

## INVESTIGATION REPORT

Date	27 February 2023
Complaint number	CMP-01121
Complainant	Mr Peter Mericka
Tribunal member	Member Ussher
Jurisdiction	Victorian Civil and Administrative Tribunal
Proceeding number	J76/2021

### The Complaint

1. On 20 May 2022, the Judicial Commission (the **Commission**) received a complaint (the **Complaint**) from Mr Peter Mericka (the **Complainant**) about the conduct of Member Ussher (the **Officer**).
2. The Complaint alleges that the Officer ‘committed serious criminal offences of dishonesty and has used his position and his close relationship with the Victorian Legal Services Commissioner ... to stalk [the Complainant] and to pervert the course of justice.’
3. The Complaint characterises the Officer’s conduct in other broad ways, although does not clearly identify the conduct said to demonstrate the overarching allegation. At a minimum, the Complaint alleges that in the period of 2012 to 2021, the Officer:
  - attempted to defraud the Complainant of more than \$10,000;
  - made ‘false complaints’ about the Complainant to the Victorian Legal Services Commissioner on three occasions; and
  - on two occasions, sent the Complainant correspondence threatening defamation action.

### Investigation

4. The Complainant is a legal practitioner and makes serious allegations about the Officer’s conduct before and during the Officer’s appointment to the Victorian Civil and Administrative Tribunal (**VCAT**). On the face of the Complaint’s ‘opening statement’, the Commission was satisfied that the Complaint warranted further consideration in accordance with section 16(1)(b)(ii) of the *Judicial Commission of Victoria Act 2016* (the **Act**). Section 16(1)(b)(ii) of the

Act states that the Commission must dismiss a complaint unless satisfied the conduct of the Officer *may* have infringed the standards of conduct generally expected of a tribunal member.

5. On 24 May 2022, a Commission officer contacted the Complainant by phone to clarify aspects of the Complaint.
6. On 1 August 2022, the Commission requested the tribunal file for *Mericka v Victorian Legal Services Board (J76/2021)* for the purpose of investigating the Complaint. VCAT indicated that the file was with the member presiding in J76/2021 and could not be provided until a later time.
7. In late 2022, the Commission learned from VCAT's *Annual Report 2020–21* that the Officer's role as a member ended on 30 June 2022.

### **Mandatory dismissal of the Complaint**

8. The Act provides a process for investigating complaints about active judicial officers and VCAT members. The Commission has no ability or discretion to continue investigating a complaint about former judicial officers or VCAT members.
9. Section 16(3)(e) requires the Commission to dismiss a complaint if the Commission is satisfied that the officer concerned has resigned or retired and is no longer a VCAT member. The Commission is so satisfied. Accordingly, the Complaint must be dismissed under section 13(2)(b) on the ground that section 16(3)(e) applies.