



From: admin (lsc)
Sent: Monday, 18 February 2013 9:41 AM
To: Cara O'Shanassy
Subject: FW: Corruption Complaint (COM-2012-1380)
Importance: High

Administration| Legal Services COMMISSIONER

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From: Peter Mericka [mailto:PeterMericka@lawyersrealestate.com.au]
Sent: Monday, 18 February 2013 9:33 AM
To: admin (lsc)
Subject: RE: Corruption Complaint (COM-2012-1380)
Importance: High

Dear Ms. O'Shanassy,

I note that you have not replied to my request for an extension until 28 February, 2012. Your previous email to me was quite unhelpful, and gave me the impression that you are impatiently waiting for me to give you the opportunity to declare that you have my response and that I have failed to satisfy your requests pursuant to Section 4.4.11(a)(a) and (b) of the Legal Profession Act. I should declare at this stage that I do not believe that you have the jurisdiction to make such demands when they relate to a matter that was raised by me in personal capacity as a litigant, victim of corruption and director of an incorporated entity, and not in any professional capacity. However, I will place the jurisdiction issue to one side for the time being.

As I have no more time in which to prepare my response, I now submit my working draft. While the material is only a draft, I believe that it contains sufficient information on which to base a much broader and more comprehensive investigation into the matters raised as a result of the Chief Justice's writing to you on 16 November, 2012.

Introduction

You have asked about the reasons my writing to the Chief Justice on 29 May, 2012. The immediate reason for my sending this letter was a letter written to me on behalf of Dr. Claire Noone, Director of Consumer Affairs Victoria, and an angry telephone call to my lawyer from Mr. Blair Ussher, General Counsel Consumer Affairs Victoria. However, it is also important that you understand that the behaviour of Dr. Claire Noone is linked to a decade of improper conduct on the part of CAV, culminating in the Supreme Court matter before Sifris J., and leading to the compounding of the corrupt conduct by the Chief Justice.

Please regard this email as a formal written complaint to the Legal Services Commissioner of corrupt conduct perpetrated by the Honourable Chief Justice Marilyn Warren. The basis of my complaint is that the Chief Justice received a written report/complaint of corruption having been laundered through the Supreme Court of Victoria, but failed to acknowledge the complaint, failed to investigate the complaint, summarily dismissed the complaint and then sought to have the complainant discredited by causing an investigation to be initiated by the Legal Services Commissioner the purpose of which was to find a basis on which her dismissal of the complaint could be retrospectively justified. It is submitted that the conduct of the Chief Justice amounted to a corrupt "cover-up" and constitutes conduct unbecoming a member of the legal profession and an officer of the Supreme Court of Victoria.

There are three main parts to this issue:

1. Corrupt conduct on the part of Consumer Affairs Victoria;
2. The laundering of the corrupt conduct through the Supreme Court of Victoria (i.e. through the court of Sifris J.); and
3. Corrupt conduct on the part of the Chief Justice in her improper handling of the complaint contained in my letter of 29 May, 2012.

Each of these matters, while linked to the others, requires careful investigation of a kind that I believe is beyond the competence and expertise of your office. However, I have lodged my complaint with your office in order to satisfy the questions raised in your letter of 16 November, 2012, to place on record my formal written complaint, and to commence the process by which a full and proper investigation will be undertaken.

At this stage I will focus on the conduct of the Chief Justice. What follows is a description of the events that led to my writing my letter of 29 May, 2012. I believe that the information set out below gives rise to a reasonable suspicion that the Chief Justice has acted corruptly and that her conduct indicates the likelihood of her having collaborated with others in an attempt to pervert the course of justice.

I would suggest that the first avenue of enquiry in this matter should be the circumstances surrounding the writing of the letter dated 22 May, 2012 by Mr. Blair Ussher on behalf of Dr. Claire Noone, Director of Consumer Affairs Victoria.

Background

Before discussing the letter from Consumer Affairs Victoria that prompted my writing to the Chief Justice, I should provide a brief background to the matter.

A little over 10 years ago, I began offering clients assistance in the sale of residential real estate. In effect, my service was no more than the usual conveyancing services offered by a lawyer, but with the elimination of the estate agent from the sale process. This meant that the client would obtain a formal written valuation, determine a sale range based on the valuation, show potential purchasers over the property and execute the contract of sale. I would assist the client by ordering a sign to be erected at the property, and passing on enquiries received from potential purchasers. I would also arrange for details of the client's property to be uploaded to the websites of www.realestate.com.au and www.domain.com.au.

Local real estate agents, concerned about the challenge my service represented to their monopoly, sought to have Consumer Affairs Victoria prevent me from competing with them. After a number of investigations and threats of prosecution, Consumer Affairs Victoria informed me that they did not have evidence on which they could base a prosecution, that no further investigations would be undertaken, and no legal action would be taken against me. I sought advice on what procedures I should adopt or actions I should cease in order to satisfy Consumer Affairs Victoria, but my requests were refused and no advice was offered. However, I was told that Consumer Affairs Victoria did not want me to offer my services. Over the years Consumer Affairs Victoria created difficulties for me, to the point that I insisted that they take legal action against me or confirm that they had no concerns about my services. Consumer Affairs Victoria refused on both counts. After I had experienced further difficulties and refusals to prosecute, including my being unfairly named in Parliament by The Hon. Bruce Atkinson MLA, I complained to the Minister for Consumer Affairs Victoria that the conduct of his department constituted a form of corrupt conduct.

Instead of dealing with my complaint in accordance with the *Whistleblowers Protection Act 2001*, the Minister delivered my complaint direct to the party about whom I had complained – Dr. Claire Noone, Director of Consumer Affairs Victoria. Dr. Noone wasted no time in finding a pretext for launching Supreme Court proceedings against me (“the Mericka Case”), on bases never previously raised, and without any warning whatsoever. The proceedings were initiated as a direct reprisal for my corruption complaint (a criminal offence in and of itself – see Section 18 *Whistleblowers Protection Act 2001*), and were commenced contrary to the **Consumer Affairs Victoria Compliance and Enforcement Policy** and the **Model Litigant Guidelines**.

The hearing before Sifris J. was a sham; a view I formed as the matter proceeded and which I will discuss further at a later time. In the meantime, I refer to a communication from my lawyer, Mr. Tim Dixon, in which he informed me that my barrister Mr. Nimal Wikramanayake S.C. (described in the Journal of the Law Institute of Victoria as ‘*a chartered arbitrator and accredited mediator, and author of Voumard’s The Sale of Land...is a Judge of the Court of Appeal in Fiji*’) and a lawyer who can be regarded as an

expert in litigation procedure and the conduct of judges, was “*convinced*” that Sifris J. had decided the outcome of the case before proceedings had commenced.

The decision in the Mericka Case was seen by Consumer Affairs Victoria as an opportunity to destroy my business and personal and professional reputation. Even the Legal Services Commissioner himself took the opportunity to attack me in what I regard as his own contribution to the corrupt campaign to vilify me, and the LSC website continues to display false and misleading information about the Mericka Case and its outcome. (I will deal with this as a separate complaint at a later time). Material displayed on various pages of the Consumer Affairs Victoria website portrays me as a person who has sought to evade or defy the law, rather than a business owner who took a stand against a government department in response to corrupt conduct.

As a result of Sifris J’s decision in the Mericka Case, I was ordered to publish an advertisement in two local newspapers for two consecutive Saturdays. The Director of Consumer Affairs, in what can only be described as an example of open hostility and malice, insisted that the advertisements were to be published before the appeal period had concluded. The orders were submitted to the newspapers exactly as prepared by Consumer Affairs Victoria, but during the production process newspaper staff overlooked the use of bold type for my name and that of my firm. The Director then waited until the advertisement had appeared for a second week before notifying me that my name and that of my firm did not appear in bold type, and this constituted a contempt of court. (The only reason for this being an issue, I submit, is that the Director was concerned that my reputation would not be sufficiently damaged unless the names were more prominent.) Similarly, the fact that I placed an advertisement of my own after the ordered advertisement seemed to infuriate the Director, who then attempted to argue that this constituted a breach of the Court’s order and was therefore a serious contempt of court.

The Director of Consumer Affairs Victoria then ordered Mr. Blair Ussher to initiate contempt proceedings unless I gave an undertaking that amounted to an admission that I had deliberately acted in contempt of the Supreme Court. Knowing that Sifris J. would unhesitatingly find me guilty of Contempt of Court, I wrote to the Chief Justice in an effort to have Sifris J. disqualified. I did not expect that the Chief Justice would take action to have the Director abandon the contempt proceedings. Nor did I expect that the Chief Justice would join the campaign of vilification in order to eliminate me as a future threat.

This is but a brief background, and it should not be regarded as a full examination or explanation of the 10 year history of my dispute with Consumer Affairs Victoria.

Letter dated 22 May, 2012 from Consumer Affairs Victoria to Peter Mericka

On 22 May, 2012 Mr. Blair Ussher, on behalf of Dr. Claire Noone, wrote to my lawyers alleging that “*your clients have not published the notice (pursuant to the final order of the Supreme Court)...*”. Mr. Ussher also inferred that this amounted to a serious contempt of court:

“As you know, publishing court ordered notices with additional, non-sanctioned statements is seen by the courts as a serious contempt.”

Mr. Ussher stated that,

“There can be no excuse for a member of the legal profession to have behaved in this manner.”

Upon reading these passages I formed the view that Dr. Noone was adopting a strategy of deliberately misrepresenting the situation, that she was falsely asserting that I was deliberately in contempt of the Supreme Court, and that no explanation or excuse would be accepted in response.

The letter set out Dr. Noone’s demands,

“...the Plaintiff requires your clients to furnish written undertakings in the following terms:

- 1. that the publication of the corrective notice will be strictly in the form ordered by the Supreme Court and set out in Schedules A & B to the order made on 26 April 2012;***
- 2. the correct notice will be published in the respective newspapers on two consecutive Saturdays as required by the order made on 26 April 2012.***

These undertakings must be provided by no later than 4:00pm on 23 May, 2012.”

The demands were backed up with the certainty of contempt proceedings being initiated:

“Should the undertakings not be provided, such proceedings will certainly be initiated.”

The allegations made in the letter were a nonsense, and entirely false. I had provided a copy of the advertisement, in the exact form ordered by the court, to each of the newspapers. I had also ordered that my own advertisement, to be placed below the court ordered advertisement, with instructions that it should be

quite separate and distinct and set within its own box on the page. According to newspaper staff, the boxes surrounding each of the advertisements were separate and distinct, but in order to save space no "white space" had been left between the two boxes. In other words, the two separate advertisements were contiguous but quite separate and distinct.

The only difference between what was published and what had been ordered was that my name and that of my firm did not appear in bold type. It is my view that it was Dr. Noone's intention that my reputation and that of my firm should be damaged by the advertisements, and that this had been diminished by the lack of bold type.

Effect of the letter from Consumer Affairs Victoria

I was satisfied that no contempt of court had been committed, and that Dr. Noone could never establish a *prima facie* case of Contempt of Court. I regarded the letter from Mr. Ussher as a form of extreme bullying and harassment. It also included all of the essential elements of an extortion:

1. There was an unwarranted demand – the publishing of orders in addition to those published pursuant to the order of the Court was not something Dr. Noone was entitled to "**require**".
2. The demand was accompanied by menaces – the threat "**Should the undertakings not be provided, such proceedings will certainly be initiated**" was clearly calculated to cause me to panic, and to accede to the Dr. Noone's demand by delivering the "required" undertakings by 4.00 p.m. the following day.
3. The purpose of the demand and menaces was to cause me loss (in the form of advertising costs in the vicinity of \$10,000), as well as serious damage to my business and personal reputation. It should be noted that I was not taken to task immediately; Dr. Noone waited until the advertisements had already appeared a second time before contacting me.

Although an extortion of this nature is not blackmail of a criminal offence pursuant to Section 87 of the *Crimes Act 1958* without the element of intent to cause loss (quaere whether demanding advertising expenditure constitutes an intent to cause loss sufficient to satisfy this element), it is nonetheless a form of blackmail and highly improper.

I later realised that Dr. Noone's demand was not simply an attempt to cause me damage and financial loss; it was also an attempt to force me to make admission to my being in contempt of court. Had I acceded to Dr. Noone's demands she would also have been in a position to inform the Legal Services Commissioner of my having accepted that I had committed "**a serious contempt**" for which "**there can be no excuse for a member of the legal profession...**".

It also occurred to me that, in order for Dr. Noone to be in a position to make these demands, she would have to have the support of the Supreme Court and the Legal Services Commissioner. This is because, in order to be able to implicitly promise no further action in return for my acceding to her demands, Dr. Noone had to be able to promise, not only that she would not proceed with contempt proceedings, but also that no-one else would initiate proceedings independently of her or criticise her for usurping the roles of the Supreme Court and the Legal Services Commissioner.

My experience with the office of Consumer Affairs Victoria and Dr. Noone over the past decade had been most unpleasant. While I had made numerous requests for assistance in compliance, Consumer Affairs Victoria had refused each request. When I demanded that Consumer Affairs Victoria should prosecute me if they genuinely believed that I was in breach of the law, they refused. I was permitted to operate my business in the same manner for 10 years, but with subtle forms of harassment as mentioned in the material that accompanied my letter to the Chief Justice. It was only when I lodged a corruption complaint against Consumer Affairs Victoria and Dr. Noone that the proceedings were commenced in the Supreme Court. Even then, the proceedings were without warning, based on issues not previously raised by Consumer Affairs Victoria, and contrary to established procedural and prosecutorial guidelines (these are published in detail on the Consumer Affairs Victoria website). In addition, the provisions of the *Whistleblowers Protection Act 2001* were completely ignored.

Given the history of malice and obstruction, and the initiating of legal proceedings, the purpose of which had more to do with punishing me than in protecting consumers, I regarded Dr. Noone's message to me as an escalation in the attempt by Consumer Affairs Victoria to destroy my business and my reputation (this would later be confirmed by Mr. Blair Ussher in his angry telephone call to my lawyer).

When I discussed the matter with my lawyer, Mr. Tim Dixon of Stynes Dixon Lawyers, he told me that I had to realise that this was not a matter limited to the law; rather, I was experiencing what happens when an individual comes up against a bureaucracy with the enormous influence, power and financial resources.

Although I did contact the newspapers about the advertisements, I instructed Mr. Dixon to inform Consumer Affairs Victoria that I would not provide the demanded undertakings, and that I believed that Consumer Affairs Victoria was seeking to persecute me by undertaking a course of bullying, harassment and hounding.

A copy of Mr. Dixon's letter to Mr. Blair Ussher, specifically alleging bullying and harassment, is attached.

Angry telephone call from Mr. Blair Ussher

After sending my response to Mr. Ussher, my Mr. Dixon received an angry telephone call from Mr. Ussher. Mr. Tim Dixon then telephoned me and told me that he had received a telephone call from a

furious and abusive Mr. Ussher. According to Mr. Dixon, Mr. Ussher had been extremely threatening, demanding that I provide the undertakings referred to in his letter of 22 May, 2012 and that if I did not I would be “crushed”, my business ruined and my reputation destroyed. The impression conveyed by Mr. Dixon was that Mr. Ussher was almost hysterical with rage, would not let Mr. Dixon speak and indicated that Consumer Affairs Victoria would stop at nothing in its efforts to destroy me. After the call had concluded, Mr. Ussher apparently realised that he had gone too far, and called Mr. Dixon again to apologise for “venting”.

My immediate response, when Mr. Dixon had told me of his conversation with Mr. Ussher, was to instruct Mr. Dixon to ensure that he had comprehensive and contemporaneous diary notes of the conversation, then to put these details into a letter to Mr. Ussher, to put these things to Mr. Ussher and to have Mr. Ussher explain his behaviour. I told Mr. Dixon that this was extremely important, as Mr. Ussher’s behaviour went some way to confirm that Consumer Affairs Victoria was determined to damage my business and my reputation and was consistent with my complaints regarding corrupt conduct on the part of Consumer Affairs Victoria over previous years.

Unfortunately, Mr. Dixon did not follow my instructions. I believe that Mr. Dixon felt intimidated by Mr. Ussher. He may also have feared being called to give evidence about the matter at some time in the future. In any case, Mr. Dixon called me back to explain that he could not accurately recall the conversation in sufficient detail to be able to follow my instructions. I told him to write down what he had told me, and to put it to Mr. Ussher. Later that day Mr. Dixon sent me a draft email as follows:

“Proposed email to Blair Ussher

Blair,

I refer to our conversation earlier today.

As you requested, I have sought instructions from my client as to whether the advertisements in the newspapers would be in the exact form of Schedule B or in the form in which they last appeared as were slightly altered in the newspapers’ production processes. I am instructed that, as has been previously advised, the deadline for such advertisements closed last Monday and my client is not now able to change them. Accordingly, the advertisements will appear in the same format as those previously published.

I have notified my client of your opinion that he is “a lunatic,” is deliberately in contempt of the court orders, is acting unprofessionally and that you will take action against him which will ruin his career and his practice as a lawyer. You advised me that you were very angry with him.

He disagrees with your views and instructs me that he has no intention to flout the court orders and his wish is to practice as a lawyer without interference. He simply does not have the resources to put toward further publication of advertisements which were altered by the newspapers without his prior knowledge and consent.

I have counselled Mr Mericka against continuing to fight against a bureaucracy with as much influence, power and financial resources as yours.

I do not think there is much more I can honestly say. Let me know."

I replied to Mr. Dixon,

"Hi Tim,

Did he not say that I should be "crushed" and that they "will ruin my career"? What you are proposing is more along the lines of a mere observation than intention.

If he said things to the effect that they intend to bring about these things then I really need to have that put back to him."

Mr. Dixon telephoned me to apologise for not having taken any notes of the conversation, and for not being able to put the conversation to Mr. Ussher as I had instructed. After the telephone call I sent Mr. Dixon the following email:

"Hi Tim,

I am sorry, but I have to tell you that you have dropped the ball on this. As to how is a matter for you, but I have to write this email in order to purge myself of churning emotions that I am experiencing over yesterday's events and the email below.

Yesterday afternoon you telephoned me to say that you had received a call from Blair Ussher, that Ussher was "ranting" to you about me and that he was very angry. You told

me, "he said you're a lunatic" and "he said that they are going to crush you" and "he said that they are going to ruin your career".

You will recall that I immediately instructed you in the following terms. "I want you to take a diary note of that conversation, stating Ussher's own words back to him, and send it to him straight away so that he can give his response to it. I want you to use his exact same words in inverted commas. This is what the whole matter has been about from the very start, and now he's admitting it." You agreed that you would follow these instructions.

When I hung up from speaking with you I was pleased and excited. I told Nicki about our conversation. Jeanette was on another phone, so I couldn't speak with her immediately, but she could see that I had some important news for her and she sought me out as soon as she finished her telephone call.

When I relayed to her what you had told me she was upset that Ussher would say such things and was so openly hostile, and she did not immediately understand why I was pleased. I explained to her that we finally had Ussher, on behalf of CAV, admitting to you personally that CAV's agenda was not the enforcement of laws for consumer benefit, but the crushing and destroying of me and my business. I told her that I had instructed you to immediately take a diary note of the conversation, to give Ussher a chance to respond, and to send copies of both your communication with Ussher and his response to me. Jeanette was elated.

Then we received your email.

On reading your email I immediately noted that you had completely backed away from what you had told me over the telephone, and had framed the email in such a way that it did no more than to confirm that Ussher was angry as he blurted out some observations about the consequences of my refusal to publish another set of advertisements.

I telephoned you and asked about the change of position, and you explained that your recall of the conversation with Ussher was not that good after all, that you could not remember precisely what he had said, and that you could not be sure that what you had told me was no more than your impressions of what Ussher had said. You told me that you hadn't realised the importance of what Ussher was saying and hadn't considered it necessary to take a diary note at the time. I said to you, "Tim, this was the keystone of the whole matter. We have been saying all along that CAV is not acting to protect consumers and that they're just after me to shut me down." You told me that next time you spoke to Ussher you would record the conversation on your Dictaphone. I then went on you counsel you over the Listening Devices Act and the need to ensure that contemporaneous notes were taken. You corrected me and told me that there is no breach of the Act if the

Dictaphone is used merely as an aid memoir for the making of written notes. I accepted this.

We then discussed the value of sending Ussher the email you had written, and I told you that it was pointless as it did nothing more than confirm back to him some warnings or observations he had offered. I instructed you to send the first paragraph only.

Tim, I understand that mistakes can be made, but this one has been an extremely damaging one for us emotionally. Why? Because Jeanette and I know that there are two possible reasons for the difference in the information relayed to me in the telephone call and what you put in the email below:

1. You were swept along with Ussher's anger and the tone of his comments, failed to properly listen to what he was saying, and reported to me as fact something that may or may not have been an accurate restatement of his comments without considering the import of what you were telling me. Having been made aware of the importance of the conversation, and without having made a diary note of it, you became confused as to whether what you had told me was an accurate account of your conversation, or something you had simply made up after the event on the basis of your impressions. In any event, you are not in a position to give evidence of what Ussher told you. The "dropping of the ball" in this scenario would be your passing on as a verifiable fact an account of a that could not be verified at all.

or

2. You came to your senses after telling me about Ussher's comments, and realised that your role had suddenly changed from that of passive adviser to that of weapon-wielding champion, and that you would be called upon to give evidence of your conversation with Ussher. This carried with it a number of serious implications, including your being cross-examined and having your own credibility tested etc. etc. A lapsing or "fogging" of the memory, and our disappointment as expressed in 1. above would be infinitely more bearable – bitter medicine swallowed quickly, rather than risking your own credibility and professional standing over a long period of time.

Only you can know which of these scenarios best describes what has happened, and of course my preference is to go with 1. as I could not continue with you as my legal representative if I were to believe 2.

Mr. Dixon replied as follows:

“Peter,

I now respond to this morning’s email. Clearly, you spent much of last night thinking about the things which you have set out.

I did tell you yesterday that I had been telephoned by Blair Ussher and essentially all of what occurred during the call.

My recollection is as follows: (paraphrasing) I told you about the substance of his call which was to do with the advertisements for this weekend’s newspapers and I took instructions from you about the response to be made to him. I said that he was angry but that I didn’t think it necessary to go into that. After that, you pressed me about what was said in anger by Ussher. You will recall that I was reluctant to go into that. I then told you that I had not taken notes of his precise words but that he used words like “lunatic” and “unprofessional behaviour” and “destroying your business” and “doing things which will end up crushing you.” I told you that we had been speaking over the top of each other with me seeking to put an immediate stop to that aspect of the conversation. I agree that you then instructed me in terms of paragraph 3 of this morning’s email. I said clearly to you at the time that I was not sure that I could put down precise quotes as it had been a short but heated exchange where my focus was to point out to him that any opinion which he had was of no relevance or assistance and that whilst I had counselled you about various matters, ultimately you would do as you saw fit.

At that time – which was before you gave me instructions concerning – was it “attitude modification”? – as you had had cause to instruct younger police officers about when you were a Sergeant, my focus was entirely upon the substance of Ussher’s particular complaint and my mind was directed to how that was likely to affect you. My mind was not directed to the detail of the commentary, worthless personal opinion and insults which I regarded as completely irrelevant. When he apologised to me for “venting” that part of the call assumed even less significance for me.

When I came to attempt to put down exact quotes of what Ussher said, I found myself unable string together what you required (or undoubtedly hoped for) with any precision. In the conversation I had with you, I was not clear about what was said and I was even less clear later on.

I am sorry if what has occurred has been emotionally damaging to you. In this job it is very often difficult to know what or how much to say. In my experience, sometimes it seems appropriate not to alert clients to sideline issues (as I thought at the time this was) which might divert them from the main game. I have not taken that approach with you and

I believe I have been forthright with you at all times. Clearly, your agenda in relation to that conversation was fundamentally different to mine.

For what it is worth, I think your feelings of elation which you say were dashed arose because your mind seized upon the prospect that you had some sort of knockout blow to deliver. Certainly you gave me the impression that you were urging me toward that course. I was not looking for any knockout blow before my conversation with you yesterday; I was very much concerned with avoiding the consequences for you of being brought back before the Judge for contempt – if that is possible.

Perhaps it is time for us to go our separate ways.”

Mr. Dixon’s response, apart from indicating to me that he was reluctant to become involved in pursuing issues raised as a result of his conversation with Mr. Ussher, gave me the impression that my being “*brought back before the Judge for contempt*” was inevitable, now that Mr. Ussher had confirmed that Consumer Affairs Victoria would be “*doing things which will end up crushing you*” and “*which will ruin (my) career and (my) practice as a lawyer*”.

I replied to Mr. Dixon as follows:

“Hi Tim,

Sorry about the delay in my getting back to you, I have been out of the office for a while today.

As you know, I have never regarded this matter as one of a true breach of the law and the consequences that flow from a breach of the law. I have always regarded it as an unfair and improper manipulation of the legal system. It has always been a matter of CAV attacking the person, rather than the issue, and so it was my expectation that any indication of this being borne out in communications or conduct of the opposing party would be readily identified and collected as evidence of this. At the very least, I expected that the fact that Ussher became angry would have been an indicator of his personal interest in the matter. This was not the first time he had lost control, and each time he loses control it is caused by something other than a purely professional interest in acting on behalf of his office. Personal involvement, personal interest, emotional attachment to outcomes; all of these are indicators of the true motivation behind CAV’s action against me – recording of these comments/outbursts was extremely important.

Regarding this matter as a purely legal one, to the point that Ussher's anger was overlooked as being significant is a cause for serious concern for me. Yesterday's incident was not really a matter of dropping the ball, it was more of a failure to see the ball so that there was not even an attempt to catch it.

Tim, you're a nice guy and I really like you as a friend, but you must admit that I am entitled to feel disappointed in the circumstances. I was entitled to let you know that I am disappointed and why.

Having read your email, and your advice that perhaps we should go our separate ways, I think that you're probably more exhausted with all of this than I am. Maybe that's what's brought us to this point. Anyway, as usual, I accept your wise counsel and I will end our retainer.

Please inform Mr. Ussher that he should now communicate directly with me."

On 25 May, 2012 I wrote to Mr. Ussher, quoting Mr. Dixon:

Dear Mr. Ussher,

Re: Consumer Affairs Victoria v P. Mericka & Ors

Proceedings: SCI 2011 6877

Please be advised that I am no longer represented by Stynes Dixon Lawyers, and that this is a direct result of your angry outburst during your telephone conversation with my lawyer, Mr. Tim Dixon on 23 May, 2012.

Mr. Dixon suggested that we should go our separate ways after I took him to task for failing to take comprehensive notes of your telephone conversation with him.

In an email to me yesterday, Mr. Dixon stated as follows:

"I told you about the substance of his call which was to do with the advertisements for this weekend's newspapers and I took instructions from you about the response to be made to

him. I said that he was angry but that I didn't think it necessary to go into that. After that, you pressed me about what was said in anger by Ussher. You will recall that I was reluctant to go into that. I then told you that I had not taken notes of his precise words but that he used words like "lunatic" and "unprofessional behaviour" and "destroying your business" and "doing things which will end up crushing you." I told you that we had been speaking over the top of each other with me seeking to put an immediate stop to that aspect of the conversation. I agree that you then instructed me in terms of paragraph 3 of this morning's email. I said clearly to you at the time that I was not sure that I could put down precise quotes as it had been a short but heated exchange where my focus was to point out to him that any opinion which he had was of no relevance or assistance and that whilst I had counselled you about various matters, ultimately you would do as you saw fit."

I understand that you later felt the need to apologise to Mr. Dixon. As part of his explanation to me, Mr. Dixon also stated:

"My mind was not directed to the detail of the commentary, worthless personal opinion and insults which I regarded as completely irrelevant. When he apologised to me for "venting" that part of the call assumed even less significance for me."

I have now lost my legal representative, the only person apart from myself who has a full knowledge and understanding of my matter.

Please provide me with a full explanation for your behavior."

Mr. Ussher sent a fax in reply which sought a notice regarding Mr. Dixon's no longer acting for me, but which completely ignored my request for an explanation for his behaviour. I replied to Mr. Ussher's fax, and again sought an explanation. This request was similarly ignored. I accepted that Mr. Ussher had no intention of either confirming or denying the content of my allegation, and regarded Mr. Dixon's account of his conversation with Mr. Ussher as true.

The need to have Sifris J. disqualified

I was now satisfied that:

1. Dr. Claire Noone would now bring contempt proceedings against me.
2. The contempt proceedings were intended to crush me personally, ruin my business and destroy my career as a legal practitioner.
3. The charge of contempt was unjustified and would fail if heard by an unbiased and competent judge.
4. If I were to appear before Sifris J. I would not be treated fairly, and a finding of guilt was inevitable. (This was based on my experience as a defendant before Sifris J.; a matter I will address separately and in detail at a later time.)
5. It was imperative that Sifris J. should be disqualified from hearing the contempt charge if I were to have any future as a legal practitioner.

On 29 May, 2012 I wrote to the Chief Justice, Ms. Marilyn Warren, seeking to have Sifris J. disqualified from hearing the contempt charge. The following day I wrote to the Minister for Consumer Affairs, informing him of my letter to the Chief Justice, and complaining about the conduct of Mr. Blair Ussher, and requesting a full investigation (see attached letter with Appendix "A").

The Minister delivered my letter direct to the person against whom previous corruption allegations had been made: Dr. Claire Noone. In her reply of 19 July, 2012 Dr. Noone refers to the abovementioned communications between Mr. Dixon and Mr. Ussher, and states,

"Your allegations concerning the manner of the conversation are denied. I am informed that all communications between Mr. Dixon and Mr. Ussher were cordial and professional."

Dr. Noone did not contact Mr. Dixon about the exchange. Dr. Noone's failure to contact Mr. Dixon is unfortunate, as her statement implies that Mr. Dixon may have concocted the exchange, and lied to his own client about it.

What I expected of the Chief Justice

When I wrote to the Chief Justice I expected that she would reply promptly, seeking further information from me and that she would initiate an investigation into the matters raised. It was my expectation that Sifris J. would be disqualified from hearing the contempt charge, or that a reason would be found for having the matter dealt with by another judge.

I did not expect that the charge would not proceed, and that the entire contempt issue would simply disappear. Nor did I expect that the Chief Justice would receive such a serious complaint, wait for over two months, and dismiss it without explanation or further enquiry.

When I received the Chief Justice's response dated 15 August, 2012 I replied as follows:

"You have acknowledged receipt of my letter of 29 May, 2012, and having given it consideration over a period of two and a half months.

I note that the substance of my complaint is not denied, nor is there any explanation for the conduct of the Hon. Justice Sifris in allowing corrupt conduct to be laundered through his court.

As you are now aware, the matter dealt with by the Hon. Justice Sifris was brought in reprisal for my having made a formal complaint to the Minister for Consumer Affairs regarding corrupt conduct.

As a direct result of this corrupt conduct having been laundered through the Supreme Court my personal reputation and community standing have been severely damaged. In such circumstances, I believe that I am entitled to know the reason for your not taking any further action in respect of the matters raised in the correspondence presented to you.

I wish to have this letter placed on record as a formal complaint regarding the laundering of corrupt conduct through the Supreme Court of Victoria."

In a letter dated 23 August, 2012, the Chief Justice replied,

"Your correspondence of 19 August, 2012 is acknowledged.

The serious allegations contained in your letter are emphatically denied. Any concerns you may have with respect to your proceeding before the Supreme Court may be pursued by way of avenues of appeal. This is a matter entirely for you.

Kindly note that no further correspondence will be entered into with respect to this matter.”

On 30 August, 2012 I replied to the Chief Justice:

“Complaint Mishandled

The Supreme Court’s handling of this matter is a disgrace, and I have lost confidence in the Court’s ability to fairly and impartially deal with it. Instead of confronting the corruption complained of, the Supreme Court now appears to condone it.

I submitted my complaint in good faith, having taken the extraordinary and difficult decision to draw attention to the laundering of corrupt conduct through Justice Sifris’ Court. For two months my letter was ignored, save for an email confirming that it had been received. A response came only after a telephone call from me.

The reply, when it eventually came, was an arrogant dismissal of my complaint.

When I drew attention to the fact that there had been no denial of the content of my complaint, I received a swift and angry rebuke: “The serious allegations contained in your letter are emphatically denied.” This was followed by this breathtakingly ridiculous advice: “Any concerns you may have with respect to your proceeding before the Supreme Court may be pursued by way of avenues of appeal.” The reference to the seriousness of the allegations was not an acknowledgement; rather, it was an aggressive warning that the making of serious allegations will not be tolerated by the Supreme Court.

As if to emphasise the anger generated by my audacity in seeking justice and a fair hearing, the door of the Supreme Court was slammed in my face with the words, “Kindly note that no further correspondence will be entered into with respect to this matter.”

Corrupt Conduct by Justice Sifris

I have been informed that Senior Counsel is convinced that Justice Sifris had already made his decision before the court hearing had commenced, and I concur fully with this view. With his decision having been made in advance, the proceedings conducted by Justice Sifris were a sham.

I have also been informed by the CEO of the Law Institute of Victoria that it is the view of the Law Institute that Justice Sifris' decision affects no other lawyers or law firms in the State of Victoria. (I and my firm are now the only practitioners among all of the lawyers, incorporated legal practices and licensed conveyancers in Victoria required by Consumer Affairs Victoria to hold an estate agent's licence simply to represent ordinary consumers in negotiations for the purchase or sale of residential real estate.)

There have been no warnings, updates or guidelines issued by any industry stakeholders or regulators to industry participants as a consequence of Justice Sifris' findings. My own observations in the day to day running of my practice confirm that Justice Sifris' decision, and the absurd implications and outcomes that flow from it, are being universally ignored. It is generally regarded as incomprehensible, unworkable and contrary to the interests of consumers and practitioners alike.

Cover-up

I am now firmly of the belief that Justice Sifris had been improperly influenced by factors external to the matter before the court, that the outcome of the trial had been pre-determined, and that the trial itself was a sham.

I also believe that Justice Sifris was fully aware that the proceedings before him were brought in reprisal for my having complained of corrupt conduct, and that his orders relating to misleading and deceptive conduct were calculated to punish me, rather than to rectify any supposed misunderstandings generated by material I had published.

I regard the delay in dealing with my complaint, the off-handed dismissal of my complaint, and the veiled warning against my making "serious allegations" are the first stages of what is colloquially known as a cover-up.

Record of Complaint

I advise that it is now my intention to pursue other avenues of redress. I require that this letter be placed on the record of the Supreme Court of Victoria."

The Chief Justice did not reply.

I had expected that, with an allegation of corruption now having been clearly made against Sifris J., the Chief Justice would have sought further information or commenced some form of investigation. I felt that an expert opinion, from eminent Senior Counsel (Mr. Nimal Nikramanayake can be regarded as an expert due to his seniority and his experience as a Judge of the Court of Appeal in Fiji) that Sifris J. had made his decision before the court hearing had commenced should have prompted some form of action on the part of the Chief Justice, but it did not. I do not believe that any of this material was brought to the attention of the Legal Services Commissioner.

Consequences of my writing to the Chief Justice

Despite all that was said by Consumer Affairs Victoria regarding the serious contempt of court, the assertion that there can be no excuse, and the certainty that contempt proceedings would be initiated, nothing has happened. Not only did Dr. Noone not proceed with the charge, she did not see fit to report it to the Legal Services Commissioner or to have it dealt with in any other way. I conclude that the matter has been abandoned, and all parties associated with it have been silenced.

I am of the firm belief that, as a direct consequence of my writing to the Chief Justice, the Chief Justice has moved “behind the scenes” to ensure that the contempt charge would not proceed (quære perverting of the course of justice).

While I appear to have been the beneficiary of the Chief Justice’s conduct, it nonetheless disgusts me that the contempt charge has been disposed of in this manner. By causing the charge to be completely abandoned the Chief Justice has taken away my opportunity to defend myself against serious allegations that affect my professional standing as an officer of the Supreme Court, and to expose the corrupt conduct that gave rise to the trial before Sifris J. as well as the process of “corruption laundering”.

The Chief Justice’s improper conduct has been compounded by her cunning attempt to have me discredited by the Legal Services Commissioner. (I have unsuccessfully sought to have the Legal Services Commissioner disqualified from investigating this matter.) It is my belief that, in order to avoid the consequences of her conduct, the Chief Justice has attempted to “cover up” her wrongdoing by having the Legal Services Commissioner commence an investigation, the purpose of which is to have me found guilty of improper conduct for seeking to have Sifris J. disqualified.

Request for suspension of current investigation

Pursuant to Section 4.4.7 of the *Legal Profession Act 2004* I now lodge a disciplinary complaint against each of the following Australian legal practitioners regarding behaviour that constitutes serious professional misconduct and corruption:

The Honourable Chief Justice Marilyn Warren

Acting Secretary of the Department of Justice Dr. Claire Noone

General Counsel Consumer Affairs Victoria Mr. Blair Ussher

Legal Services Commissioner Mr. Michael McGarvie

I now request that your investigation into my conduct be suspended, pending the outcome of investigations into the conduct of the abovenamed.

I submit that my complaint, and the investigations into the allegations I have made, should be dealt with by an independent investigator who is completely independent of the Department of Justice and the Minister for Consumer Affairs. The investigator should be someone who is not in awe of senior public servants or politicians, and who has experience in investigations of a serious and complex nature. The investigator should be assisted by a member of the Victoria Police Force who has qualified at the Victoria Police Force Detective Training School.

Issues to be investigated should include (but not be limited to) the following:

Regarding the conduct of Dr. Claire Noone

1. Who was the informant for the purposes of recommending the "*contempt proceedings*" referred to in the final paragraph of the letter sent on behalf of Dr. Claire Noone on 22 May, 2012?
2. Who recommended that proceedings should be initiated?
3. Who approved the initiating of proceedings?
4. Why were proceedings not immediately initiated, given the description of the contempt allegation as "*a serious contempt*" and "*There can be no excuse for a member of the legal profession to have behaved in this manner.*"

5. By what authority did Dr. Claire Noone purport to “*require*” the defendant to furnish written undertakings 1. and 2. as set out in Mr. Ussher’s letter of 22 May, 2012?
6. By what authority did Dr. Claire Noone implicitly assure the defendant that, by acceding to the demands set out in Mr. Ussher’s letter of 22 May, 2012, he would avoid the consequences of “*a serious contempt*” of the Supreme Court of Victoria?
7. Why was the defendant informed that “*contempt proceedings will certainly be initiated*”?
8. At what point was it decided that the contempt proceedings should be abandoned?
9. Why was the defendant not informed that the contempt proceedings had been abandoned?
10. In the defendant’s letter to the Minister for Consumer Affairs Victoria of 30 May, 2012 the opening paragraph stated as follows:

“On 18 December, 2009 I wrote to your predecessor regarding my concerns about the conduct of Consumer Affairs Victoria. Mr. Robinson did little more than to deliver me into the hands of those about whom I had complained. The result has been a concerted and determined effort, led by Dr. Claire Noone and her General Counsel, Mr. Blair Ussher, to bring about the total destruction of my business, my reputation and my financial security.”

The letter was clearly a complaint regarding the conduct of Dr. Noone and Mr. Ussher.

1. Why did Dr. Noone not immediately recognise that she was in a position of conflicting interests when she received this letter from the Minister?
2. Why did Dr. Noone not decline to deal with the matter on behalf of the Minister?
3. Why did Dr. Noone not contact Mr. Tim Dixon regarding his telephone conversation with Mr. Ussher?

4. On what basis did Dr. Noone dismiss the complaint with the words, "*Your allegations concerning the manner of the conversation are denied. I am informed that all communications between Mr. Dixon and Mr. Ussher were cordial and professional*" in her letter to the defendant of 19 July, 2012.

Regarding the conduct of Mr. Blair Ussher (in addition to the above)

1. What prompted Mr. Ussher's angry telephone call to the defendant's lawyer, Mr. Tim Dixon on 23 May, 2012?
2. Why was Mr. Ussher angry?
3. Why did Mr. Ussher insist that things would be done to "*crush*" the defendant and to ruin his business?
4. On 25 May, 2012 it was put to Mr. Ussher that he had made a telephone call to Mr. Tim Dixon and "*used words like 'lunatic' and 'unprofessional behaviour' and 'destroying your business' and 'doing things which will end up crushing you'*". Why did he not immediately deny having behaved in this manner when requested to explain. Why did Mr. Ussher not deny the behaviour when requested a second time to explain?
5. Why did Mr. Ussher allow Dr. Claire Noone to state in her letter of 19 July, 2012, in reference to the telephone conversation of 25 May, 2012, "*Your allegations concerning the manner of the conversation are denied. I am informed that all communications between Mr. Dixon and Mr. Ussher were cordial and professional.*"
6. Why did Mr. Ussher not immediately recognise that he and Dr. Noone were in a position of conflicting interests with regard to the handling of the defendant's complaint, and Mr. Ussher's ongoing carriage of the matters relating to the defendant?
7. Why did Mr. Ussher continue his involvement in matters relating to the defendant when, on 12 October, 2012 he was reminded by the defendant, "*I wish to confirm my complaints, and to place on record the fact that I do not believe that you are a fit and proper person to be representing CAV in this matter, and I insist that CAV should be represented by someone other than yourself in proceedings (taxation of costs) on Monday. If you and CAV insist on your participating in*

Monday's proceedings, my participation will be under protest and your involvement will be the subject of further complaint."

Regarding the conduct of The Honourable Chief Justice Marilyn Warren

1. Why did the Chief Justice fail to reply to the defendant's letter date 29 May, 2012 for a period of more than 2 months?
2. Why did the Chief Justice not reply to the defendant's letter until prompted to do so by the defendant himself?
3. Why did the Chief Justice not call for an immediate investigation into the defendant's allegations?
4. Why did the Chief Justice not seek further information from the defendant regarding the allegations?
5. It should be put to the Chief Justice that during the period between 29 May, 2012 to 15 August, 2012 (the "period of silence") the Chief Justice communicated with other parties ("the other parties") mentioned in the defendant's letter of 29 May, 2012.
6. It should be put to the Chief Justice that the purpose of her communicating with the other parties was to alert them to the complaints made by the defendant.
7. It should be put to the Chief Justice that the purpose of her communicating with the other parties during the period of silence was to afford them the opportunity of "covering up", insofar as they would be in a position to consider their responses to questions they may be called upon to answer, they would be able to make changes to records and they would be able to collaborate on their versions of events.
8. It should be put to the Chief Justice that the purpose of her communicating with the other parties was to have the contempt proceedings, initiated by Dr. Claire Noone, abandoned.

9. It should be put to the Chief Justice that the reason the contempt proceedings were abandoned is that the other parties acceded to her request to ensure that the contempt proceedings would be abandoned.

10. Why did the Chief Justice inform the defendant that she ***“does not propose that any further action be taken with respect to the matter you raise concerning the Hon. Justice Sifris”*** when she had little or no knowledge of the full circumstances, but had an abundance of information on which to justify her initiating an investigation.

11. On what basis did the Chief Justice make the statement (in her letter to the defendant dated 23 August, 2012), ***“The serious allegations contained in your letter are emphatically denied”*** when she had not investigated the allegations, and had insufficient information on which to make an informed decision?

12. Why did the Chief Justice inform the defendant, in her letter of 23 August, 2012, that ***“no further correspondence will be entered into with respect to this matter.”***?

13. It should be put to the Chief Justice that the reason for her informing the defendant that ***“no further correspondence will be entered into with respect to this matter.”*** Was to ensure that she would remain wilfully blind to the full facts and circumstances in order to avoid/evade her responsibility to initiate a proper enquiry into the matters raised.

14. Why did the Chief Justice write to the Legal Services Commissioner on the day after she wrote to the defendant stating, ***“The Chief Justice does not propose that any further action be taken with respect to the matters you raised concerning the Hon. Justice Sifris.”***?

15. Why was the Chief Justice’s letter to the Legal Services Commissioner of 16 August, 2012 not framed as a complaint?

16. It should be put to the Chief Justice that she did not lodge a complaint with the Legal Services Commissioner regarding the defendant’s letter of 29 May, 2012 because she had failed to investigate the complaint and could not demonstrate that the matters raised in the defendant’s letter were without merit or otherwise warranted the making of a complaint.

17. It should be put to the Chief Justice that part of her purpose in writing to the Legal Services Commissioner on 16 August, 2012 was to discredit the defendant.

18. It should be put to the Chief Justice that part of her purpose in writing to the Legal Services Commissioner on 16 August, 2012 was to have the Legal Services Commissioner understand that she had decided that the defendant's complaint was without merit.

19. It should be put to the Chief Justice that part of her purpose in writing to the Legal Services Commissioner on 16 August, 2012 was to have the Legal Services Commissioner obtain the information that the Chief Justice should have obtained before making her final decision on the matter.

20. It should be put to the Chief Justice that part of her purpose in writing to the Legal Services Commissioner on 16 August, 2012 was to have the Legal Services Commissioner conduct an investigation that would retrospectively support the final decision of the Chief Justice.

Regarding the Legal Services Commissioner

1. Why did the Legal Services Commissioner not suspect the motives of the Chief Justice when he received her letter of 16 August, 2012?

2. It should be put to the Legal Services Commissioner that it was clear that the Chief Justice had made a decision concerning the merit/veracity of the matters raised by the defendant.

3. It should be put to the Legal Services Commissioner that it was clear that the Chief Justice expected the Legal Services Commissioner to accept her decision on the matters raised by the defendant.

4. It should be put to the Legal Services Commissioner that it was clear that the Chief Justice had made her decision without full knowledge of the facts and circumstances of the matters raised by the defendant.

5. It should be put to the Legal Services Commissioner that there was an expectation on the part of the Chief Justice that the Legal Services Commissioner would conduct an "investigation", the conclusion of which would support the Chief Justice's pre-judging of the matters raised by the defendant.

6. Why did the Legal Services Commissioner not recuse himself and his office when the defendant complained about his involvement in the matters raised and in the context of ongoing corrupt conduct?

7. It should be put to the Legal Services Commissioner that it was his intention to ensure that the aims and purposes of the Chief Justice, namely a finding in support of the Chief Justice and a discrediting of the defendant, would be fulfilled in accordance with her expectations.

Regards,

Peter Mericka B.A., LL.B

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From: admin (lsc) [<mailto:admin@lsc.vic.gov.au>]
Sent: Friday, 8 February 2013 4:55 PM
To: Peter Mericka
Subject: Corruption Complaint (COM-2012-1380)

Dear Mr Mericka,

Thank you for your email below.