

24
27 February 2015

Private and Confidential

Mr Peter Mericka
Lawyers Real Estate Pty Ltd
Shop 6, 3-5 Hewmart Arcade
Hewish Road
CROYDON VIC 3136

Dear Mr Mericka

Complaint by Mr Blair Ussher

Our ref: COM-2014-1529 - Cara O'Shanassy

I have received a complaint about you from Mr Blair Ussher in relation to:

1. a letter sent by you to the Minister for Consumer Affairs Victoria dated 30 May 2012;
2. a letter sent by you to the Legal Services Commissioner dated 18 February 2013;
3. a letter sent by you to the Victorian Civil and Administrative Tribunal ("VCAT") and dated 21 May 2014;
4. statements posted by you on a website (www.petermericka.com.au) from early May to 10 September 2014 and on Twitter;
5. comments attributed to you and reported in the Maroondah Leader newspaper, on 27 January 2015.

Having received the complaint, and in discharge of the Commissioner's obligations under part 4.2 of the *Legal Profession Act 2004 (Vic)* ("Act"), further enquiries were made of Mr Ussher for the purposes of identifying the precise nature and extent of his complaint.

I now enclose a copy of the complaint, together with a further email from Mr Ussher dated 12 December 2014 with attachments, and a further letter from Mr Ussher dated 4 February 2015 with attachments. Please take this letter as written notice under section 4.2.8 of the Act.

Mr Ussher has raised the following concerns:

1. That in your letter to the Minister, you:
 - a. asserted that Mr Tim Dixon, your former solicitor, had reported to you that Mr Ussher had angrily told him that Consumer Affairs Victoria ("CAV") was going to "crush Mr Mericka and ruin his reputation, career and business" and that you did so knowing that Mr Dixon had disavowed that statement but that you failed to disclose this in your letter to the Minister; and

- b. under a heading 'Unfit for Office', informed the Minister that the handling of the Supreme Court proceeding issued by the Director of CAV against you ("the proceeding"), and in which Mr Ussher acted for the Director, had "been improper at the outset" but without giving any reasons to support this assertion, which was made by you for the purpose of having Mr Ussher removed as lawyer for the Director in the proceeding;
2. That you made further allegations (detailed on page 3 of Mr Ussher's complaint) about Mr Ussher in letters to the Legal Services Commissioner and to VCAT, which you published on the website www.petermericka.com.au ("the website"), which you in turn linked to tweets published on your Twitter account and on the Twitter account of Lawyers Conveyancing and on your Google+ account;
3. That in statements posted by you on the website www.petermericka.com.au:
 - a. on the page entitled "Supreme Court of Victoria – Why the Chief Justice Must Resign", you:
 - i. stated that you were "under a blackmail threat" from Mr Ussher;
 - ii. stated that "false charges of Contempt of Court" would be brought against you unless you acceded to Mr Ussher's demands;
 - iii. stated that Mr Ussher made verbal threats, specifically that he would "crush" you;
 - iv. stated that Mr Ussher was acting in collusion with others;
 - v. extracted part of the letter you wrote to the Minister in which you alleged, among other things, that Mr Ussher had engaged in "a concerted and determined effort... to bring about the total destruction of my business, my reputation and my financial security". You also posted a link to the letter on this page;
 - vi. that CAV attempted to "blackmail me into making a false admission of my having been in contempt of the Supreme Court".
 - b. you placed a posting on the website entitled "Protected: Consumer Affairs Victoria – the Blair Ussher Blackmail", which was password protect but which you invited people to contact you for the password;
 - c. on the page entitled "Home – Peter Mericka" under the heading "Retaliation by Consumer Affairs Victoria – The Mericka Case", you repeated the allegations that CAV attempted to blackmail you into making false admissions, and that when you stood up to them they threatened to "crush" you and ruin your business. You also make reference to "corrupt officials within consumer affairs" in circumstances where the only officials within CAV identified by you throughout your posts are Dr Noone and Mr Ussher; and
 - d. on the page entitled "Peter Mericka – How I Became A Corruption Whistleblower", you repeated the allegations that CAV attempted to blackmail you into making false admissions and that when you stood up to them they threatened to "crush" you and ruin your business. This page contained a link to your letter to VCAT dated 21 May 2014, which in turn specifically named Mr Ussher in connected with an attempt to blackmail you and raise false contempt charges against you (at page 3).

4. It also appears that you publicly repeated your claim that CAV "has gone to great length to destroy my firm and reputation" when speaking with the Maroondah Leader newspaper, with same being reported on 27 January 2015.

I note that I am aware that the material posted on the website referred to above was removed by you shortly prior to the hearing of the disciplinary charges in the proceeding now reported at *Legal Services Commissioner v Mericka* [2014] VCAT 1576 ("prior disciplinary matter").

The nature and extent of material published by you on that website came directly to the attention of my office in later June 2014, following emails sent by you to a member of the Commissioner's legal team on 29 and 30 June 2014. That occurred after the filing of charges in the prior disciplinary matter, and the fixing of that matter for hearing in VCAT.

I also note that the existence of that website, and the fact that certain posts and materials – including some connected with the prior disciplinary matter – had been removed from it, was raised during the course of argument at the hearing of your plea in that matter, although it was not expressly referred to in the reasons for decision published on 18 December 2014.

Some of the materials apparently posted by you on that website – beyond those identified in Mr Ussher's complaint – were a cause of significant concern to the Commissioner. However, given the removal of all of those materials, and the overlap with the prior disciplinary matter, I confirm that the scope of my present investigation will not traverse the publication on the website of communications or posts which repeat or make reference to matters arising out of the letters sent by you to the Chief Justice and others that were the subject of the prior disciplinary matter (even though the republication of those letters on the website did not form part of the charges laid against you in that matter).

I will now explain how I propose to deal with this complaint.

Disciplinary Investigation

Generally, my role in handling a disciplinary complaint is to investigate the complaint to determine the substance of the complaint and what, if any actions should flow from that determination. My investigation will involve:

- asking for information and supporting evidence from you and Mr Ussher,
- giving each of you the opportunity to comment on the other's submissions and explanations,
- if necessary, obtaining further statements from others involved in the matter, and
- obtaining and examining other records and documents.

I now seek a full written explanation of your conduct, as to the issues raised in Mr Ussher's complaint. Please also include copies of any documents that support your explanation, and put your letter in a form that is suitable to pass on to Mr Ussher.

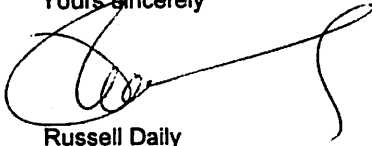
I make these requests under section 4.4.11(1)(a) and (b) of the Act.

Legal Services
COMMISSIONER

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If you believe you cannot respond within 21 days, or have any other queries, please contact Ms
Cara O'Shanassy on 9679 8001.

Yours sincerely



Russell Daily
Executive Director, Complaints & Intervention

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