

## DANIEL DEEKS – Telephone Conversation #2 - Transcript

Daniel: [inaudible 00:00:01] Sooner.

Peter: That's alright.

Daniel: So, in relation to your query, you had a query as to why the board didn't chase you up the last year in relation to the complaint. As I said, I wasn't actually here last year. So, I couldn't give you that answer. Basically, this is the way that things are done this year so we're chasing up applicants who have open complaints. And if they didn't disclose them then we will notify them that they need to disclose it. I can't really comment on last year unfortunately because, as I said, I wasn't here. It's just the way that we're doing things this year.

Peter: So, was that procedure in place last year?

Daniel: I don't believe it was, no. If I had to [inaudible 00:00:44] it just, perhaps, slipped through and we weren't notified of it at that point last year.

Peter: What slipped through last year, sorry?

Daniel: I mean, perhaps, I don't know because obviously we get the information from the commissioner's office. So, whether we just weren't notified of it last year in relation to the open complaint and that's why we never chased you up. I don't know how weren't made aware of that open complaint and why we didn't contact you last year unfortunately. But-

Peter: So, if you had been contacted you would've followed it up?

Daniel: We would. Of course, we would've, yep.

Peter: If it had been followed up then my practising certificate would've been withheld until after the matter had been finalised?

Daniel: The determination would have to be made on a case by case basis but potentially yes.

Peter: So, that's just a slip up that last year you weren't notified?

Daniel: It's not necessary, we're holding up your certificate, as I said, we, a decision hasn't been made in relation to ... It's currently with the manager of practitioner services awaiting review.

Peter: Who is the manager of practitioner services?

Daniel: Well, it goes through three people first of all, so, it goes through the assistant manager, the manager, and then it will go to the commissioner. Whether it will go to the commissioner in this case, I don't know.

Peter: Why would it not?

Daniel: Because of your comments and the concerns that you've raised.

Peter: Because of the conflict?

Daniel: Because of the, yep, the concerns that you've raised previously. You know-

Peter: Because if he's in a position of conflict-

Daniel: Well, yep, I agree. I-

Peter: Sorry?

Daniel: It may have to go to the board or it could be signed off. Because the manager of practitioner services does have the delegation to assess if some of this isn't proper.

Peter: Who is that person?

Daniel: Her name is [Shirley Joseph 00:02:43].

Peter: Right, and who's the other person you mentioned? There was another one as well.

Daniel: The assistant manager.

Peter: And who's that?

Daniel: [Sarah Abelardo 00:02:53].

Peter: But it seems like it's, sort of, a Chinese wall situation. The legal services commissioner is in a position of conflict and yet he still has people over whom he has supervisory authority making decisions. But they'd be making a decision with one eye on him as their supervisor.

Daniel: I really can't comment on their position to comment on that but what I would say is if you have got those concerns you can put them in writing to-

Peter: But you know what I mean by the concept of the Chinese wall?

Daniel: I can see what you mean. But as I say, I can't really comment on that. But if you want to put that in writing to me, and then I can pass it on.

Peter: But who would I complain to given that McGarvie is the head of the place and he's the one who stands accused, and he's the one who's in a position of conflict? Who would I complain to about him being in that position of con ... Because, I mean, obviously the guy is not recognising that conflict himself. Either that or he recognises it but he's chosen to ignore it. Which just compounds the situation because if he's in a position of conflict and refuses to step aside it indicates that he's very, very, determined.

Daniel: If the commissioner isn't making the decision it can always go to the board and then the board can assess the renewal application if necessary. So, that will be, I don't quite remember how many people are on the board, but I think roughly eight individuals. And they will make the determination.

Peter: But is that what's going to happen or is that just a possibility?

Daniel: It's just a possibility. I'm just giving you the options here. As I said, no determination has been made yet [Peter 00:04:58]. So, you should probably just wait and see, wait for the outcome of the renewal application first of all before raising these concerns.

Peter: I suppose the reason-

Daniel: If necessary, it could be issued to you so, really-

Peter: But when would it be issued?

Daniel: I really wouldn't want to put a timeframe on it unfortunately.

Peter: So, I'm in limbo for the foreseeable future. I've got this ... two charges of professional misconduct that are coming up. That's going before VCAT. Now, my understanding from what you've been telling me this morning is that the decision about my practising certificate won't be made until after the VCAT decision?

Daniel: That's just one option, whether they can issue the certificate, as I said, it's currently with the manager of practitioner services, making that determination.

Peter: So, it could be issued before the VCAT hearing and then a further decision made in light of the VCAT hearing? But the decision to withhold it entirely wouldn't be made until after the VCAT hearing?

Daniel: No, so if, no. We're gonna write out to you either way. I would hope that it would be some time in the next few weeks. [inaudible 00:06:27] I'm hoping that we can write out to you sooner, possibly next week. I just don't want to put a timeframe on it because I don't want you to-

Peter: What I'm concerned about though is I don't want to lose my practising certificate before the VCAT hearing because if the charges are dismissed, as I expect them to be, I don't want to have lost my certificate in the mean time. So, I just want assurance that that decision won't be made until after the VCAT hearing.

Daniel: So, as I say, a decision will need to be made to grant you your renewal. So, we'll give you the renewed certificate. What decision will be made to just withhold the renewal for now, until the decision has been made, and then make a determination on your fitness once VCAT have made their decision. What I think will probably happen is that, well actually I probably shouldn't really say what I think would happen because I'm not the decision maker. So, I wouldn't want to give you any sort of false information. So, it's probably best to just wait until you receive the letter from the board in relation to the renewal application.

Peter: But the important thing for me is, I have a right to be heard. And so, I don't have to worry about making any submissions before the VCAT application, before the VCAT hearing's done. Because I'll be notified after the VCAT hearing that, it's being, my practising certificate's being considered and then I'll be given an opportunity to address that.

Daniel: That's right. So, either way we're gonna write out to you in the next few weeks. So, we'll either grant you the certificate or we'll write back to you telling you that, "Whilst the VCAT matter is still being processed, it's still being asse ... The VCAT matter is still ongoing. Then we will not be renewing the certificate at present, and we will just give you the deemed certificate for the time being until the VCAT matter has been finalised."

Peter: So, I don't have to try and convince anyone that I'm entitled to the certificate until after the VCAT hearing?

Daniel: That's right. As I say, we might be determined, the determination could be made by the manager of practitioner services that we're just gonna grant you the certificate. So, you'll receive correspondence in the next week or so I would imagine. I would hope.

Peter: But I just wanted to clarify that I don't have to try and justify getting a certificate until after the VCAT hearing.

Daniel: That's right.

Peter: Well, look. Thank you very much for that [Daniel 00:09:14].

Daniel: That's okay.

Peter: Okay, bye.

Daniel: Thanks so much. Bye.

Peter: Bye.