.

Daniel Deeks: Ah, hi Peter, how are you?

Peter Mericka: Yeah, not to bad. I just wanted to clarify a couple of things.

Daniel Deeks: Yep.

Peter Mericka: You know with that form of mine, when I've put it in?

Daniel Deeks: Mm-hmm (affirmative)

Peter Mericka: And I put "No" about anything that the Legal Services Board wasn't already aware of.

Daniel Deeks: Yep.

Peter Mericka: What was it that prompted you to call me about that?

Daniel Deeks: Uh, because we can see that there has obviously now been complaint in relation to some practitioners on our internal systems and if the practitioners didn't disclose that in the complaint then we contact the individual.

Peter Mericka: Right, cause that means that you did already know about the complaint so I was correct in saying on the form that there wasn't anything that you didn't already know about.

Daniel Deeks: Ah, but if you just refer to Rule 13 of the general rules. Then it'd be something that you should disclose on the renewal application. I don't know if you have a copy of the general rules there, but I can certainly read you the section. For the purposes of Section 45, in considering whether the applicant is not a fit and proper person to hold an Australian practising certificate the designated local authority may have regards to one of the following matters, and of the complaint, here's one of them.

Peter Mericka: Right. Okay, so when you became aware of that, that was through cross-checking was it?

Daniel Deeks: It was, yes, just through cross-checking, certain lists here, internally.

Peter Mericka: Right, and is that a routine thing?

Daniel Deeks: It is, yes.

Peter Mericka: And that's done every year?

Daniel Deeks: It is.

Peter Mericka: And were you doing that job last year?

Daniel Deeks: I wasn't here last year unfortunately, so I couldn't actually say. I wasn't in this role.

Peter Mericka: Right.

Daniel Deeks: I wouldn't be able to say unfortunately.

Peter Mericka: Because, see last year the situation was exactly the same. I had an open investigation last year and none of this stuff happened.

Daniel Deeks: Right, I imagine this has been something that has just been brought in, but I know that we are.

Peter Mericka: Right. Okay, and can I just ask, how come no one told me about this? I had to find out by ringing up to chase my practising certificate. I wasn't told. See,

you've called me up and you knew about this and you knew that it would prompt a decision making process about fitness to practise-

Daniel Deeks: Mm-hmm (affirmative)

Peter Mericka: But you didn't tell me that a decision had to be made about fitness to practise and that my practising certificate would be withheld until that decision was made. No one told me that. How come?

Daniel Deeks: I think when I did call you, I did explain that to you over the phone.

Peter Mericka: No, I had no idea. All I knew was that it was a mistake on the form that had to be corrected and you asked me to send an email. Basically you wanted me to send you an email, telling you something that you already knew.

Daniel Deeks: Regardless of whether you actually disclosed it or not it's stuff that we can take into account.

Peter Mericka: Right, yep. But I wasn't told at any stage that my practising certificate was going to be held up until a decision was made. I just wanted to know why I wasn't told and why I wasn't told about a date on which the decision was to be made. Is there a date on which this decision is going to be made?

Daniel Deeks: Not at present, it's currently with the manager of practitioner review, the application is. As I said if the decision isn't made by the 30th of June, you can continue to practise after that date, because you would have a deemed practising certificate. So there's no issues with you practising if you don't receive the certificate prior to the 30th of June, you can continue to practise. That is obviously, if a decision isn't made by the 30th of June.

Peter Mericka: Okay now, given that there is a decision making process there, in relation to there being an open investigation-

Daniel Deeks: Mm-hmm (affirmative)

Peter Mericka: Do I get any say? Do I get an opportunity to address the decision maker?

Daniel Deeks: I mean you can certainly put something in writing.

Peter Mericka: Yeah but isn't anyone going to ask me if I've got anything to say? Wouldn't I be told, we're making a decision about [crosstalk 00:05:51] fitness to practise do you want to make a submission on that?

Daniel Deeks: That is what's actually happening at the moment. So we are making that decision.

Peter Mericka: Yeah. But who tells me that I have to, or that I've got an opportunity to be heard? How am I supposed to know that I've got an opportunity to be heard?

Daniel Deeks: So, I mean what would happen is once the decision is made, we'll write out to you, give you a [crosstalk 00:06:19]

Peter Mericka: Yeah but it's too late then. Once the decisions made, I haven't had a chance to address the decision maker. That's not fair.

Daniel Deeks: I mean you could always put something in writing to me now if you like.

Peter Mericka: Yeah, but why wouldn't you tell me before the decisions made, that my practising certificates in jeopardy because there's an open investigation? I mean in the interest of fairness. Really if my practising certificate is being held up and then I inquire as to why its being held up and then I'm told it's because a decision is yet to be made about fitness to practise. Shouldn't I also be told, if there's anything you want to tell us about it you'll be given an opportunity before the decision is made?

Daniel Deeks: I mean on the renewal form it does refer you to Rule 13 in the general rules, which does say that we would take that into account.

Peter Mericka: Take what into account?

Daniel Deeks: The open complaint. It does actually refer you to Section 45 on the renewal form, so if you read the renewal form and it refers you to the general rules. Rule 13, which says that was can take into account the open complaint when assessing your fitness. So, if you actually read the form it does tell you on the renewal form.

Peter Mericka: Yeah, but- [crosstalk 00:07:38]

Daniel Deeks: You were advised at the time when you completed the renewal form, that we would take that into account.

Peter Mericka: Yeah, but what does taking it into account mean? Is it the mere fact that there's a complaint, which hasn't been substantiated? [crosstalk 00:07:53] I mean, is a decision made to withhold my practising certificate because someone has gone to the trouble of making a complaint?- It just seems unfair that-

Daniel Deeks: Once we've made a decision, I see that being made prior the 30th of June, we will write out to you. And if you want to have your say- [crosstalk 00:08:19]

Peter Mericka: But it's too late when the decisions made. It's too late then. Once the decisions made, it's all too late, isn't it?

Daniel Deeks: If for example we were going to take your certificate off you, then we would give you a preliminary review and you would have the chance to provide us with a written submission.

Peter Mericka: Hang on so, what's the decision that's being made?

Daniel Deeks: I'm not the decision maker, so I couldn't give you that information unfortunately.

Peter Mericka: So all I know is that some decision is being made, but I don't know what that decision might be and I don't know how I can address it or affect it in any way?

Daniel Deeks: [inaudible 00:09:00] receive correspondence from the board. Obviously you won't know what the decision is-

Peter Mericka: Yeah but I want to be able to influence the decision. I want to be able to say well hang on a second, this whole process isn't fair. [crosstalk 00:09:12]

Daniel Deeks: Again, if the your certificate was to be made, then we would give you the option to then provide written submission to the board.

Peter Mericka: Right, so what would they, this is the legal services board-

Daniel Deeks: That's right, yep.

Peter Mericka: Would write to me and say, we've made a decision about your practising certificate-

Daniel Deeks: That's right. So if the decision was negative towards you, for example if we were to suspend or take your certificate off you. Then we would provide you with a preliminary review, which we would send out the reasons for that and they give you the opportunity to respond by written submission back to us.

Peter Mericka: Right, okay. So, does that happen in every case where there's an open investigation- Like, you don't wait for the investigation to conclude before making decisions about it? If the decisions made-

Daniel Deeks: I think it would be wrong for us to make a decision on your fitness until the open investigation has been completed. Until a decision has been made on the open investigation.

Peter Mericka: Okay, so no decision will be made until the investigations concluded?

Daniel Deeks: That possibly be what will happen, yes.

Peter Mericka: Right, okay. Is this the normal process?

Daniel Deeks: It is yep.

Peter Mericka: Right, so the practitioner is put on tenter-hooks with regard to their- Wouldn't it be better to simply say to the practitioner, look once this investigations concluded, we may have to look at your holding of a practising certificate, whether that should be affected.

Daniel Deeks: Mm-hmm (affirmative)

Peter Mericka: But I mean, I've been through this process before and that's what's happened. But the reason I'm having this conversation with you is that it seems to me that this is a way of putting pressure on me. Because, I've told you that the Legal Services Commissioner is the subject of a formal complaint that I've made about him to the Victorian Ombudsman.

Daniel Deeks: I wasn't aware that there's been a complaint and I don't know- Does the commissioner know that you've put in a complaint about him?

Peter Mericka: Oh, I told you that the other day when I spoke to you on the phone.

Daniel Deeks: I know you told me, but I wasn't aware at the time or prior to you telling me [crosstalk 00:11:42]-

Peter Mericka: And I told you, I expressed surprise that the Legal Services Commissioner, being the subject of a complaint, would now be threatening my certificate in this way. You see, it just seems to be a way of putting pressure on me so that I might do some sort of deal [crosstalk 00:12:05]

Daniel Deeks: Yep. What I think will probably happen is that, that decision won't be made until the current matter has been resolved. I think that's what's going to happen.

Peter Mericka: Right, well why not just leave my practising certificate alone and have it issued to me and then take it away if and when it becomes necessary? Why put all this pressure on me?

Daniel Deeks: Because you can have a deemed certificate. So if you just have that deemed certificate you can continue in force, so your current certificate continue in force for the time being, and then- [crosstalk 00:12:35]

Peter Mericka: Yeah, but that's not what I'm asking about Daniel. I'm talking about the pressure that this puts on a person, when they don't have their prac- Like, the first I knew about this was I didn't have my practising certificate and I didn't know why. So I inquired and then I was told it's because there's this open investigation. Why not just leave it all alone, wait until the investigation's finished? Because if the whole investigation comes to naught, then I've been put under all of this pressure for no good reason.

Daniel Deeks: I mean it's just the usual course of action that the board takes. If there's an open investigation [inaudible 00:13:16], then we usually would just hold off on making an assessment as to whether the practitioner is fit and proper until the [inaudible 00:13:26] matter has been resolved.

Peter Mericka: Yeah, see the reason I sort of find it all a bit suspicious is because last year none of this happened.

Daniel Deeks: Mm-hmm (affirmative).

Peter Mericka: There was no suggestion of anything like this last year and the investigation last year. This investigation now, are you aware of it?

Daniel Deeks: I'm not really aware of it unfortunately.

Peter Mericka: Yeah okay, well the investigation at the moment is because I wrote to Gadens Lawyers and told them that their conduct amounted to misleading and deceptive conduct. Right, so they put in a complaint. So it's a pretty petty sort of thing, as compared to what was happening last year. Last year, the Legal Services Commissioner had a complaint that I had accused another lawyer of a serious criminal offence of dishonesty, namely blackmail. Right?

Daniel Deeks: Mm-hmm (affirmative).

Peter Mericka: Now there was no threat to my certificate, the certificate was processed, none of the nonsense came up and at the end of the process the complaint against me was dismissed. Right, now I didn't have to go through any angst or upset over my practising certificate with that issue, which was much more serious than this one. And yet, I'm having all of this upset and this process of my certificate not being issued and me having to chase it up and find out that a decision has to be made and all that sort of thing. The only difference between the situation last year and the present is that I happened to have put in a complaint against the Legal Services Commissioner with the Ombudsman, and that's why it seems to me that this process has been initiated. Not because it was necessary, but in order to make things difficult for me, in retaliation for my having complained about the Legal Services Commissioner.

Daniel Deeks: I mean, that's certainly not the case.

Peter Mericka: Well how do you know that's not the case?

Daniel Deeks: If there was a conflict then I think that the decision has to be made by someone else in the office, but you know, that's something that we'd have to look into-

Peter Mericka: Well see this process- We didn't have this process last year. In exactly the same circumstances last year this did not happen.

Daniel Deeks: Yep.

Peter Mericka: Is it something that's been introduced since then? Or is it something that's been introduced just for me?

Daniel Deeks: No, we do have a list of all practitioners that have a complaint against them, and we have contacted them-

Peter Mericka: Right, well why wasn't I contacted last year?

Daniel Deeks: As I said, I wouldn't be able to say unfortunately, why you weren't contacted last year, because I wasn't working in this position.

Peter Mericka: Okay, look can I ask you to find out for me please?

Daniel Deeks: I can find out and I'll give you a call back.

Peter Mericka: Yeah that'd be much appreciated. Okay, thanks Daniel.

Daniel Deeks: Thanks. Bye.

Peter Mericka: Bye.