



Your Ref: J73/2014
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21 May 2014

Victoria Civil and Administrative Tribunal (VCAT)
GPO Box 5408
Melbourne 3001

COPY

Dear Sir/Madam,

Re: Michael McGarvie – Legal Services Commissioner v Mr Peter Mericka

I am in receipt of your letter dated 14 May, 2014 enclosing a copy of the abovementioned application lodged with VCAT (the Application) by the Legal Services Commissioner.

I wish to place on record, at the earliest opportunity, my complaint regarding the laundering of corrupt conduct through the Supreme Court of Victoria by the Director of Consumer Affairs Victoria, and what I submit is a further attempt by the Legal Services Commissioner to launder corrupt conduct through VCAT.

A cursory examination of the application will confirm that the Legal Services Commissioner charges that my raising concerns in writing with the Chief Justice regarding the laundering of corrupt conduct through the Supreme Court constitutes professional misconduct. I refer to the attached copy of the document titled "*Supreme Court of Victoria Complaints*" which states, under the heading "*Judicial Complaints Process*" as follows:

"There may be occasions, however, where a person is concerned not with the decision made but with the conduct of a Judge or Associate Judge. Such concerns can be raised in writing with the Chief Justice."

Charge 1

I submit that Charge 1 is a patent absurdity insofar as it asserts that writing to the Chief Justice to raise concerns about the conduct of a Judge, as provided for in the Supreme Court's own Judicial Complaints Process (refer above) can be regarded as dishonourable and disgraceful. The absurdity becomes all the more apparent when one asks, "*If the Chief Justice had investigated the concerns raised and discovered that they were well-founded, would the raising of these concerns be regarded as dishonourable and disgraceful?*"

Not only did the Chief Justice fail to investigate the concerns raised, she also refused to accept any further correspondence on the matter, preventing any form of elaboration or further explanation.

In a letter (see page 15 of the Application) written on behalf of the Chief Justice dated 15 August, 2012, I was informed, "*The Chief Justice does not propose that any further action be taken with respect to the matters you raise concerning the Hon. Justice Sifris.*"

Despite having informed me that no further action was proposed, the following day, another letter (this letter is not included in the materials forming the Legal Services Commissioner's Application, but see attached) was sent to the Legal Services Commissioner on behalf of the Chief Justice.

This letter was the means by which the Chief Justice reported my having written to her. It is interesting that the letter uses the words "*raises concerns*", as this is quite similar to the terminology used in the attached Supreme Court complaints process to describe a complaint lodged with the Chief Justice. It is also noteworthy that the Legal Services Commissioner automatically assumed that the "*concerns*" expressed in the letter from the Chief Justice did not relate at all to the content of my complaint, but only to my having made the complaint.

It is my understanding that the Legal Services Commissioner has not made any enquiry into the matters I raised with the Chief Justice, claiming that he was prevented from pursuing that avenue of enquiry by reason of a lack of jurisdiction. It is submitted that a lack of jurisdiction did not at all prevent the Legal Services Commissioner from seeking exculpatory material, as he was quite entitled to make whatever enquiries he may have deemed appropriate, and to draw adverse inferences if thwarted by any party seeking to use jurisdiction as a reason for refusing to assist him.

The Legal Services Commissioner asserts that he was entitled to commence an own-motion investigation into my having written to the Chief Justice, using the pretext that my complaint had no substance. In the absence of any enquiry or investigation into my complaint by the Chief Justice neither she nor the Legal Services Commissioner were entitled to arrive at such a conclusion.

It is submitted that the Legal Services Commissioner commenced an own-motion investigation when he had no basis for doing so, and that he did so contrary to the protocols posted on the Legal Services Commissioner website and in the Legal Services Commissioner Own Motion Investigations Policy at:

http://lsc.vic.gov.au/documents/LSC_OwnMotionInvestigationsPolicy.pdf

I submit that the commencing of an own-motion investigation at the behest of the Chief Justice, and the submitting of the Application to VCAT constitutes a corrupt collaboration between the Chief Justice of the Supreme Court of Victoria and the Legal Services Commissioner. I further submit that the true purpose behind these actions was to pursue, harass and improperly punish me for having drawn attention to matters of corruption. Furthermore, I submit that the laying of this charge constitutes an attempt by both the Legal Services Commissioner and the Chief Justice of the Supreme Court of Victoria to launder corruption through VCAT.

Charge 2

The Legal Services Commissioner also charges that my having written to the Premier of Victoria and others, to "blow the whistle" on the conduct of the Chief Justice, when I discovered that she had procured the Legal Services Commissioner to pursue me, also constitutes professional misconduct.

I submit that an investigation into the concerns I raised with the Chief Justice in my letter of 29 May, 2012 would have confirmed that corrupt conduct was indeed laundered through the Supreme Court of Victoria, that Justice Sifris was not competent to hear charges of Contempt of Court threatened by Consumer Affairs Victoria and that the conduct of the Chief Justice, in the totality of the circumstances was corrupt.

I further submit that the decision of the Chief Justice not to investigate the concerns I had raised with her and, instead, to pursue me simply for having raised these concerns, gave me the right, as a victim of corrupt conduct and as a whistleblower, to seek the intervention of the Attorney General and the Premier of Victoria. It was also incumbent upon me as a legal practitioner and an officer of the Supreme Court of Victoria to make this request, and I did so as follows (see page 22 of the Application):

"It has been my experience in recent years that departments within the Department of Justice, Victoria have not complied with regulations and guidelines established to prevent misconduct and injustice (see Consumer Affairs Victoria – Prosecution & Enforcement Policy and Model Litigant Guidelines), and that senior public servants are able to rely on each other for protection when complaints of misconduct and misfeasance in public office are made.

I therefore request the above submission be accepted, and a truly independent investigator be appointed to deal with the complaint and the issues related to it."

To date there has been no investigation into any complaints I have lodged. The only action taken in relation to my complaints is what I would describe as retaliatory action, the purpose of which appears to be to harass, intimidate and deter me from pursuing my complaints and to simultaneously discredit me.

While a failure to investigate my complaints may appear, at first blush, to support the suggestion that my complaints cannot be substantiated, it is submitted that the failure to investigate equally prevents the Chief Justice and the Legal Services Commissioner from implying that there is no substance to them. Furthermore, the difficulty this presents for the Chief Justice and the Legal Services Commissioner in this regard is compounded by the fact that they both had the means to initiate a thorough and independent investigation, but failed to do so.

I submit that the extraordinary conduct of the Chief Justice and the Legal Services Commissioner in deliberately avoiding any form of investigation into the matters I have raised is *prima facie* an admission by conduct; the admission being that both believed that an investigation would vindicate my role as "whistleblower" while exposing the parties nominated to censure.

The failure of the Premier of Victoria to have the matters investigated only serves to amplify corruption as an issue in this matter.

Self-defence

I submit that a particularly important aspect of this matter is the fact that I have not, at any stage, done anything to cause the present problems to arise. My primary reason for having "blown the whistle" on the corruption I have complained of is that I have had to defend myself from those who are familiar with the justice and disciplinary systems and their use for the purposes of "corruption laundering".

Until Mr. Blair Ussher, General Counsel, Consumer Affairs Victoria attempted to blackmail me, I was prepared to put all of my bad experiences with Consumer Affairs Victoria and the Supreme Court of Victoria behind me, and to move on. However, Mr. Ussher's threat of false Contempt of Court charges forced me to defend myself by raising the issue with the Chief Justice.

I fully expected that the Chief Justice would hold me accountable for my allegation of corruption laundering and other matters I raised with her, and I was prepared to assist and inform her or any delegate she might appoint for the purposes of conducting a proper investigation. Inexplicably, the Chief Justice ignored my complaints, and then summarily dismissed them when I followed up some months later.

I felt let down and frustrated. At the same time, I had hoped that my writing to the Chief Justice might cause her to make at least some initial enquiries, sufficient perhaps to deter Consumer Affairs Victoria from proceeding with the false Contempt of Court charges. When the Contempt of Court charges failed to materialise I decided again that I should leave things as they were and move on.

It was when I received a letter from the Legal Services Commissioner some months later that I realised that the Chief Justice had joined the hue and cry of those who are intent on pursuing me as a corruption whistleblower to the end and, to use the words of Mr. Blair Ussher, to "crush" me and to ruin me professionally.

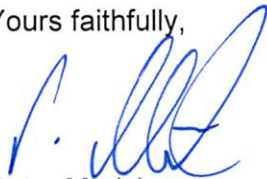
Conclusion

I warned the Chief Justice that corruption had been laundered through the Supreme Court, and that a further attempt was being made to have false charges of Contempt of Court similarly laundered through the Court. In my capacity as a corruption whistleblower and victim of corruption, I now warn VCAT that an attempt is being made to further launder corrupt conduct through VCAT by way of disciplinary proceedings brought by the Legal Services Commissioner.

I advise that in the event that the Application by the Legal Services Commissioner proceeds as a normal VCAT hearing, my defence will be that the proceedings have been brought by a corrupt public official as an attempt to cover up the corrupt conduct of others. I will also rely on this letter as confirmation that VCAT was warned in advance that the Application was lodged by the Legal Services Commissioner in circumstances of the most serious misconduct by, and on behalf of, senior members of the public service and the judiciary.

Please place this letter on the VCAT file as my initial response to the Application lodged by the Legal Services Commissioner.

Yours faithfully,



Peter Mericka

Supreme Court of Victoria Complaints

Judicial Complaints Process

Judges and Associate Judges are not subject to direct discipline by other persons, apart from extreme cases where they may be removed by the Governor on an address from both Houses of Parliament for serious misconduct or unfitness. This degree of immunity from direct discipline except in extreme cases is necessary to maintain the independence of the Judges and Associate Judges so that they can, and can be seen to, administer justice impartially. At the same time they are made accountable generally through the public nature of their work, the requirement that they give adequate reasons for their decisions and the right given to litigants to challenge decisions on appeal.

There may be occasions, however, where a person is concerned not with the decision made but with the conduct of a Judge or Associate Judge. Such concerns can be raised in writing with the Chief Justice. The Chief Justice will determine how the concerns raised should be addressed consistently with the need to preserve the independence of the Judge or Associate Judge and will, where appropriate, communicate with the person who has lodged the complaint.

In considering the conduct of Judges and Associate Judges it should be borne in mind that they are expected to manage proceedings efficiently and effectively. At times they have to be brief and assertive. If you consider that you have been dealt with too briefly or firmly, this may be the reason. "Guide to Judicial Conduct" published by the Australian Institute of Judicial Administration Incorporated is published on its web site – <http://www.aija.org.au>.

Complaints Against Associates And Tipstaves

Concerns about the conduct of an Associate or Tipstaff should be addressed to the Judge or Associate Judge employing them. The Judge or Associate Judge will consider how the concerns should be addressed and will communicate with the person lodging the complaint. The Judge or Associate Judge in his or her discretion may refer the matter to the Chief Justice.

Complaints Against Other Staff

Concerns about other staff should be raised with the Chief Executive Officer. The Chief Executive Officer may, in his or her discretion, refer the matter to the Chief Justice.