



...the new direction in real estate

Our Ref: *
 Contact: Peter Mericka
 Direct Tel: 97262702
 Direct email: peter@lawyersrealestate.com.au

30 May 2012

The Hon. Michael O'Brien
 Minister for Consumer Affairs
 Level 22
 1 Spring Street
 Melbourne, Victoria 3000

DXEC030918

COOPY

Dear Sir,

Re: Corruption Issue: Ongoing Harassment by Consumer Affairs Victoria

Introduction

On 18 December, 2009 I wrote to your predecessor regarding my concerns about the conduct of Consumer Affairs Victoria (see Appendix A). 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 MERICKA Case

The case of *Dr. Claire Noone, Director of Consumer Affairs Victoria v Peter Mericka & Ors [2012] VSC 101* has recently concluded, and I have written to the Chief Justice of Victoria to formally complain about the conduct of that matter by Sifris J.

My complaint contains the following observation:

"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."

Misfeasance in Public Office

Each time I have complained about the behaviour of officers of Consumer Affairs Victoria (CAV) it has resulted in those to whom I have complained apologetically backing away, and those about whom the complaints have been made becoming more confident and resolute in their efforts to destroy my reputation and my business.

The goal of causing damage to me and to my business has been disguised as an attempt to bring about compliance with the law, but it has been difficult to have this acknowledged by those whose role it is to prevent such behaviour. While there have been major departures from CAV's enforcement and compliance policies, and from the Justice Department's own model litigant principles, these have been papered over with spurious arguments suggesting that legal action has been pursued in the public interest.

If one simply examines my relationship with CAV over the past decade, it becomes clear that I have done nothing wrong. Had there been any wrongdoing, CAV would have prosecuted me and my firm. There has been no prosecution, nor will there be. Similarly, there has never been any element of consumer detriment identified in the decade that my firm has been operating.

Nonetheless, my reputation, my business and my financial security have all been taken from me by high-ranking officials who have been motivated, not by public interest, but by a desire to teach me a lesson in how one should deal with powerful people in public office.

Mr. Blair Ussher's Intemperate Outburst

CAV's determination to destroy me was made quite clear in recent days, culminating in a display of open hostility by CAV General Counsel, Mr. Ussher, in an angry outburst which led to my losing my legal representative.

In a telephone conversation on 23 May, 2013, my lawyer, Mr. Tim Dixon, had complained to me about the behaviour of Mr. Ussher and I pressed him for details. Mr. Dixon told me that Mr. Ussher was extremely angry, was "talking over" him, and told him, *inter alia*, that CAV is going to crush me, ruin my reputation, ruin my career and ruin my business.

When Mr. Dixon told me of this conversation I immediately instructed him to take contemporaneous notes. Mr. Dixon later told me that he was unable to follow my instructions in full, and explained why in an email the following day. Mr. Dixon eventually suggested that we should part company as he believed that I had lost confidence in him over his handling of the incident.

I reproduced relevant parts of Mr. Dixon's email in a fax to Mr. Ussher, in which I also asked him to explain his behaviour (see Appendix B). Mr. Ussher ignored my request, and sent me his fax of 28 May, 2012 regarding notice he wanted my lawyer to file (see Appendix C).

I sent Mr. Ussher a further fax the same day (see Appendix D), restating advice provided to me by Mr. Dixon to the effect that the notice Mr. Ussher required was unnecessary. I also noted that the explanation I sought did not relate to the court proceeding, and again requesting that he explain his behaviour.

Once again, Mr. Ussher completely ignored my request, addressing only the issue regarding the notice (see Appendix E).

The Cause of Mr. Ussher's Anger

In ordinary circumstances it would be difficult to understand why a person in Mr. Ussher's position would become enraged to the point that he would telephone my lawyer and behave in such a bizarre manner. However, when one considers the nature of my relationship with CAV over the past decade, the reason is more apparent.

The Supreme Court had ordered me to place certain advertisements in The Age and Herald-Sun newspapers, and I placed the advertisements precisely in accordance with the court's orders. However, when printed the advertisements did not have certain words appearing in bold font, and Mr. Ussher was upset about this. He wrote to my lawyer, insisting that I give undertakings to the effect that I would republish these advertisements at a cost of \$10,000.

Mr. Ussher clearly believed that he was entitled to penalise me in this way, and to threaten court action unless I did as he directed. (It should be noted that Mr. Ussher had waited until two weeks' of advertising had appeared before alerting me to his concerns; which I believe was a deliberate strategy on his part to ensure that I would be forced to pay a full two weeks' advertising on top of what I had already paid for.)

Mr. Ussher concluded his letter to my lawyer with these words,

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

I instructed my lawyer to inform Mr. Ussher that an error had occurred with the newspaper publishers, that the error was insignificant, that I could not afford the cost of republication, and that I would not give the undertakings Mr. Ussher demanded. I also instructed my lawyer to inform Mr. Ussher that I believed that his conduct amounted to a form of bullying.

I believe that Mr. Ussher saw this as a challenge to his authority, but also understood that he was now committed to initiating legal proceedings because of his clear and unequivocal threat. It would appear that Mr. Ussher realised that he would either have to retreat from his threat, or carry through with it and risk criticism for commencing unjustified and vexatious legal action, and this has caused him to lose his temper.

Most significantly, Mr. Ussher, through the words used in his angry outburst, confirmed:

1. That he is fully cognizant of the devastating effect his campaign has had, and continues to have on me, my business and my reputation; and
2. He intends to continue with his campaign without any regard whatsoever for the damage caused or yet to be caused.

Mr. Ussher's outburst is a clear admission of an intention to cause irreparable harm.

Unfit for Office

Mr. Ussher's handling of this matter has been improper from the outset, and his angry outburst simply confirms the true nature of CAV's motives.

Mr. Ussher's cruel and vindictive attitude to me and my firm is at odds with the role of CAV, and renders him unfit for his position.

I request that Mr. Ussher be relieved of all involvement with any matters associated with me or my firm.

Further Efforts by CAV to Destroy Me

CAV is now committed to the taking of legal action against me for contempt of court. I believe that Dr. Noone, through Mr. Ussher, intends to have me found guilty of contempt, have me lose my practising certificate, and then take steps to have me bankrupted and my firm wound up when I cannot meet the massive costs associated with the Supreme Court actions. I expect that Dr. Noone will again feed information to the community by way of press releases and her CAV blog.

This will end my legal career, my standing as a consumer advocate and my ability to earn an income. This is despite the fact that I have always acted honestly, openly and in the interests of consumers.

Investigation Required

In my letter of 18 December, 2009 I sought "a full and diligent investigation into the conduct of CAV".

The conduct of CAV between the date of my complaint and the present serves to confirm both the basis of my original complaint and the concerns I expressed in that complaint under the heading "Concerns Regarding Consumer Affairs Victoria". I draw particular attention to these words,

"I cannot afford to have the future of my business, and the investments I have made in my business, jeopardized 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."

Mr. O'Brien, please let me put to you this simple proposition:

There is something seriously wrong when a government department can use consumer protection legislation against a consumer advocate, and knowingly bring about an unjust and anti-consumer outcome.

Appointment of Independent Investigator

I request that an independent investigator should be appointed to deal with this matter.

I would suggest that the Auditor General would be most appropriate, as the allocation of funds to Dr. Noone's campaign to discredit me and to destroy my business will probably provide the first level of proof that compliance and enforcement guidelines have been ignored, avoided or misused.

I look forward to your response.

Yours faithfully,

Peter Mericka

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Appendix A

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).

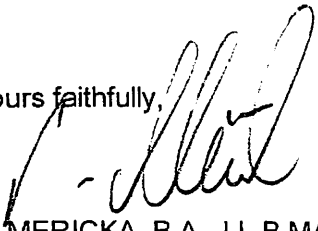
After experiencing nearly a decade of bullying, isolation and denial by CAV I have decided that enough is enough, and I demand a full and diligent investigation into the conduct of CAV.

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.

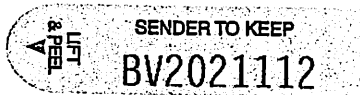
I am quite prepared to meet with you, or with representatives of CAV to discuss this matter further.

Yours faithfully, 

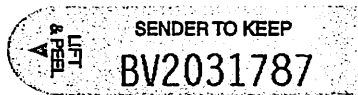
P. MERICKA B.A., LL.B MAICD
Legal Practitioner Director
Lawyers Real Estate Pty Ltd

Copies to:

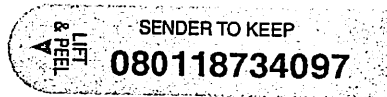
The Hon. Rob Hulls
Attorney General
121 Exhibition Street
Melbourne 3000



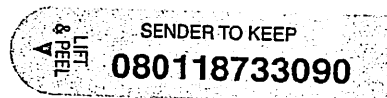
Ombudsman Victoria
Level 9, 459 Collins Street (North Tower)
Melbourne 3000



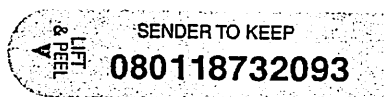
The Registrar
Business Licensing Authority
Box 322B GPO
Melbourne 3001

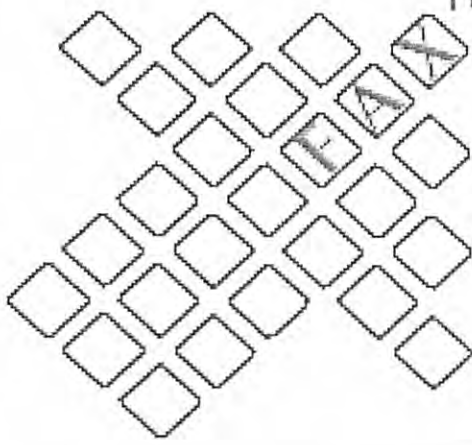


The Chairperson
Estate Agents Council
Level 17, 121 Exhibition Street
Melbourne 3000



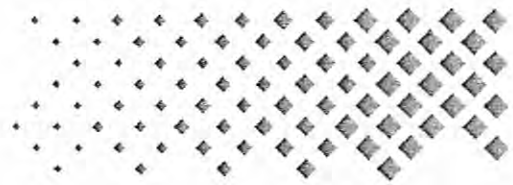
The President
Law Institute of Victoria
PO Box 263C
Melbourne 3001





APPENDIX B

LAWYERS REAL ESTATE



Lawyers Conveyancing

Lawyers Real Estate Pty Ltd (ABN 42 395 990 189)

Suite 6, 3-5 Hewish Road, Croydon Victoria 3136

Fax: 9 725 3316

www.LawyersConveyancing.com.au

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ORIGINAL FAXLETTER

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Your Ref:
Our Ref:
Contact: Peter Mericka
Direct Tel: 97262702
Direct email: peter@lawyersrealestate.com.au

25 May 2012

**Consumer Affairs Victoria
(Attn: Mr. Blair Ussher)**

URGENT

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."

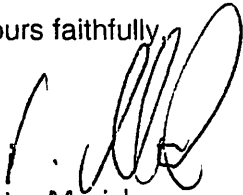
I understand that you later felt the need to apologise to Mr. Dixon. As part of his explanation to me, Mr. Dixon also stated:

"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.

Yours faithfully,



Peter Mericka
Lawyers Real Estate

* To ensure effective communication, please quote our reference in all correspondence, emails and telephone calls.

Fax: 8684 6222

Appendix C



Department of Justice

Consumer Affairs Victoria

80 Collins Street
Melbourne 3000
PO Box 123
Melbourne 3001
Telephone: 03 8684 6257
Facsimile: 03 8684 6211
Email: consumer@justice.vic.gov.au
DX210220

28 May 2012

Mr Peter Mericka
Director
Lawyers Real Estate Pty Ltd
Suite 6, 3-5 Hewish Road,
Croydon
VIC. 3136.

By fax: 9725 3316 & Post

Dear Mr Mericka,

**Re: Director of Consumer Affairs Victoria v You & Ors
Supreme Court Proceedings 4660/2010**

I refer to the above matter and advise that I have been interstate since 25 May 2012 and have only just received your facsimile.

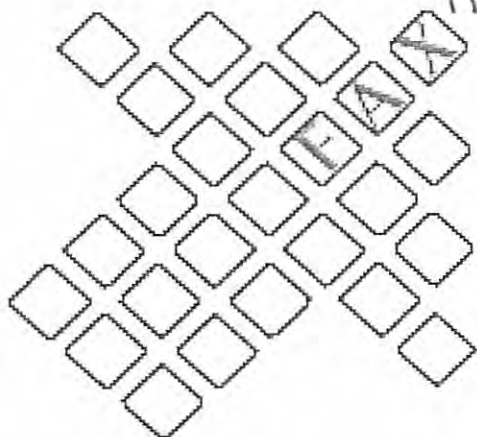
Please arrange for a 'Notice of Solicitor Ceasing to Act' to be filed and served pursuant to the Rules. Alternatively, please arrange for a 'Notice of Change of Solicitor', together with your new address for service, to be filed and served.

After you have attended to this, direct communication by you with my office may only occur, provided:

1. you are self-represented (otherwise communications will be with your legal representative);
and
2. all such communications are in writing (preferably by letter, posted or transmitted by facsimile rather than email).

Yours faithfully,

Blair Ussher
General Counsel
Consumer affairs Victoria



Appendix D

LAWYERS REAL ESTATE



Lawyers Conveyancing

Lawyers Real Estate Pty Ltd (ABN 42 395 990 189)
Suite 6, 3-5 Hewish Road, Croydon Victoria 3136
Fax: 9 725 3316
www.LawyersConveyancing.com.au

This transmission is private and confidential. It must not be used in any way by any party other than the party to whom addressed



ORIGINAL FAXLETTER

THIS DOCUMENT IS TO BE REGARDED AS AN ORIGINAL - NO FURTHER COPY WILL BE FORWARDED BY POST

Your Ref:
Our Ref:
Contact: Peter Mericka
Direct Tel: 97262702
Direct email: peter@lawyersrealestate.com.au

28 May 2012

**Consumer Affairs Victoria
(Attn: Mr. Blair Ussher)**

Dear Mr. Ussher,

Re: Consumer Affairs Victoria v P. Mericka & Ors
Proceedings: SCI 2011 6877

In reply to your fax of 28 May, 2012, I have been advised that, as the final orders were made on 27 April, 2012 and 28 days have passed since that date, and there is no appeal, then the Court is now *functus officio* as there is no proceeding on foot. Consequently, there is no requirement for a Notice of Solicitor Ceasing to Act.

In any case, my request was not one relating to the matter. Rather, I am seeking an explanation for your behaviour, as described in fax to you.

Once again, I request that you provide me with a full explanation for your behavior.

Yours faithfully

Peter Mericka
Lawyers Real Estate

* To ensure effective communication, please quote our reference in all correspondence, emails and telephone calls.

Fax: 8684 6211

Appendix E



Department of Justice

Consumer Affairs Victoria

80 Collins Street
Melbourne 3000
PO Box 123
Melbourne 3001
Telephone: 03 8684 6257
Facsimile: 03 8684 6211
Email: consumer@justice.vic.gov.au
DX210220

29 May 2012

Mr Peter Mericka
Director
Lawyers Real Estate Pty Ltd
Suite 6,
3-5 Hewish Road,
Croydon
VIC. 3136.

By fax: 9725 3316

Dear Mr Mericka,

**Re: Director of Consumer Affairs Victoria v You & Ors
Supreme Court Proceedings 4660/2010**

I refer to the above matter and to your second 'faxletter' transmitted on 28 May 2012.

I believe that you have misread Order 20 of the *General Civil Procedure Rules*.

The period in which a party may file and serve a Notice of Appeal is 14 days from the date of the Supreme Court's decision (O64.03). Order 23.03(3)(c) provides that a solicitor shall not file a Notice of 'Ceasing to Act', except with the leave of the Court, within 28 days after the proceeding has been finally determined. Thereafter the solicitor may file the Notice without leave of the Court provided a Notice of Appeal or summons seeking leave to appeal out of time has not been filed with the Court of Appeal. As neither a notice of appeal nor a summons seeking leave to appeal out of time has been filed, your former solicitors are, therefore, at liberty to file a Notice of Ceasing to Act without leave of the Court.

Please arrange for a 'Notice of Solicitor Ceasing to Act' to be filed and served pursuant to the Rules. If your former solicitors do not wish to file and serve this notice, then you should arrange for a 'Notice of Change of Solicitor', endorsed with your address for service, to be filed and served. Whichever course you adopt you will need to advise me whether you are to be represented by retained lawyers or whether you are self-represented.



I note your assertion that your request '*was not one relating to the matter.*' This assertion is contradicted by the heading to your letter, namely:

**Re: Consumer Affairs Victoria v Peter Mericka & Ors
Proceedings SCI 2011 6877**

I presume that you meant to refer to the substantive proceeding. In any event, I can assure you that my only communications with Mr Dixon have been in respect of the proceeding of: **DCAV v Peter Mericka & Ors**. I do not intend to enter into any communications that have no bearing upon either the proceeding or the enforcement of the Court's order.

I confirm that direct communication by you with my office may only occur in accordance with the terms set out in my letter of 28 May 2012.

Yours faithfully,



Blair Ussher
General Counsel
Consumer affairs Victoria