

Your ref:

Our ref: COM-2012-1380
Cara O'Shanassy

9/330 Collins St Melbourne VIC 3000
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16 November 2012

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

Investigation by the Legal Services Commissioner

This letter is to let you know that I have decided to commence an investigation under section 4.4.8 of the *Legal Profession Act 2004* into the issues identified in the **enclosed** letter from Chief Justice's Chambers, Supreme Court of Victoria, dated 16 August 2012.

This is an investigation without there having been any complaint. However, the merits of the disciplinary concerns raised in the enclosed document will be assessed impartially, and a decision will not be made until you have been given a reasonable amount of time to respond and any further investigations which appear necessary are undertaken.

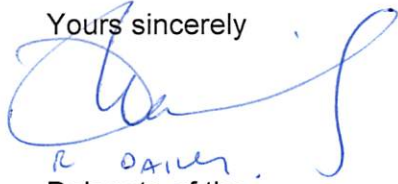
I now seek your version of events and your explanation as to the issues raised in the document, and particularly about the following matters.

1. Your reasons for sending the letter about Sifris J's alleged conduct to the Chief Justice of the Supreme Court;
2. Whether you raised your concerns, including whether you made an application for Sifris J to recuse himself, during the course of the hearing in *Dr. Claire Noone, Director of Consumer Affairs Victoria v Peter Mericka & Ors*. If so, please provide details of same;
3. Details and documents supporting your allegations against Sifris J that he:
 - a. allowed the Supreme Court 'to be used for the purpose of "laundering" corrupt conduct, and thereby giving this conduct a veneer of legitimacy';
 - b. 'deliberately limited his involvement to little more than the application of the Supreme Court seal to the orders sought by the Director of Consumer Affairs Victoria'.
4. Reasons why you wrote to the Chief Justice seeking that Sifris J be disqualified from dealing with any further matters in which you may be involved, rather than making an application if and when that situation arose.

Please also include copies of any documents that support your explanation.

I make these requests under section 4.4.11(1)(a) and (b) of the Act. I ask that you respond within a reasonable time. If you believe you cannot respond within 21 days please contact Ms Cara O'Shanassy on (03) 9679 8001.

Yours sincerely



R O'NEILL
Delegate of the
Legal Services Commissioner

Enc.



CHIEF JUSTICE'S CHAMBERS
SUPREME COURT
MELBOURNE 3000

16 August 2012



Mr. Michael McGarvie
Legal Services Commissioner
Level 9, 330 Collins Street
Melbourne VIC 3000

Dear Commissioner,

The Chief Justice has received the attached letter and attachments dated 29 May 2012 from Mr. Peter Mericka of Lawyers Real Estate.

The matter has been considered by her Honour and it is proposed that no action be taken. However, the letter raises concerns in that a member of the legal profession has made remarks of that nature against a judge of the Court.

In the circumstances, it may be a matter for the consideration of the Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Macgillivray', written in a cursive style.

Vivienne Macgillivray
Executive Associate to the Chief Justice

...the new direction in real estate

Our Ref:
 Contact:
 Direct Tel:
 Direct email:

29 May 2012

The Hon. Marilyn Warren
 Supreme Court of Victoria
 210 William Street
 Melbourne, Victoria 3000

Dear Madam,

Re: Sifris J. – Complaint of Bias and Incompetence

I wish to lodge a formal complaint of bias and incompetence on the part of Sifris J. in his hearing and determining the matter of Dr. Claire Noone, Director of Consumer Affairs Victoria v Peter Mericka & Ors [2012] VSC 101.

The complaint is based on the judge's allowing his court to be used for the purpose of "laundering" corrupt conduct, and thereby giving this conduct a veneer of legitimacy.

With the imprimatur of the Supreme Court, the corrupt conduct continues under the cloak of orders made by Sifris J.

I believe that Sifris J. was fully aware of the background to this matter, including the personal involvement of The Hon. Bruce Atkinson MLC and the conduct of senior management within Consumer Affairs Victoria, and deliberately limited his involvement to little more than the application of the Supreme Court seal to the orders sought by the Director of Consumer Affairs Victoria.

I enclose copies of correspondence I have written to various parties in recent years as background to my complaint.

Consumer Affairs Victoria is in the process of commencing frivolous and vexatious Contempt of Court proceedings against me. While I look forward to answering the allegation, I am not prepared to have the matter dealt with by Sifris J.

I seek your confirmation that Sifris J. will be disqualified from dealing with any further matters in which I may be involved.

Yours faithfully,


 Peter Mericka

...the new direction in real estate

18 December 2009

HON TONY ROBINSON MP
 MINISTER FOR CONSUMER AFFAIRS
 LEVEL 5
 1 MACARTHUR STREET
 EAST MELBOURNE 3002



Dear Sir,

RE: CORRUPTION ISSUE: ONGOING DISPUTE BETWEEN LAWYERS REAL ESTATE PTY LTD AND CONSUMER AFFAIRS VICTORIA

I write to you in the hope that you can bring an end to the ongoing dispute between Consumer Affairs Victoria (CAV) and Lawyers Real Estate Pty Ltd, in the interests of justice for my firm and for the consumers of Victoria.

I believe that the dispute has been perpetuated by high-ranking managers within CAV, and that it has been taken "underground" in recent times by way of a whispering campaign perpetrated by persons closely associated with CAV.

The circumstances of this ongoing dispute are such that I am forced to conclude that individuals within CAV are motivated by corrupt or improper purposes, rather than a genuine desire to protect the interests of consumers and the broader community.

Overview

Consumer Affairs Victoria

My law firm, Lawyers Real Estate Pty Ltd is an incorporated legal practice. For the best part of this decade Lawyers Real Estate has been offering real estate sales services to consumers as an alternative to the over-priced and out-moded services offered by real estate agents.

I realise that I am being quite bold when I declare that the Lawyers Real Estate concept is probably the greatest innovation to benefit real estate consumers in recent times, but after having sold close to two hundred properties and receiving the highest praise from my clients, I feel that my claim is quite justified. Unfortunately, instead of promoting the Lawyers Real Estate concept and working with Lawyers Real Estate in ensuring that consumers gain maximum benefits, CAV has deliberately and relentlessly thwarted all of my efforts over the past 7 years.

A concept that is clearly of benefit to consumers has become a running sore and a source of embarrassment for a government department whose role is to protect consumers. In effect, the emergence of a consumer-friendly real estate sales concept has drawn attention to the failure of CAV as a consumer protection body. This, in turn, appears to have generated a strong negative reaction within CAV, giving rise to a determination on the part of CAV to prevent the Lawyers Real Estate concept from assuming its proper place in the Victorian real estate industry.

Lawyers Real Estate Pty Ltd

When I first entered the real estate industry in 1993 as a conveyancing lawyer I saw that the entire system was a mess, and that this state of affairs was perpetuated through subtle anti-consumer alliances formed between real estate agents, lawyers and conveyancers, and tolerated by CAV.

When conducting conveyancing transactions I would become involved in disputes with real estate agents who were acting contrary to the law, with lawyers and conveyancers whose referral relationships with real estate agents aligned them with the agents as against their own clients, and with a benign CAV whose primary interest was in maintaining the appearance that all was well in the industry.

An opportunity for change arrived when an elderly, but very independent and determined, client decided to sell her Hawthorn property without involving a real estate agent. The client instructed me to represent her in dealings with potential purchasers, and to negotiate the sale on her behalf. Eliminating the real estate agent from the sale transaction enabled me to protect my client by assuming full control over the contract, negotiation and contract execution stages of the sale, and to continue this representative role through the conveyancing transaction.

The client was well protected, I was able to discharge my responsibilities without hindrance from a commission-driven third party, and the client saved many thousands of dollars by paying a single low fixed fee-for-service without the addition of a massive commission liability.

The development of this service was nothing special. I was simply representing my client as a lawyer, and assisting her to sell her property without her having to engage a real estate agent to deal with matters that are properly the responsibility of lawyer anyway. For example, it has always been the role of the lawyer to draft, advise upon, negotiate and execute contracts for the sale of real estate. Even where a real estate is involved in a sale, lawyers regularly negotiate the final details of the sale post-contract, or even a completely new contract, when the real estate agent has already moved on to the next listing.

I began to offer this service to other clients of my firm. I realised that, not only was this an opportunity to break the stranglehold of the real estate agent monopoly over residential real estate sales, it was also the means by which the industry could be exposed to genuine consumer protection and price competition.

In basic terms, the Lawyers Real Estate concept allows the consumer to arrange the advertising of their property through their lawyer, instead of having to engage a real estate agent to perform this simple task. All other tasks associated with the sale are legal functions, best performed by the lawyer.

Trouble With Consumer Affairs Victoria

My first encounter with CAV was in the form of a threat, made by CAV after I dared to lodge an unrelated complaint.

In a letter dated 9 May, 2002, Ms. Anna Lygopoulos, Conciliator, Estate Agents Resolution Service informed me,

"During my initial assessment of your correspondence, I discovered that you do not hold an estate agents licence."

Ms. Lygopoulos then reproduced Sections 4 and 12 of the *Estate Agents Act*, and warned me,

"The Office has conducted a co-ordinated program of successful prosecutions against unlicensed real estate practitioners. Subject to the exceptions as provided for by the Act,

unlicensed practice as an estate agent is an offence for which the maximum penalty is now \$50,000 or 12 months imprisonment for an individual or \$100,000 for a corporation. (Emphasis added by Ms. Lygopoulos).

I contacted Ms. Lygopoulos and explained the legal position to her. However, on 20 June, 2002 I received another letter from Ms. Lygopoulos containing a most amazing and unsubstantiated assertion,

"As discussed during our telephone conversation on 13 May, 2002, I have sought and obtained legal opinion regarding your estate agent practice (sic). The legal advice I have received is that the exemption provided by section 5(2)(e) of the Estate Agents Act 1980 only applies to a 'one-off' sale to take place for any existing client for whom legal services ordinarily provided by a legal practitioner are already being provided."

It was clear to me that CAV was simply making up its own rules, and applying them to my business as it saw fit.

A year of argument and correspondence ensued. I complained of harassment, while CAV denied harassment.

I requested that CAV engage learned counsel in order to confirm that my service did not breach any laws. CAV refused.

In a letter dated 6 June, 2003, Mr. Steven Devlin, Manager – Legal, had this to say,

"In previous correspondence you have sought an indication, not only of the CAV view of the conduct, but also whether CAV would issue charges. I have not recommended charges to be initiated at this time. This decision is made purely on the application of prosecutorial guidelines that are adhered to by CAV. This discretion has been made on the basis of the form and sufficiency of the evidence available at the time of providing advice to the investigator."

In other words, CAV had no evidence of wrong-doing on my part, despite having visited my premises, having taken many photographs of the contents of my shop-front window, and having had access to my website (which provides a full description of all aspects of my service). Despite this, CAV still wanted me to stop providing real estate services. Mr. Devlin's letter continued,

"As previously advised CAV would encourage you to review your ongoing structure and conduct...in relation to sale boards, shop front and advertising material..."

Why? If there was no evidence of wrong-doing on my part why was CAV encouraging me to review my conduct?

Eventually, realising that they were in danger of being exposed as utterly incompetent in their dealings with me and with my firm, CAV wound up their investigation. In a letter dated 16 October, 2003 from General Manager Peter Hiland, I was informed,

"I am advised that the previous investigation into your activities, as they related to aspects of the Estate Agents Act 1980, has concluded. I confirm that no charges against you have been laid under that Act. I am also advised that no other enforcement activity is to be pursued against you in respect of the previous investigation conducted by Consumer Affairs Victoria."

(It should be noted that some years later, when the Honourable Member for Koonung and Spokesperson for Small Business, Sport and Recreation (as he then was) Mr. Bruce Atkinson named me in Parliament regarding the Minister's "failure to stop Peter Mericka of Lawyers Real

state from trading in real estate..." the contents of this letter had apparently not been made available to the Honourable Member along with the other material provided to him.)

While the investigation had supposedly concluded in October, 2003, in less than 12 months CAV was harassing me again. After seeing flashes outside my office during business hours, I approached a CAV inspector who had been provocatively photographing displays in the shopfront windows of my office. I wrote to CAV to seek an explanation, and on 29 June, 2004 I received the following explanation from General Manager Peter Hiland, the person who had earlier informed me that *"the previous investigation into your activities, as they related to aspects of the Estate Agents Act 1980, has concluded."*

"I confirm that a Consumer Affairs Victoria staff member did attend your Croydon offices for the purposes of pursuing enquiries about an alleged breach of the Estate Agents Act 1980, associated with the sale of land.

I confirm that a Consumer Affairs Victoria inspector took photos of the advertisements appearing in the office window of your offices in Croydon for the purposes of ascertaining whether there had been any change in the material displayed since the conclusion of our investigation in 2003...

I had also complained about harassment, in terms of businesses and suppliers who were becoming reluctant to deal with me because of CAV's campaign of harassment. Addressing these issues in the same letter Mr. Hiland informed me,

"I do not accept that Consumer Affairs Victoria activities in any way constitutes an attempt to hinder or intimidate or that it does hinder or intimidate you in the conduct of your business affairs. Consumer Affairs Victoria is obliged to undertake enquiries and does so routinely in response to consumer complaints..." (Mr. Hiland admitted in another letter that the only complaints received had come from competing real estate agents)

"I confirm that Consumer Affairs Victoria has not and does not proposed (sic) to make contact with any of your suppliers of goods or services to make any comment about the conduct of your business. Similarly, I deny that Consumer Affairs Victoria has caused any disruption to your business."

Since 2004 I have heard rumblings from CAV, usually in the form of hearsay information conveyed to me by people in the industry, sometimes in the form of "tip-offs" from sympathetic insiders in return for a promise of confidentiality. In recent times these rumblings have taken on the character of a "whispering campaign", which is discussed further below.

Legal Compliance

The services my firm offers are fully compliant with all applicable laws and regulations, and are superior to those offered by conventional real estate agents in terms of price, standards of service, consumer protection, transparency and ethics.

I believe that CAV sees the services offered by my firm as a threat, for the following reasons:

1. I have personally been very vocal about corruption in the Victorian real estate industry, and have made frequent references to the failure of CAV to properly address the issue of improper practices and corrupt behaviour in the industry in any meaningful way.
2. Those who have presided over the industry for the past decades have an interest in maintaining the *status quo*, and in convincing the community that they have been diligent in protecting consumers, when the opposite is true.

3. CAV has been humiliated by my continued success in selling real estate as a lawyer, without the need for my holding an estate agent's licence. This was compounded some years ago when the Honourable Member for Koonung, Mr. Bruce Atkinson named me in Parliament on 3 separate occasions, and criticised your predecessor because, "*She failed to stop Peter Mericka of Lawyers Real Estate from trading in real estate, when he has been refused a licence (sic) by the Business Licensing Authority*". (See Appendix "A" which remains live at:
http://www.bruceatkinson.com.au/media/smallbusiness/Atkinson_20051215_Unlicensed_real_estate_trading.pdf)
4. CAV has little or no authority when it comes to regulating lawyers, and there is the perception that my mode of operation could split the real estate industry and expose the operations of CAV to unwanted scrutiny.
5. My procedures have exposed flaws in the real estate industry that have been perpetuated by CAV through a combination of inaction by on one hand, and knee-jerk reactions on the other. A prime example of the incompetence of CAV is the poorly researched and ill-conceived legislation by which unqualified and untrained real estate agents are now compelled by law to provide property valuations in the form of "appraisals", while completely ignoring the role of the tertiary-trained property valuer. (See my submission to the Estate Agents Council at Appendix "B").

To lessen the threat my firm poses, CAV has:

- Attempted to intimidate me by sending inspectors to my office to take flash photographs in public and during business hours (I invited one of these inspectors for coffee after he had ostentatiously photographed the front of my premises, and he intimated to me that I was "rocking the boat" for CAV);
- Threatened me with legal action, but exercised "prosecutorial discretion" to avoid losing in court, and being forced to admit that its position is wrong at law. (I had spoken to a member of the CAV prosecutions team and requested that I be prosecuted as quickly as possible, stating, "I will win, you will lose, you will pay my costs in full, and the case will trumpet the role of the real estate lawyer to whole community.")
- Continued to falsely advise consumers that only a licensed real estate agent is entitled to represent a consumer in the sale of residential real estate. For example, the CAV publication **Real Estate – A guide for buyers and sellers**, falsely states, "*Anyone in the business of buying, selling or leasing property on behalf of another person must hold an estate agent's licence or be employed by a licensed estate agent as an agent's representative*" despite my having complained over the years that this statement is wrong, at law and is unfair to me and to consumers.
- Colluded with the Business Licensing Authority (BLA) in the same false assertion. The BLA carries the following false statement on its website under the heading "Estate Agents": "*If you buy, sell, lease or manage real estate or a business on behalf of a vendor, landlord, purchaser or tenant you must hold an estate agent's licence or be employed by a licensed estate agent as an agent's representative.*"
- Refused to properly investigate my right to sell real estate in my capacity as a lawyer, through fear of having to admit that they have been wrong all along.
- Conspired with the REIV by selectively feeding information about enquiries I made about estate agent licence exemptions to Bruce Atkinson MLC, so that Mr. Atkinson could name me in Parliament as someone who had been "*refused a licence by the Business Licensing Authority*" - an assertion that carried with it patently false imputations.

- Failed to properly address the question raised by Bruce Atkinson MLC regarding my right to sell real estate, allowing that Member of Parliament to continue to falsely impute that I am doing something wrong. (It is my belief that Mr. Atkinson was used as a political stooge by the Real Estate Institute of Victoria. Mr. Atkinson's success in maligning me in Parliament is largely due the deliberate failure of CAV to properly inform itself, its failure to properly inform you as Minister, and its failure to properly inform Mr. Atkinson.)

A Simple Demonstration

In order to dispose of spurious arguments put forward by those who seek to prevent my firm from selling real estate, I regularly use a short slide presentation which I prepared for use at seminars I offer on the Lawyers Real Estate concept. I find that it allows lay-persons to understand my sale concept, and the legal position of the real estate lawyer. As a starting point for an investigation into the dispute between Lawyers Real Estate Pty Ltd and CAV, I would ask that you read through "Selling Real Estate" at Appendix "C".

Whispering Campaign

Apart from isolated comments I have heard at various times over the past years, I have been informed by two separate sources that my real estate sale concept has been alluded to by lecturers at two separate and unrelated tertiary teaching institutions in recent times. While I have not been mentioned by name, comments have been made to the effect that there is "a lawyer" who is "a thorn in the side of CAV" and/or "causing concern for the authorities" and/or "attracting the attention of the regulators" and/or "blurring the legal boundaries" by "selling real estate without an estate agent's licence" and/or "being an unlicensed real estate agent" etc.

In each case, the persons who heard these comments immediately identified me as the lawyer being discussed.

Expansion of Lawyers Real Estate

Lawyers Real Estate has embarked on a major expansion of its real estate sales service. To this end we have:

- Invested in a radio advertising campaign;
- Invested in a year-long television advertising campaign on Channel 9;
- Commenced a feasibility study for franchising of the Lawyers Real Estate concept;
- Held seminars in Melbourne and Ballarat on the Lawyers Real Estate concept.

Concerns Regarding Consumer Affairs Victoria

I have no doubt that there will be a very short time-lag between the time a copy of this letter reaches CAV, and the same being passed on to the Real Estate Institute of Victoria (REIV), and I anticipate that the REIV will waste no time in developing a counter-strategy to prevent my firm from becoming a true competitor in the real estate industry.

It is my belief that the REIV will seek to manipulate CAV, and have a spokesperson from CAV make public statements to the effect that lawyers are not entitled to sell real estate, that Lawyers Real Estate is not entitled to sell real estate, that CAV has "concerns" about the Lawyers Real Estate concept etc.

I also expect that the Deputy President of the Legislative Council may again be trotted out by the REIV to contribute to the argument, and I anticipate that he will raise further uninformed rhetorical questions about the legitimacy of my business.

I fear that CAV will again communicate with service providers in an effort to damage my relationships, and limit my access to services my business relies upon.

I cannot afford to have the future of my business, and the investments I have made in my business, jeopardised by well-connected bureaucrats who seek to perpetuate the *status quo*, and who have demonstrated an unhealthy and anti-consumer bias in favour of the REIV and its members.

Recognition Of Legitimacy

I have built my business over a period of 8 years, and I have been open and honest in all of my dealings with the Law Institute of Victoria, the Legal Services Board, the Legal Services Commissioner and CAV.

My approach to real estate sales combines consumer protection, proper application of the law, total transparency throughout the sale and conveyancing processes, and guidance by ethical principles. My service provides consumers with a fixed fee (\$4,400) "one-stop-shop" service, which includes:

- Professionally installed signage;
- Professional photography;
- Internet listings;
- Legal advice
- Preparation of sale documentation;
- Negotiation;
- Execution of contracts; and
- Conveyancing services.

Thus, instead of paying a real estate agent in excess of \$10,000 in commission + GST + advertising, and then paying a lawyer or conveyancer for legal and conveyancing services, consumers can have Lawyers Real Estate attend to the entire transaction for a low fixed-fee. Consumers are entitled to have the opportunity to choose Lawyers Real Estate, and yet CAV seeks, by stealth, to prevent Lawyers Real Estate from offering this service.

My firm is one of the few to be accredited to the LAW 9000 (the ISO 9000 standard applicable to legal practices) as a Legal Best Practice Quality Endorsed Law Firm.

I am aware of no consumer complaints having been made against me or about the services I offer. (I understand that all complaints CAV has received regarding Lawyers Real Estate have been made by real estate agents who are concerned about having to compete with Lawyers Real Estate for clients).

After experiencing nearly a decade of bullying, isolation and denial by CAV I have decided that enough is enough, and I demand a full and diligent investigation into the conduct of CAV.

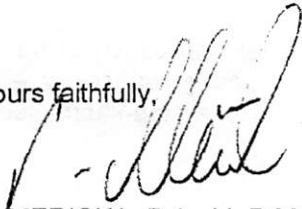
I wish to be involved in the investigation, informed of its progress, and given an opportunity to be heard on issues raised.

At the end of the investigation I expect Consumer Affairs to publicly acknowledge the following:

1. That the Lawyers Real Estate concept is accepted by CAV as a legitimate means by which lawyers can sell real estate for their clients;
2. That lawyers in the State of Victoria are entitled to sell real estate as lawyers, and without the need to become licensed real estate agents;
3. That neither I, nor Lawyers Real Estate Pty Ltd have ever breached any rules or regulations in the providing of real estate sales services to consumers in Victoria;
4. That the CAV publication "*Real Estate – A guide for buyers and sellers*", the Consumer Affairs Victoria website and the Business Licensing Authority website will be corrected so as to inform consumers that a lawyer can represent any person in the sale of real estate; and
5. That CAV regrets having created difficulties for me and for my firm over the past 7 years.

I am quite prepared to meet with you, or with representatives of CAV to discuss this matter further.

Yours faithfully,



P. MERICKA B.A., LL.B MAICD
Legal Practitioner Director
Lawyers Real Estate Pty Ltd

Copies to:

The Hon. Rob Hulls
Attorney General
121 Exhibition Street
Melbourne 3000

SENDER TO KEEP
BV2021112

Ombudsman Victoria
Level 9, 459 Collins Street (North Tower)
Melbourne 3000

SENDER TO KEEP
BV2031787

The Registrar
Business Licensing Authority
Box 322B GPO
Melbourne 3001

SENDER TO KEEP
080118734097

The Chairperson
Estate Agents Council
Level 17, 121 Exhibition Street
Melbourne 3000

SENDER TO KEEP
080118733090

The President
Law Institute of Victoria
PO Box 263C
Melbourne 3001

SENDER TO KEEP
080118732093

01 March 2010

THE OMBUDSMAN VICTORIA
 LEVEL 9, 459 COLLINS STREET (NORTH TOWER)
 MELBOURNE VIC 3000

Dear Sir/Madam,

RE: CORRUPTION COMPLAINT – DIRECTOR CONSUMER AFFAIRS VICTORIA

I refer to the attached copies of correspondence, and confirm that I now wish to lodge a formal complaint regarding corrupt conduct on the part of Dr. Noone, Director Consumer Affairs Victoria (CAV).

The complaint stems from false allegations made by CAV to the effect that I personally, and my firm Lawyers Real Estate Pty Ltd., have committed breaches of the *Estate Agents Act 1980*, and the refusal of Dr. Noone and CAV to properly investigate the matter, to determine the true legal position, and to exonerate me and my firm.

The corruption aspect arises from Dr. Noone's attempt to cover up the wrongdoing of CAV, and to deliberately leave me and my firm tainted by false allegations made by CAV. The allegations are calculated to cause me embarrassment, and to attract criticism and suspicion of the manner in which I operate my firm.

I am in the process of franchising Lawyers Real Estate, but an impediment to my doing so is the "Catch-22" situation created by Consumer Affairs in alleging criminal conduct, but then refusing to prosecute in order to ensure that I can claim neither a court victory nor a CAV exoneration. This is generating credibility problems for me and for my firm which are quite undeserved and impossible for me to address.

Enclosed is a copy of Dr. Noone's response to a formal complaint I lodged with her office. Probably the most telling statement contained in the letter is:

"The previous investigation by CAV concluded on the basis that there was insufficient evidence to prove that your conduct breached the Act."

The fact of the matter is that neither I, nor my firm, have ever done anything to breach the *Estate Agents Act 1980*, and despite all arguments, examples and evidence I have produced to CAV, the false allegations have never been withdrawn, and there has been no exoneration.

CAV seeks to damage my reputation and that of my firm by implying that I, and my firm, have engaged in criminal conduct, but we have managed to evade the legal consequences of our criminal conduct because ***"there was insufficient evidence to prove that your conduct breached the Act."***

A further strategy employed by Dr. Noone is the deliberate use of false conclusions, based on statements that have no basis in law or in fact. For example, at matter 2. of the attached letter Dr. Noone states:

"Lawyers in the State of Victoria are not entitled to "sell" real estate as lawyers."

This statement is not only preposterous and wrong at law, but is also extremely damaging to me and to my firm. Consumer Affairs Victoria has relied upon this incorrect interpretation of the law to justify a false assertion in its consumer publications to the effect that anyone who represents a consumer in the sale of real estate must hold an estate agents licence.

This sentence is then followed with:

"If a lawyer or any other person carries on the business of an estate agent they are required to be licensed pursuant to section 12 of the Act."

This statement has nothing whatsoever to do with me or my law firm, as Lawyers Real Estate has never purported to be a real estate business, and I have never purported to carry on the business of an estate agent. Dr. Noone knows that every sale transaction my firm undertakes is properly undertaken in its capacity as a law firm.

This deliberate misstating of the facts, and making of allegations based upon the misstated facts, is the *modus operandi* adopted by CAV in dealing with any correspondence I send to them. This goes beyond simple ignorance or negligence; it is a strategy calculated to cover up a wrong committed against me personally and against my law firm Lawyers Real Estate Pty. Ltd.

Dr. Noone is aware that if I, or my firm, were prosecuted by CAV the matter would be determined in my favour, CAV would be required to pay my costs, and both CAV and Dr. Noone would be publicly humiliated. Similarly, if CAV were to publicly acknowledge that their allegations were wrong, and that as a lawyer I am quite entitled to represent my clients in the sale of real estate, there may well be other lawyers and law firms willing to offer similar services to their clients.

A further risk to CAV and Dr. Noone is the inevitability that greater involvement by lawyers in real estate sale transactions will draw attention to the current state of the real estate industry, and raise embarrassing questions about the role of CAV and its failure to properly protect real estate consumers.

The requests I have made are not unreasonable. Effectively, they represent no more than a request that CAV should correct its wrongdoing, and put me and my firm back in the position we were in before the false allegations were made. I submit that the hysterical way Dr. Noone has reacted to these fair and reasonable requests is an indication of her embarrassment and represents a self-interested attempt to avoid the consequences of CAV's mishandling of the matter. I repeat what I put to the Minister, on whose behalf Dr. Noone responded:

"After experiencing nearly a decade of bullying, isolation and denial by CAV I have decided that enough is enough, and I demand a full and diligent investigation into the conduct of CAV."

I wish to be involved in the investigation, informed of its progress, and given an opportunity to be heard on issues raised."

At the end of the investigation I expect Consumer Affairs to publicly acknowledge the following:

- 1. That the Lawyers Real Estate concept is accepted by CAV as a legitimate means by which lawyers can sell real estate for their clients;***
- 2. That lawyers in the State of Victoria are entitled to sell real estate as lawyers, and without the need to become licensed real estate agents;***

3. ***That neither I, nor Lawyers Real Estate Pty Ltd have ever breached any rules or regulations in the providing of real estate sales services to consumers in Victoria;***
4. ***That the CAV publication "Real Estate – A guide for buyers and sellers", the Consumer Affairs Victoria website and the Business Licensing Authority website will be corrected so as to inform consumers that a lawyer can represent any person in the sale of real estate; and***
5. ***That CAV regrets having created difficulties for me and for my firm over the past 7 years.***

I am quite prepared to meet with you, or with representatives of CAV to discuss this matter further."

I confirm my allegation that Dr. Noone and Consumer Affairs Victoria have embarked upon a corrupt course of conduct, which started with the making of false allegations of criminal conduct, was perpetuated by the improper exercise of "prosecutorial discretion" in place of total exoneration, and has now developed into a "cover-up" whereby Dr. Noone and Consumer Affairs Victoria seek to avoid scrutiny by continuing to assert through various publications that my firm is engaging in illegal conduct but remains beyond the reach of the law because "*there was insufficient evidence to prove that your conduct breached the Act*".

I request that this matter be thoroughly investigated by an independent body that has access to high quality legal advice and assistance.

Yours faithfully,

P. MERICKA B.A., LL.B MAICD
Legal Practitioner Director
Lawyers Real Estate Pty Ltd

02 August 2010

THE OMBUDSMAN VICTORIA
 LEVEL 9, 459 COLLINS STREET (NORTH TOWER)
 MELBOURNE VIC 3000

COPY

Dear Sir/Madam,

RE: CORRUPTION COMPLAINT – DIRECTOR CONSUMER AFFAIRS VICTORIA

I refer to my letter of 1 March, 2010, and to my letter of 2 July, 2004

The corrupt conduct complained of continues, and I seek to have it stopped.

In your letter of 18 August, 2004 you stated,

"As you will appreciate, CAV have determined that you are in breach of the legislation and exercised its discretion not to prosecute. This decision was based on legal advice."

With respect, it is not up to CAV to make such a *determination*, as to do so is a denial of natural justice. I have requested that CAV allow the proper tribunal to make a determination as to the legality or otherwise of my business operations, but it refuses to do so.

In short, CAV continues to assert that I am in breach of the legislation, however:

1. CAV refuses to put its case to a court for final determination;
2. CAV refuses to exonerate me in the absence of any contrary determination by a court;
3. CAV refuses to conduct a proper investigation into the alleged breach; and
4. CAV refuses to nominate any specific act on my part which constitutes the alleged breach.

It is my firmly held belief that CAV, and in particular, Dr. Claire Noone and Mr. Stephen Devlin of CAV, are denying me the opportunity to answer their allegations in court or to conduct my business without harassment, for reasons of corrupt and personal self-interest. I have previously outlined these in other correspondence.

I have taken legal advice on this matter, and I am quite satisfied that no aspect of my business is in breach of the law. If CAV believes that I am in breach it should put its case to the appropriate tribunal. To this end I seek your intervention in order to instigate a proper investigation.

Yours faithfully,

P. MERICKA B.A., LL.B MAICD
 Legal Practitioner Director
 Lawyers Real Estate Pty Ltd

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